THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill
Circuit Court Judge

Unpublished Opinion No. 2018-UP-078 (S.C. Ct. App. filed February 7, 2018)

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC, ... Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC, ... Defendants,

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ... Third-Party Plaintiffs,

vs.

CAROLINA CUSTOM CONVERTING, LLC,
..... Third-Party Defendant and Counterclaim Plaintiff,

vs.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the .....Respondents,

and

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND CAROLINA CUSTOM CONVERTING, LLC, ... Petitioners.

APPENDIX TO PETITIONER CAROLINA CUSTOM CONVERTING, LLC'S PETITION FOR A WRIT OF CERTIORARI
(Volume 5 of 5)

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- ❖ Competing with the company for the purchase or sale of any kind of property (tangible or intangible) or diverting a business opportunity from the company for the employee's personal interest.
- ❖ Using company assets (e.g., funds, facilities, equipment, phones, know-how, or personnel) for the benefit of other business or personal interests.
- ❖ Engaging in outside activities that reduce the employee's impartiality or judgment or that may interfere with or adversely affect the employee's ability to perform company work.

Honoraria: From time to time, employees may be asked to represent the company before an outside group or trade association. In such instances, employees may accept expense reimbursement but should decline any fees offered. If an honorarium cannot be declined, the employee should request that the granting organization contribute the honorarium to a charity or some other nonprofit agency. If the granting organization will not comply with this request the employee must donate the money to a charity or some other nonprofit agency.

Approvals and Advice: Employees are encouraged to discuss issues and concern's pertaining to the company's commitment to ethical business practices with their supervisors. All managers shall be responsible for the enforcement of compliance with this policy. Employee's must obtain approval from their supervisor, the appropriate area or functional vice president, and an unauthorized representative from the Legal Department before undertaking any of the activities identified as possible conflicts of interest in this business' ethics policy.

EXHIBIT F
TO AFFIDAVIT OF JOHN GANDIS

Jones, Brigid M.

From:	John Gandis <john@ccc-films com>
Sent:	Monday, December 10, 2012 11:45 AM
To:	davewilsonsr@charter.net
Subject:	FW: Term Sheet
Attachments:	ATI_2541536_2_CCC Term Sheet.DOCX

Dave, the attached terms are being sent today to your lawyer. Let us know if you want to proceed on this basis. Your email proposal (from Andy A.) said that you "are prepared to move as quickly as possible", and we are interested in that as well as reflected in our terms. - John

December 9, 2012

1. This is a non-binding term sheet, and not an offer, as the parties will not be contractually bound as to the subject matter hereof unless and until they sign defintive conveyance documentation.

2. John Gandis and Andrea Comeau-Shirley (the "Sellers") will sell all of their interests in and to Carolina Custom Converting, LLC ("CCC"), including all equity and all notes and other sums owed to them or their affiliates (the "Sellers' CCC Interests"), to Dave Wilson (the "Buyer").

3. The purchase price for the Sellers' CCC Interests shall be $500,000, in cash, payable by Buyer at the closing of the transaction (the "Closing"), which will occur on December 20, 2012.

4. The transfer documentation will contain the following (and no other) representations by the Sellers: representations as to their capacity; no conflict of the transaction with agreements related to the Sellers, or CCC; organization and good standing of CCC and ZOi Films, LLC ("ZOi"); good title and no liens as to Sellers' CCC Interests; accuracy of a list of assets of CCC and ZOi, and good title to such assets; no liens on such assets except for existing, specified 3rd party obligations of CCC; accuracy of a list of debts and liabilities of CCC and ZOi; and sole ownership by CCC of the all of the equity of ZOi. No representations will be made as to the collectibility of accounts receivables, saleability or condition of inventory, condition of equipment, or claims or liabilities that are unknown. The represention shall be made on a several, not joint basis, by the Sellers, and shall survive the Closing for a period of 180 days.

5. CCC will not make any payments to the Sellers during the period ending at Closing.

6. John Gandis will permit CCC to occupy the current premises for a period of 60 days after Closing. Rent will be prepaid at Closing, in the amount of $12,000.

7. Sellers will agree, for themselves and their affiliates, to not call upon or solicit any customers of CCC or ZOi (who have been customers of CCC or ZOi at any time during 2012), for a period of 60 days subsequent to Closing.

8. Between now and Closing, all activities associated with the current litigation will be suspended.

9. The Closing documents will include general mutual releases between and among the parties (and also with CCC and ZOi), including without limitation, all claims made in the current litigation, which shall be then dismissed with prejudice.

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, Carolina Custom Converting, LLC, Counterclaim Plaintiff, vs. Dave Wilson, Steven Norvell, Neologic Distribution, Inc , and Fresh Water Systems Inc., Counterclaim Defendants.	Civil Action No. 2012-CP-23-02887 **AFFIDAVIT OF ANDREA COMEAU-SHIRLEY**

PERSONALLY APPEARED before me Andrea Comeau-Shirley who, first being duly sworn, deposes and state as follows:

1. I am a resident of Cobb County, Georgia.
2. I am over the age of eighteen, and have personal knowledge of the facts stated herein
3. This affidavit is offered background purposes and to provide context and explanation to a number of snippets of my e-mails that are cited in Wilson's Memorandum in Support of Motion for Partial Summary Judgment ("WM")
4. I am a minority shareholder/member of Carolina Custom Converting, LLC ("CCC" or the "Company").

5. I first became acquainted with CCC when my client and friend, Cliff Gandis, asked me to help his son, John Gandis, with a business that he had recently started. Of course, that business was CCC.

6. My role at CCC was to provide tax preparation services and strategic business advisory services to the Company and its Manager, John Gandis. For that service, I received a fixed equity interest. I was later promised additional equity as the scope of services expanded.

7. In addition to that role, as it pertains to John Gandis, I also work for him and his wife individually. I handle the income tax work for them and for his other businesses and generally advise him on personal and tax matters.

8. Many of the e-mails that Wilson has cited, and taken out of context, address communications between Gandis and me in my role as an advisor to him individually.

9. Contrary to the assertion of counsel for Wilson, we did not try to force Wilson out of the Company. Wilson was the person in charge of purchasing and sales, and purchasing and sales is how the Company makes money. I understood that he was critical to the Company's success.

10 My problem with Wilson, and I want to stress the word "my" because it was my personal problem, was that Wilson was not tuned into the cash flow side of the business. We were all equal members but he always demanded to receive monthly income from the Company regardless of whether we could afford it; moreover, during this time the other members were not receiving the same monthly draws. In short, he was unwilling to act like a co-owner of a company, instead he acted like either the sole owner or as an

employee and demanded that the other members treat him with priority as it related to his pay and benefits but expected the benefits of ownership when it suited him.

11. I firmly reject Counsel for Wilson's argument that we tried to squeeze Wilson out. Below are but a few examples of my own words from Wilson's own exhibit book that refute his counsel's argument.

    a. WEB, Ex 41; November 9, 2011 e-mail from me to Gandis. "I know Dave wants to be a partner – and I support him in that goal. . . . If [Dave] disagrees about the risk to our business and our credit rating if we continue the old path [i e , buying film without regard to whether we have a corresponding customer need for that film] – then we need to find a way to make Dave an investor/owner that does not have the right to veto how cash is spent."

    b. WEB, Ex. 52, January 5, 2012 e-mail from me to Gandis: "We need to remember that we don't care if he is a partner or not . . only he cares, and even then, he really only cares about getting his cash in front of vendors and employees – and we have told him "NO MORE! Never again. We are going to get even with you from a distribution perspective, and then we are going to stay even with you on a go forward basis."

Taxation Issues of an LLC and Taxation Issues of this LLC

12. Wilson and Gandis decided to operate under the LLC structure before I became involved in the Company.

13. I want to address the tax side of the Company that I believe created all of the problems that ultimately led to Wilson leaving. I am going to generally address a concept known

as phantom income and specifically address the phantom income of CCC for the 2010 tax year

14. Pass through entities are business structures wherein the operating results pass-through to each owner's personal tax return. These entities include the various partnership structures (LP, GP, LLP, etc.), and "S" Corporations and LLCs that elect to be taxed as either a partnership or as an S corporation.

15. Pass through entities often create "phantom income."

16. Phantom income is an accounting term given to taxable income reported to the Internal Revenue Service (by pass-through entities) that hasn't been distributed to the members. It's called "phantom" income because it exists on paper Its taxable income and you pay tax on it, even though there is no cash that comes to you.

17 Phantom income arises in cases where the LLC needs operating capital to expand, or to purchase inventory When the LLC uses income to do these things, the owners are still required to pay taxes on that income even though they did not receive the income

18 Carolina Custom Converting reported phantom income to its owners in 2010 predominantly as a result of a significant investment in inventory. Specifically the company used more than $850,000 of its profits to acquire inventory as of year-end 2010.

19. Ironically, it was Wilson who was solely responsible for the film purchasing activities. It was also Wilson, and he alone, that failed to liquidate film stocks during the 2010 film shortage. Worse, at the end of the 2010 year, he built up the company's film stocks in excess of typical levels (after he had been counseled on appropriate "safe harbor" levels for the various film types).

20. In planning for tax obligations, Wilson had been advised that a reduction of approximately 15% in inventory levels should have generated available cash for distribution to cover the tax liability associated with the phantom income. As this matter impacted all the owners, the group met numerous times during 2011 to discuss inventory reduction planning. Wilson failed to execute the agreed-upon plan causing all members, not just himself, to receive a Schedule K-1 with significant phantom taxable income.

Response to Various Assertions found in Wilson's Memorandum

21. On page 7 of WM, he cites Exhibit 9 to Wilson's Exhibit Book ("WEB") for the proposition that the Company knew that Wilson continued to transact business through his former company, Eastern Film Solutions ("EFS") in 2009. Specifically, the assertion is that my January 18, 2010 statement that in "2010 . . . [we would be] completing Dave's transition towards full-time CCC" means that the Company knew Wilson had been conducting side deals in 2009 as early as January 18, 2010. That is an incorrect statement. My reference to transitioning Dave to full-time CCC was a reference to transitioning Dave from doing representative work for Dew-Tex. The latter involved work that all knew about and serves as no part of the Company's claim against Wilson.

22. On page 7 of WM, he cites WEB Ex 9, a June 29, 2010 email from me regarding Wilson's having "had two jobs [one for CCC and the other for Dew-Tex] and . . .some wind down activity from [EFS] that muddies [his] tax world in 2009." This citation is made for the same reasons stated in paragraph 12, above. The import of the statement attributed to this quote is incorrect My reference to EFS wind down concerns a single transaction regarding left over film held by EFS that was sold to CCC in early 2009.

23. On page 8 of WM, he cites WEB Ex. 12, a proposed job description for a CCC employee. The WM argues that the job description shows that a CCC employee was providing work for DecoTex. That is an incorrect assertion. The job description was a proposed job description that I generated in an effort to have Gandis hire more accounting related employees This e-mail was sent in my capacity as both a personal advisor to Gandis, and as a business consultant to the Manager of CCC. At this time, I knew that Gandis was having trouble keeping up with DecoTex accounting functions and proposed that the CCC employee could restart working for DecoTex—she had previously done this type of work a number of years ago. This never happened, and had it happened it was understood that DecoTex would pay her for her work.

24. On Page 8 of WM, he cites WEB 13, a March 15, 2011 e-mail from me where I am providing more detail regarding my proposed accounting hires. The WM argues that this e-mail shows that a CCC employee was working for DecoTex. That is an incorrect statement; again, this was a proposal made in the context of hiring more accounting staff. If you begin reading the block quote found on page 8 of the WM, but begin two sentences earlier, the context is clear. "The accounting department needs the RIGHT SKILL SET and the RIGHT HEAD COUNT Based on our current level (no growth) – I think it's a two person department . . or two people plus Joy 2 5. I want to get Joy back onto M-Tech . . ." Wilson's selective quotation of this e-mail is very misleading Moreover, this was a suggestion, as a full reading of the e-mail makes clear.

25. On page 8 of WM, he cites WEB Ex. 16, a March 16, 2011 e-mail from me that addresses more of my proposal to hire experienced accounting staff and to make Joy Whitten a part-time employee of CCC. The selective block quote appears to suggest that there is a

plan to hide Joy's proposed involvement in Decotex if she were continuing as a full time CCC employee This idea is the complete opposite of my proposal. In WEB Ex 16 I write, "If we are going to be a one person office then I want that person to be someone that grew up in the accounting area and is proficient in all the new office tools and technology." My proposal reduces or eliminates Joy's involvement in the CCC accounting function and these suggestions address how John can continue to work with Joy if the CCC staffing proposal is adopted. I understand that Gandis and Wilson rejected this staffing proposal due to the anticipated salary needs for the advanced skill set.

26. On pages 9-10 of WM, he cites WEB Ex 19, an April 15, 2011 e-mail from me to Wilson and Gandis regarding the absence of tax distributions. The quotation is lifted in a manner to suggest something untoward. The full e-mail explains my reaction regarding Wilson's request for a tax distribution. The context is the monthly draws he has been receiving and a future tax bill

    a I write that, "[s]tarting in May . we are going to increase the monthly distribution from $6 8K to $10k each month . . . . This new check is about the same that you used to receive and may actually be more if you were properly setting aside 40% of those payments for taxes."

    b. Wilson responded with "Thanks. Please do not do anything with my tax/distribution payments until I return from Vacation in a week "

    c. I responded: "I want to make certain that there is no confusion – there are NO TAX DISTRIBUTUION PAYMENTS for you or anyone else at this time. We are switching the monthly payments in May .. because we need a better handle on the

cash flows and I don't [want] to continue the situation where we are uneven [in distributions] until we get a better handle on our inventory reduction plan."

i. The inventory reduction plan meant turning the excess inventory that Wilson purchased into cash so that the Company would have money. Wilson never had a grasp on the finances of the Company and its lack of cash caused by his constant film purchases.

ii. My capital letter response indicated my frustration in this regard as it was Mr. Wilson's speculative purchasing activity that drained the company's available cash.

27. On pages 10-11 of WM, he cites WEB Ex 20-21, e-mails from March 11, 2011 and March 12, 2011. He cites these e-mail exchanges for the proposition that we were seeking to "intercept" Wilson's e-mails. That assertion is wrong and the e-mails he cites confirm this. The Company was creating an archive system. Page two of Ex. 20 lists a number of CCC e-mail address that were being included in the archive system. These are e-mail addresses that deal with the sales and purchasing side of the business Because Wilson was in charge of that side of the Company, his e-mail address was included in the archive system.

28. It is also important to note that one of the reasons for archiving the e-mail was to protect the business. As I stated in my March 12, 2011 e-mail (WEB Ex 21): "reviewing all of the emails, even the internet postings . . . [helps to] ensure that our employees are not sharing confidential data, sexually harassing one another or posting negative comments about our competitors on the internet that could lead to the company being sued."

a. Counsel for Wilson's assertion that Wilson did not know this was going on is incredible, the IT company that did this work travelled to the Greenville office to do this; the Greenville office had two employees: Wilson and Bill Shaw. When the IT company's employee was at the office, he spoke with Wilson, and Wilson refused to allow him to work on one of the company's computers. Moreover, CCC has an employee handbook that provides that there is no privacy when it comes to corporate e-mail.

29 On page 11 of WM, he cites WEB Ex 22, an e-mail from me to Gandis dated March 10, 2011. Counsel for Wilson takes issue with my statement that, "[t]he same stuff that protects the business ALSO helps protect the other goals." He does not understand that statement. During Christmas of 2010, Wilson was caught doing a side deal. Accordingly, one of the positive benefits of creating the archive system was in addition to its protection of the business regarding liability and sales activity, it also allowed the owners to protect themselves from Wilson cheating the business via side deals: "[t]he same stuff that protects the business ALSO protects the other goals [of making sure we are not ruined by Wilson doing side deals]."

30 On page 11, fn.4, of WM, counsel for Wilson baldly states that Defendants attempted to intercept text messages and data from Wilson's Blackberry in late 2011. He cites no evidence for this proposition because there is none. That statement is a fabrication. In that same footnote, counsel for Wilson alleges that the changing of EFS's address in November 2011 was a violation of federal law but fails to acknowledge that Wilson contributed EFS into CCC three years previously, that CCC had been paying bills issued under the EFS name, and that EFS should not have even existed in 2011 According to

the South Carolina Secretary of State's website, EFS has not been in existence since 2008[1].

31. On pages 11-12 of WM, he cites WEB Ex. 25, this a September 19, 2011 e-mail, owned by CCC, between Wilson and his wife, and subsequent commentary from me and Gandis This e-mail is cited in an effort to craft a narrative that Wilson was being squeezed out. I reject that conclusion. My general reaction to this e-mail centered on Wilson's large tax liability and the consternation that was causing in his family. For example, I write that, "it is possible that he never mentioned income taxes to [his wife] until just now and this is . . . frustrating [her] because you can look at our balance sheet and clearly tell there is no cash there for an October 15th distribution." I also write that, "he gave himself a raise this year – and most likely didn't send in any additional money for taxes. This gave her a false sense of liquid cash and a false standard of living." I also note, that if "he won't be honest with you [Gandis] that we are suffering the consequences of his prideful arrogance and his unwillingness to team together for planning [this is a reference to his unchecked film buying and his unwillingness to implement the inventory reduction planning to address the Company's cash flow problems] . . . what makes you think he would tell [his wife] that he is anything other than a story in which he is the hapless victim of you and me?"

32. As for the quotations regarding restructuring, some context is in order. Back in the spring of 2011, Gandis came to me with a concern that Wilson may not have remitted his 2010 tax payments to the IRS as Wilson was complaining to John about his ability to fund that tax liability and he had requested that the company obtain a sufficient working capital

[1] It is not logical to assume that the dissolution is a simply a result of consistent "neglect" by Wilson as he filed a Change of Agent form with the Secretary of State for EFS in June 2008.

line so that capacity would be there to fund a tax distribution for him. The company resumed its conversations with various banks, including Bank of America, in the spring. Some of our discussions from the spring 2011 discussions are found at WEB Ex. 23, and set forth below. During those discussions, Gandis expressed concern that Wilson's status as a member, and the phantom income and tax bills associated with membership, were causing Wilson financial problems that could ultimately harm the Company To that end, as his personal advisor, I was asked to try and figure out a way to fix this problem· hence the structure discussion. Some of my comments regarding these spring 2011 discussions are below. The context for these discussions was a planned April 2011 meeting between me and Wilson to discuss any concerns he had about his status in the Company and his finances.

> He keeps wishing that cash would fall from the sky. . . . but we have to BUILD the business to support additional cash . . . Upon reflection, your absence may give him the opportunity to share with me his concerns about cash flow results that he hasn't yet been able to express to you. OR rather, that he merely chooses to say to you, why are we not taking the risk of borrowing to fund our lifestyles? I plan to explain to him that the role of an owner (even in an LLC) involves financing his business, mostly through deferred compensation. That an owner's eye is on the upside.
>
> . . . .
>
> I would then propose to him that his actions (e.g loans from company) seems to indicate that he would really rather be in a structure where he receives good monthly salary and he earns a regular bonus. This alternative structure gives him (a) more cash now and (b) preserves some of his participation [in] the financial results. It also means that he would convert to a situation where his tax obligation matches his cash flow situation
>
> . .
>
> If we are going to talk about what it means to be an owner, I think it is important that he not feel TRAPPED by his LLC and realize that . . . at this point in the game ... we can talk restructure of his participation in a way that should be a win-win

As my words indicate, I was planning to talk to Wilson about whether he would like to become a salaried officer of the Company, with a commission incentive structure. My words also show that I was not thinking of a way to force him to leave. At this point, the company was more than 6 months into discussions related to managing/reducing its inventory levels and the volumes were continuing to rise.

33. After Wilson and I met, nothing ever came of the restructuring issue But during this lengthy meeting Wilson expressed complaints about everyone at CCC telling me "he had ideas" (but I don't recall any positive suggestions being offered) We discussed inventory at length and went over the detail analysis I had prepared I tried to let him lead the conversation as I understood that he requested this meeting with me. Dave waited until we were in the car for the three mile ride to the office to bring up the topic of taxes and then only discussed items like reporting the business usage for his auto. John believed that Dave needed our help to implement the inventory reduction plan (thereby alleviating the phantom income). The members met numerous times over the next months (with Bill Shaw and John Higgins) to discuss specific actions steps and strategies related to inventory reduction. At the same time we worked with Bank of America to obtain a significant working capital line of credit. Fast forward to the September 2011 timeframe At this point, I now know that Wilson does indeed have a significant tax bill that is weighing on him Hence the following words: "This is probably your opportunity to make a RESTRUCTURING offer to Dave under which you restructure your relationship so that he gives up his equity ownership and converts to a structure where he is only taxed on what he receives!" Again, all of this was tax driven, and it was intended to ***KEEP*** Wilson at CCC, not force him out. Hence the following words: "you can put

him into a deal that compensates him for his time and energy – maybe more like a regional sales manager is paid – so he gets paid on his sales and also on the sales of the team."

34. On page 12 of WM, he cites a block quote from WEB Ex. 27, a September 20, 2011 e-mail regarding the idea of getting Wilson into a position that is a win-win for both sides. I stand completely by the block quote, for it is clear that what I am proposing was a way to ***KEEP*** Wilson in the Company. Because it does not support counsel for Wilson's position, he omits some of the lead in language to that block quote: "I guess it is nice that we have plenty of time to talk this through . . . (This is still round #1 – and it is clear that you need to decide on a deal that is fair for you and for Dave) . . . . I would suggest a letter . . it also lets him show it to [his wife] who can agree with him on the best approach."

35. On page 13 of WM, he continues to cite to the same WEB Ex. 27. In this e-mail, as Gandis's personal advisor, Gandis and I list a host of ideas to think about if he and Wilson agree to this new structure. These ideas make very clear that this was not a squeeze out: "1 CCC will pay Dave quarterly distributions to meet the portion of the tax requirement for 2010 and 2011 . . 2. Dave will be put on a monthly salary . . . 3. Dave will sign over his shares to me so that he is only taxed on what he receives from CCC monthly . . 4. Dave would stay on to sell at a salary that would have a base plus bonus structure. Dave would also participate in some of the profit provided by the sales rep's. . . . 5. If the company were ever to sell – Dave would have an opportunity to participate in the profits based solely upon the percentage of the business that he was in charge of at the time of the sale . 6. If we ever found that Dave was "cheating" - or selling any type of

film? Laminate? Paper, film, or foil – then his agreement with CCC would cease immediately . . . . 7 Dave's responsibility would be to train, or work with a purchasing person. . . . Last – I know you are going to think I am being petty about this . . but . if Dave agrees not to be an owner, then we need to FORCE him to start acting like a sales manager . . .that means he prepares sales forecast reports, he gives reporting to the company . . . and most importantly, he would need to be willing to work with other departments on cooperative basis and . . . if he needs information from the financial records, he puts in a request and receives a report . . . as an EMPLOYEE would do!"

36. Finally, I note that if Wilson is in this new positions, he:

> cannot continue to have access to the financial records – not because he doesn't need any of the information – but because he needs to be able to ARTICULATE what information is needed and we need . . . as a company . . . to know what information is needed by the sales team on a daily, weekly and monthly basis. You have to have this sharing of understanding in place if you are going to protect the company so that . . . in a bad period . . if Dave just quit on you .. your people would be able to produce the daily, weekly and monthly reports for the rest of the sales group and no one would say . . we don't know where Dave got that from . . .

37 On page 13 of WM, counsel for Wilson selectively quotes from the above e-mail discussion in an effort to portray the discussion as something that it was not. First, the reference to terminating Wilson if he was found to be cheating was simply the reality of the situation. Gandis caught him cheating in Christmas 2010 and this was fresh in our memory. Secondly, the part about the access to the financial records, viewed in its full context, was merely a reflection of the fact that Wilson's inability to articulate business information was hampering the company and that sharing of information is critical; I was encouraging a reporting structure typical of small business that would expand their perspectives beyond

the sole entrepreneurial mode of operation As noted in WEB Ex 26, Bank of America has informed the company that "they would really like to make this loan but they need to see what we do through the end of the year." At this point the company had missed its sales budget for several consecutive months and we needed to find a way to refocus Dave on growing gross margins and sales.

38. On page 13 of WM, first full paragraph, counsel for Wilson attributes a quote to me but does not provide any citation to support that quote; he then baldly asserts a valuation, again without citation. I know of no one who has asserted that they have valued this company for this litigation.

39. On page 13 of WM, he quotes from WEB Ex. 28, a September 22, 2011 e-mail discussing Wilson's request regarding taxes. I am irritated with Wilson's tax request because he is cavalierly suggesting that he needs to hear from us "what the game plan is for cash flow and taxes" despite months of meetings related to reducing our inventory levels so as to free up cash Counsel for Wilson argues that my discussion of the need to reduce our inventory levels in an effort to free up cash for everyone is somehow an effort to squeeze Wilson out. I completely reject his argument. The fact is that we had excess inventory and because of that excess inventory we didn't have any money for a distribution. (*See* Wilson Exhibit Book, Ex. 26, e-mail dated Sept 6, 2011 ("Well – the good news is that we have a bunch of money available in our inventory (specifically excess inventory), Ex 37, e-mail dated October 31, 2011 ("As you know, we started saving money this spring so we could make a tax distribution this fall, but our money was spent on film")). The fact is also that in more than 12 months of

discussions there had been little forward momentum on managing inventory and execution on the agreed upon action steps for selling the film that everyone in the planning meetings had agreed was excess/questionable.

40. On page 14 of WM, he cites to WEB Ex. 29, an October 13, 2011 e-mail discussion between me and Gandis Counsel for Wilson asserts that this e-mail was from me and to keep "feeding Gandis ideas about potential restructuring for Dave." He asserts that this e-mail was more efforts to squeeze out Wilson. I reject as fantasy this assertion. The context behind this e-mail was Gandis called me after a meeting with Wilson that same day and asked me if there was a way to "wipe out" Wilson's significant tax liability. I explained that I didn't know whether the full tax liability could be wiped out but that I was aware of a sophisticated and complex tax planning idea that could reduce his tax bill to the lowest level possible. I send him a summary of the necessary steps. Several days later (as the email states) Gandis asked, "Is this something that I could forward directly to Dave?" I responded, "No problem at all." This was not some covert scheme. We were working together to try and fix a tax problem that our partner incurred, and had no ready means of fixing In my reply to Gandis, I supplemented the original action step listing so at to create the listing I intend to be delivered to Wilson (October 13, 2011 e-mail, incorporated herein and attached as ***Exhibit A***). You will note that the plan did not push Dave out of the company but restructured his participation. "This helps to build the company and keeps Dave participation at a broader level (although he now shares in gross income instead of net income)"

41. After Gandis forwarded Ex. 29 to Wilson, that act set in motion a sequence of events that we did not expect. Moreover, I have just learned that Wilson did not ask John in their meeting to find out if I could assist him with his personal tax situation. As the assistance was not requested, I believe that Wilson was offended by us trying to help him out with his tax problems; that he took this as an insult to his pride. It also does not help that Gandis forwarded the wrong email to Wilson and therefore the listing that Wilson received failed to include the language about continued participation in gross income.

42. In WEB Ex. 30, Wilson asked for his capital account balances, but there is no evidence that I reply to this inquiry or exploded. Instead I reply solely to Gandis to ask him whether Wilson received the tax planning idea. Gandis responded that yes, he had gotten the idea but had responded that, "there was no way that it was a 'good deal' for him because his capital account was somewhere around $500k and this would be the minimum "buy out" that he could accept" I then responded "NO he doesn't understand." I meant that he doesn't understand the case law that would permit the minimization of his tax liability and the next sentences of the email explains how the case law works. It was important to sustaining the tax position that Dave agree that the company has the right to "CALL his loan . and then he either comes up with $123K or he forfeits his membership interest" This fact was to support a tax filing position that a subsequent loss allocation is properly reflecting his economic interest when taking into account all agreements that he has with the company.

43. As to my response. in my mind, I was working for ***no*** pay to try and explain a complex tax mechanism to erase tax debt from years past, and Wilson was ungrateful. I was frustrated by this and by the fact that the cash deficiency was a result of Wilson's failure to execute the inventory reduction plan. Importantly, he didn't understand that in order to remove the $200,000 tax liability from his own return, those taxes were not going to evaporate but were to be shifted to Gandis who would end up the financial burden that had been plaguing Wilson. Wilson had been asking us to help him live beyond his and the Company's means by providing him with a monthly draw that none of us were receiving; and he wasn't saving any of that money for taxes despite the fact that the express purpose for increasing his distribution was so he could make tax remittances. Now he had a large tax bill, and he was making it our problem. The comment simply explains how the tax plan was designed to try and meet the IRS' reasonable basis threshold as this tax strategy was both aggressive and sophisticated.

44. As to the content of counsel for Wilson's argument, in the first full paragraph of WM p.14, that my e-mail was a response to Wilson's act of asking "for a precise amount of his capital account," that is a complete fabrication As discussed above, this was a response to our efforts to fix his tax liability

45. On page 14 of WM, he cites WEB Ex. 31, an October 21, 2011 e-mail discussion between Gandis and myself shortly after Wilson has, essentially, threatened to quit CCC and/or and form his own competing company after forcing CCC to close. (October 17, 2011 e-mail incorporated herein and attached as ***Exhibit B***). This email does not suggest that Wilson is not a member, but wonders how the

company could protect its survival. In the days between October 17th and the 21st, Wilson has bellowed several brutish positions to John in which he uses a forced closing of the company as his negotiating strength. In an attempt to diffuse Wilson's agitation, I spoke with Wilson's tax accountant (Ray Harris) to share with him the specific case law and theory that "wiped out" his tax liability. My notes related to this call include a remark by his CPA to the effect: "I am not certain that his ego is going to understand that you are trying to help him out. He wants his cake and to eat it too. He wants the upside of ownership but all the security of being an employee" When I ask Mr. Harris if he can help with this situation he remarks, "I have worked Dave so far up the flag pole I don't know that I will be able to bring him down."

46. On page 14 of WM, he cites WEB Ex. 36, an October 31, 2011 e-mail addressing Wilson's request for that month's check in which he is trying to recharacterize his loans. The context behind this e-mail is that Wilson and Gandis have engaged in a discussion about Wilson's future status. Specifically, they are discussing whether Wilson will (1) remain as a full member, (2) convert to a salaried officer, or (3) membership modification in order to eliminate Wilson's tax bill. It is important to note that all three of those options would have resulted in Wilson staying with the Company and still participating in the company's growth (modified equity rights) My comment regarding the fact he really needs that cash was in response to Gandis telling me that Wilson told him he needed the cash. My comment regarding him not spending the next three weeks debating the issue was my hope that, as a Company, we could quickly get this episode behind us and

get back to the business. In addition, I had explained that the tax planning idea needed to be fully analyzed by the legal team and that it was important that this work begin sooner than later in the event that the results were not as anticipated. I had estimated that the legal analysis would likely exceed $15,000 and had convinced John that the company should bear those costs even though this was a planning idea intended to satisfy (what I understood to be) Wilson's request In addition there is an IRS imposed deadline for executing the tax planning idea and there was very little time left to get all the steps accomplished properly.

47. On page 14 of WM, counsel for Wilson asserts without citation that I stated, later on the same day that Wilson really wanted the status quo and that Wilson had yet to be informed he may not receive a check in January. I do not understand this argument. The e-mail was from October 31.

48. On page 15 of WM, he cites WEB Ex. 37, an October 31, 2011 email from me discussing our current cash position in response to cash forecast prepared by Wilson which omits significant business obligations that require cash I stand by everything in this e-mail. Counsel for Wilson quotes heavily from it in an effort to portray that something is amiss, but I do not read it the same way. Some context is helpful. At this time, Wilson was ahead of Gandis and me in distributions to the tune of over $100,000. That is why I write, "I don't believe it is in our best interest not to make the 2011 even up prior to year end." By that I mean, that while it is only fair that we get as much as Wilson ***had already received***, the company could not afford to completely fix the situation in the next two months. I go on to note that we should have had more funds available. "As

you know, we started saving money this spring so we could make a tax distribution this fall, but our money was spent on film." It is important to note that Wilson was in charge of film purchases and he spent the money we had been saving for a tax distribution on film. Finally, I write that "[i]t will be difficult to convince Dave that we don't have the funds to give him a $12K loan so long as we are sitting there with a fat balance of money that really is your money (and to a much smaller extent, my money)" To be clear, what I am saying is that it is not fair to continue to prefer Wilson over Gandis and me. If we are all members, why are we continuing to not act that way? I don't see anything wrong with this line of discussion. I would imagine that all business owners would feel this way. This is certainly not evidence of an attempt to push Wilson out: demanding equal treatment. I am also pointing out that the company has legal obligations to its vendors and employees that need to take precedence over distributions or loans to members.

49. On page 16 of WM, he cites Web Ex. 38, an October 31, 2011 e-mail from me to Gandis. I stand by this e-mail. The block quote succinctly states the problem we were having. Wilson was refusing to act like an equal member. My lead in to that e-mail expresses my frustration: "This Halloween I have seen the scariest creature of all – partner with his head in the sand living in fantasy land ------ MmwhaaaHAHaaah. "

50. In that same e-mail, I continue to express the same concerns, this time in more concrete fashion: "If he wants option #1 [i.e., staying on as a full member] that agreement says, starting in 2012, I Dave Wilson will not receive a distribution

check unless we are all getting checks and I also agree that I will not receive an advance from the company unless all our vendor bills are being paid on a timely basis. He needs to understand that we already cannot afford to make a 12K loan to Dave – This week we didn't pay Mitsubishi today because we didn't have enough money for all our vendors ... we really cannot keep on paying our vendors late and yet ...pay Dave – If he wants a guaranteed check then he needs to be an employee!"

51. No one was forcing Wilson out.

52. On page 16 of WM, counsel for Wilson argues that "I lobbied Defendant Gandis not to pay Dave Wilson and prepared cash flow documents painting a dire picture." That is not true. Wilson relies on WEB Ex. 39 for this argument. Ex. 39 is an e-mail from Nov. 6, 2011 wherein I provide an overview of the finances of the Company on a year by year basis. In this e-mail I describe how the company operated and where its cash went with the stated purpose "before we can decide what we might do differently going forward ..I would suggest that we start by looking at the PAST and seeing what we would have done differently there...so as to generate cash for owners." I have spent years recommending sound business practices, including paying vendors timely and managing inventory on a just-in-time basis (where possible). In this email I outline five critical steps that should enable the company to generate cash at a level where both taxes are covered and the company would be able to ***begin paying salaries to members***. I have consistently lobbied that CCC take care of its employees and its suppliers while serving its customers and that owners should be last in the order

of priority. I believe that when owners take care of these groups of people, they build loyalty and the company prospers (which then takes care of the owners).

53. On page 16 of WM, counsel for Wilson also argues that my e-mails were somehow manipulative. To support that argument, he cites WEB Ex. 40-41. Exhibit 40 is a November 9, 2011 e-mail from me to Gandis. In that e-mail I am acting as Gandis' personal advisor and as a member, and I am essentially arguing against Gandis abdicating his 51% vote. I explain that I had accepted an equity position only after having both members confirm for me that the voting arrangement was 51% (and not unanimity). It was clear to me that Wilson was essentially saying to John that the only way Wilson was not going to force a dissolution of CCC would be if Gandis agreed to change the voting to give Wilson veto rights. I also advocated for a formal management structure that will allow the Company to grow, with Wilson exclusively focusing on sales. Exhibit 41 is another November 9, 2011 e-mail from me to Gandis. In that e-mail I specifically state that, "I know Dave wants to be a partner – and I support him in that goal – but we really need to come to a consensus on how the business is going to be managed."

54. On page 16-17 of WM, counsel discussed my minority preference that I was to receive at an exit—that is, when the Company was sold. The context for this was that I had been providing services to CCC that was to be paid for at an exit event based on the company's value. When Wilson first[2] asked for the company to convert from partnership to "S" corporation status, I explained that a

[2] This initial conversation was either in 2009 or 2010.

deferred/carried interest could not work in an "S" corporation structure and, as such, I was against this structure unless they caught up my distributions prior to the conversion and agreed to additional shares immediately (rather than at exit). When Wilson told us that his family was going to be buying the Company, I discounted my catch up to $100,000 and inserted the $100,000 preference as a basis to ensure my extra work was included in the sale.[3] Recording this distribution was similar to the catch up distribution that the company had on its books for other distribution payments This was a placeholder for negotiation, and I placed it on the books because I was owed that money. Wilson's counsel argues that this action was done in "bad faith, blatant self-dealing, and based upon a lie." That statement is a fallacy.

55. On page 18 of WM, he cites WEB Ex. 49-50, these are two January 5, 2012 e-mails that address locking Wilson out of quickbooks. Counsel for Wilson cites these e-mails as if I did something wrong. What he fails to mention is the reason for the lockout. First, the lockout was only from access to sensitive accounting information; he retained the ability to engage in sales functions. Second, the reason for the lockout was because Gandis and I learned that he was in discussions with a competitor. Wilson did not tell us why he was talking to a competitor, and when he refused to disclose the parties that he was talking to or to provide copies of the information that he had shared, we became very concerned about what he might have been sharing. As it turned out, our concern was

[3] Given that Wilson had stated that he believed his interest was worth at least $700,000, this offer reflected a sale of the majority shares (and controlling vote) at much less than this amount. It doesn't appear that Wilson objected to the price so much as that I was receiving this allocation.

justified. The competitor he was talking to was FilmTech and its affiliate(s) The same FilmTech that Wilson negotiated to work for, with the express promise of taking our current customers and all the customers we had been working on over the past six months. (January 16, 2012 e-mail, incorporated herein and attached as Exhibit C).

56. On page 18 of WM, he cites WEB Ex 51, a January 5, 2012 e-mail from me to Gandis. In the e-mail we are discussing Wilson's conduct in communicating with FilmTech. The context of this e-mail was that we didn't know what to do as this could be a great opportunity for CCC to create a vertical alignment with a supplier or it could be trouble.

57 On page 18 of WM, he cites WEB Ex. 52, this is a January 5, 2012 e-mail from me to Gandis. The basis of the e-mail was that we were waiting for Wilson to respond to the Texas-Draw offer He had already indicated that he was going to buy us out but he still had the opportunity to force us to buy him out under those terms. This was a tense time and I hoped that Dave was going to close on his offer. Counsel for Wilson points to this e-mail for the proposition that "[s]queeze outs take time" That is an odd statement to make, considering that we were the ones SELLING to Wilson at a price that he had scoffed at. In this e-mail I stated that: "We need to remember that we don't care if he is a partner or not . . . only he cares"; "[m]y first preference is he buys us out ***at the price we offered him***"; "[m]y second preference is that we keep him as a partner."

58 In Exhibit 52, counsel for Wilson also highlights the fact that we were waiting to get our answer to our dissociation question. He highlights that text as if there was

something untoward about it, but never explains the question. And for good reason. The explanation is as follows. after Wilson received my idea about eliminating his tax liability by taking a loss on his capital account, he was offended and sent an e-mail response. (Exhibit A). In that e-mail he asserted he had the ability to unilaterally dissociate and dissolve CCC. He consistently had threatened to dissociate which he insisted would force a liquidation of the company. At that time CCC had 23 employees and just prior to Christmas he told John that he would put everyone out of work in time for the holidays. We were shocked, and sought legal counsel as to whether that was an accurate statement.

59. On page 19 of WM, counsel for Wilson cites to a number of e-mails that addressed Wilson's resignation from CCC. He actually states that I offered a "cover story" pursuant to our "final plan to expel Wilson." Counsel for Wilson's spin on these statements is pure fabrication. There was no cover story. That was the story. Clayon Jennings, Esq. did not, however, call William Floyd, Esq., he called John Zamer, Esq., and told him Wilson saw no opportunity for a future together and that he was leaving. We now know that the timing of Wilson's actions, via his lawyer, coincided with the January 16, 2012 e-mail to FilmTech/McGarel wherein it appeared that both Wilson and McGarel had reached an agreement, and where Wilson told McGarel the following:

> Hi Mark,
>
> I look forward to the opportunity to join your organization. . . Here are the points of discussion for our agreement.
>
> . . .
>
> 4 Full time employee with draw or salary of $8k per for month for a period of time until my commission reaches a level that supports my needs. My goal will be to move as much of the business I manage at CCC

to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on our qualifying over the past 3 to 6 months.

60. Counsel for Wilson also appears to take issue with my assertion that our "mission is to get the laptop, his phone and anything else CCC owns." I do not understand how this is anything other than legitimate. It is apparently missed on counsel for Wilson that at this time Wilson ***had told us*** he was going leave, and we had the justified belief that he may take CCC's hard earned trade secrets That justified belief has been borne out in this case.

61. It is also important to note that a secondary concern for the computers was that they may reveal whether Wilson had been habitually unfaithful to the Company. Now that he was leaving, this was a very important thing to learn Exhibit 53, a January 17, 2012 email, makes this exact point. "My guess is that he knows that all of the damaging information to him is on the lap top and maybe some on the phone...." Wilson was apparently concerned about the same thing.

62. When Wilson left CCC, he took his lap tops and blackberry (CCC property) and ran erasure programs on the lap tops and removed the sim card from the blackberry before returning them to the Company.

63. On pages 20-23 of WM, counsel for Wilson addresses ZoiFilms. Some context for this subsidiary of CCC is in order. John started discussing how to save CCC immediately after Wilson's departure Candidly, I was not interested in continuing the business model that they had developed. I demanded assurance from John that the company would not sell defective materials into the market place, make substitutions on customers order, or purchasing off-lot/surplus films from

competitors. Most importantly, I asked if him what kind of image he wanted to have in the market place as CCC's reputation had been damaged by these practices and the company had lost several significant customers in the packaging industry. I told him that the company needed to rebrand and needed a strategy to align with this new face in the market place. So we started discussions about ZOi (which means "life") We considered lots of options, including starting a competitive company.

64. We discovered that Wilson had formed a competitor in late March; therefore, we reached out to Steve Potts on April 2, 2012 to do the same thing (WEB Ex 63). His firm provided a draft operating agreement and the SC formation documents ready for execution. These documents were never executed as we learned that we could only do new and different things in a new company. I understood this to mean new products (not simply new customers) could be sold outside of CCC. I began to develop a strategy that aligned with this understanding that would focus on renewables (including cellulose) sold to a group of prospects. I told Gandis that I would begin working with my contacts from Atlanta to address technology, logistics, supply, and angel investment for a new business model that was intended to serve a small group of customers that are heavy consumers of these products. I also believed that within weeks, the matter with Wilson would be papered and a normal process of dissociation would begin In all my years of working with start-ups, venture capital, and private companies, it had been my experience that business people want to get back to doing business and their lawyers "work it out." I did not know that Wilson had a previously sued his

business partners and, had I known that this was his history, I would have never agreed to become a member in CCC.

65. When Wilson filed this lawsuit, he specifically asked for dissolution When we responded to his complaint, we specifically asked for dissolution. For the entirety of 2012, 1 operated under the assumption that CCC was going to be dissolved. Because CCC was going to be dissolved, and because the film business was a worthwhile investment of my time, we needed to figure out what to do after CCC was dissolved The "what to do" was originally to be ZoiFilms, but after I was advised that no one would invest in a new company while the suit with Wilson was underway, the plans to do a new company outside of CCC was abandoned. Counsel for Wilson's argument that ZoiFilms was some covert conspiracy to siphon funds from CCC is pure fantasy.

66. ZoiFilms was formed with the purpose of providing a new business entity in which to offer our sales team equity. John had agreed that the team could receive 15% of the new business margins as their compensation At the time ZOi Films was formed, it was my expectation that the operating agreement would be drafted to include equity for the sales teams as these employees had no commissions I believed that eventually all the accounts would be moved to ZOI so as to implement a full rebranding. I continued to expect a hasty resolution after Wilson's exit from CCC. This was not underhanded at all.

67 Operating under the assumption that CCC is going to be dissolved, in WEB Ex. 65, a July 20, 2012 e-mail from me, I discuss how I anticipated that the courts were going to handle the split up of CCC among the members: Wilson, Gandis,

and me as part of wrapping up this litigation. I also have asked Cliff to assist in creating a working capital line for the companies so that the company can continue to prosper during this period. These stated action steps align with those that I detailed above:

> CCC will be aggressive in reducing its film stock between now and November 30th.– with a goal to have all film sold by October 31st at the retail level and then spend November selling the residual in bulk sales to other brokers/scrap dealers. This would allow for collection of the receivables by December 31st.
> As there likely won't be new film purchases (there are some open POs still to be fulfilled) – this cash should allow CCC to pay all its vendors and . . . if we do this right, have cash left over – which would be divisible amongst the owners. The first portion of cash goes to John (and Me) to catch us up to the cash that Dave has already received (via loans) from CCC. Any excess would be divided appropriately - - the court &/or the attorneys will guide us as to how to properly settle matters with Dave so it can all be done.

68. In that same e-mail, I further discuss how we get CCC and the litigation wrapped up so that I can move on to our new, post-litigation venture

> As you may know, we have been taking monthly physical inventory since May. Our next one is scheduled for Friday August 3rd. After this tally – we will deliver that tally to Dave (and continue to do so for each month-end throughout the year). As Dave is also out there selling film again for his new employer, it is [in] CCC's best interest to have his new employer buy film from us and help us to wrap up CCC more quickly Our people will be working hard to this film vigorously over the next 4 months – and as I noted above, whatever is left after the October 31st inventory will be unloaded at "gotta-go-prices" in November . . I think even Dave will agree thatif we haven't found a retail buyer that a sale at bulk/discount is an appropriate ending for the supply.

69. Upon reflection, it was wishful thinking that this litigation would conclude so easily.

70. It is also important to make clear that the ZoiFilms idea has changed numerous times over 2012 and that most of the ideas have never been implemented, including specializing in new products unique to the food industry. Exhibit 59 of the WEB is a

March 15, 2012 e-mail from me to Gandis. In this e-mail, I discuss this very issue as it related to a future sales representative, specifically Brian Cunningham. "Brian knows a couple of companies that are part of the military MRE program - he also knows the Golden Flake people, pastry people, he is very good friends with the founder of Poore's brothers (SNAK on the stock exchange), and tons of other companies in the Atlanta area. Out of state he knows the Cloverhill people, the Welch's fruit sna[c]k people." The goal of placing new products (i.e. different film types) with these new customers in the food industry never materialized.

71. I will now respond to specific allegations lobbed by counsel for Wilson against me regarding the bank account information and formation documents found on pages 22-23 of WM. Some context is in order. Wilson has sued me as an individual, and accused me of all manner of illegality in the conduct of my chosen profession. These accusations are terribly distressing to me because I know them to be utterly false, but also because the accusations have the potential to harm my business reputation. The only reason that Wilson has been able to level these specious accusations is because I agreed to become a member at CCC in return for my sweat equity work. I remain perplexed how a minority, non-voting member in a limited liability company can become personally responsible for the actions of that company. It is in the context of my being brought into litigation that I decided to move my personal interest in CCC and to form ZOiFilms with corporate members. I also recommended to John Gandis that he interpose a corporate entity between himself and CCC – although I explained to him that this change would not impact whether he would be liable for any actions that he undertook as a manager. This was not an act of deceit but an action of self-preservation.

72. ZoiFilms is a subsidiary of CCC, and every cent of business transacted through it has been put into CCC or spent on CCC business.

December 2012 Offer

73. I received notice of the offer from my counsel on or about December 6, 2012.

74. I was immediately in favor of the offer. We told Wilson that we would accept the offer; he then provided a number of document requests over the next several weeks as we moved towards an anticipated closing before year end; I worked feverishly to provide all of the information sought by him.

Insolvency

75. At the May 8, 2014 mediation, Mr Bradshaw provided a preliminary, normalized balance sheet that demonstrated the company is not insolvent, as it has a positive net equity. Furthermore, as of May 31, 2014, the Company's receivables exceed its trade payables by more than $75,000 Presently the Company's sales are continuing an upward trend for the year as it has added several new and large accounts.

FURTHER AFFIANT SAYETH NAUGHT.

ANDREA COMEAU-SHIRLEY

SWORN and subscribed to before me
this 19 day of June, 2014

Notary Public for Georgia

Notary Public, Paulding County, Georgia
My Commission Expires August 17, 2015

My Commission Expires 08/17/2015

EXHIBIT A
TO AFFIDAVIT OF ANDREA SHIRLEY

Namaste Consulting

From: Namaste Consulting <namasteconsult@bellsouth.net>
Sent: Thursday, October 13, 2011 11:02 AM
To: 'john@ccc-films.com'
Subject: RE: Restructuring for Dave - subtle points about the commission arrangement .... just to remember as you put it to paper

I would suggest that you clarify that in the email you clarify he earns ONE rate on his sales and DIFFERENT rate on the sales where others are also being paid a commission (See my change below) .. the intent is to incent him to transfer customers over since it will then free him to earn higher commissions .

I would NOT put these details into the email ... but suggest them for your consideration so he doesn't assume he is just like the other guys . .

I would also suggest that he have a high rate for 1st year sales, then the rate reduce year after year (so we don't end up with a situation like Mike where someone just sits on their butt waiting on the phone to ring).

LASTLY .. I would also suggest that there is NO COMMISSION or the LOWEST COMMISSION for other brokers – including ESA ... and that he is charged 25% of all finance fees that are UNPAID by a customer. If they pay on time – there is no finance fee, if they pay late but pay their finance fee .. no charge to him, if they pay late and REFUSE to pay the finance fee .. then we have lost money and he should "share" in that cost (otherwise he has no incentive to properly negotiate terms. AGAIN ... he is not dinged by them not paying late – he is only dinged when he agrees to waive their finance fee!).

Andrea

From: John Gandis [mailto:john@ccc-films.com]
Sent: Thursday, October 13, 2011 10:46 AM
To: Namaste Consulting
Subject: Re: Restructuring for Dave

Thanks Andrea.

Is this e-mail something that I could forward directly to Dave ?

- JG

Sent from my Verizon Wireless BlackBerry

From: "Namaste Consulting" <namasteconsult@bellsouth.net>
Date: Wed, 12 Oct 2011 21:33:51 -0400
To: John Gandis<john@ccc-films.com>
Subject: Restructuring for Dave

One potential restructuring for Dave – with a purpose of bringing his reportable taxable income in line with his cash receipts:

1) Dave informs the company of his desire to repay his loan* in full (current balance is about $123K) – which he would repay by turning in his collateral (his membership interest in CCC, LLC).
   a. This transaction will generate a LOSS for Dave which he would claim in his 2011 tax return.
   b. If this loss exceeds his total 2011 income, the excess would be carried back – freeing up past taxes and reducing his unpaid 2010 taxes (either by applying the loss or by applying refunds from earlier years that are created when his loss is carried back)
   c. The LLC records the full redemption of his ownership interest prior to 12/31/2011. The LLC would also be amended so as to reduce Dave's profit allocation for 2011 to zero. (This amendment must be completed on a timely basis to ensure it will be effective).
2) Dave is placed on a "regional commission" structure - this is intended to mean he earns one commission rate on his own sales and also earns a different commission on the sales of team members (that he supervises). This is intended to encourage accounts to be turned over as the revenue stream continues even though the work has been greatly reduced or eliminated. This helps to build the company and keeps Dave participating at a broader level (although he now shares in gross income instead of net income). Dave would become an employee of the company – thereby retaining his health insurance benefits. Presumably there would be a modest base salary.
3) As a company, this would adjust our monthly cash outflow as his salary and commissions would become payable as sales are collected.
4) I recommend that we also shift most of purchasing to another salaried employee to ensure that he has time to maximize his sales revenues (and therefore commissions).

Let me know if you have any questions about the above,
Andrea

*As a reminder- starting in August 2010, the company began making loans to Dave. The terms were (a) due upon demand, (b) 10% interest, and (c) collateral is his membership interest – but otherwise non-recourse against personal assets. Another term was that the company had the right to decide, based upon its overall cash situation whether to deny his request for a loan in a given month. We have already had discussions about the need to reduce this loan based on the company's cash situation

EXHIBIT B
TO AFFIDAVIT OF ANDREA SHIRLEY

John Gandis

From: Dave Wilson [dave@ccc-films.com]
Sent: Monday, October 17, 2011 4:50 PM
To: John Gandis
Cc: Andrea Comeau-Shirley

I have spoken with my accountant regarding Andreas proposal and he believes it is flawed. Surrendering my stock would be a capital loss and not an ordinary loss against the taxes owed so I'm not sure this would help much. I am happy to have Ray talk with Andrea about this.

Frankly, I'm surprised that Andrea would even propose a buyout of my shares for $123,000. My capital account was worth $592000 at the end of 2010 and assuming we have made some profit this year, it's worth even more today. I think the value of my capital account is much more relevant than the loan amount when trying to determine the fair value of my interest in the company.

Here are several other options you need to consider.

1. CCC starts making regular accruals and distributions to its members to cover tax liabilities incurred by their ownership in CCC. I can set up an installment plan with the IRS which would spread the tax payments out over a number of years. I would also insist that we accrue for 2011 taxes so that quarterly distributions can be made to cover a percentage of the projected liability for 2011.
2. Dave resigns from CCC and maintains his 45% ownership. Dave is then free to do whatever he wants to including working for or operating a film company outside of CCC. By law, Dave has no duty to the LLC as a non-managing member but maintains all rights and privileges of a member.
3. Dave resigns and disassociates from the LLC. The LLC then has 30 days to set forth a purchase plan for my shares at fair market value. If the other members are unable to or unwilling to buy my shares, by law, the company is to close, assets liquidated, and funds dispersed to its members net of liabilities

I don't know too many business owners who would continue to participate in a business that does not budget for and disperse funds to cover tax liabilities incurred by ownership of the business. I realize that each of us is in a different financial position but making decisions based on the needs of two partners without considering the needs of the third puts us in a quandary.

Running the business as we have been with no thought for tax liabilities is not an option. If dispersing funds for taxes means we grow at a slower rate, then so be it. We're kidding ourselves if we think we are successful because of a P&L that does not take into account the tax liabilities of its members.

Andrea's comments about handing over purchasing to someone else in the company demonstrates how out of touch she is with our company. Bill issues PO's and is capable of doing this. Bill nor anyone else is qualified to select vendors, new products, etc We are not in a position to hire someone to do purchasing even if we found someone who was qualified

Dave

EXHIBIT C
TO AFFIDAVIT OF ANDREA SHIRLEY

From: Dave Wilson <davewilson@easternfilms.net>
Sent: Monday, January 16, 2012 12:11 PM
To: Mark McGarel (mmcgarel@filmtechinc.com)
Subject: Filmtech

Hi Mark,

I look forward to the opportunity to join your organization. I'm eager to start with Filmtech as quickly as possible and work to grow Filmtech revenue in new areas. Here are the points of discussion for our agreement.

1. Commission rate – 5% on gross sales for all customers I bring to Filmtech X% commission (TBD) to manage any existing Filmtech business.

2 More than 5% on sales exceeding normal margins - % TBD by Mark.

3. Territory – domestic and international

4. Full time employee with draw or salary of $8k per month for a period of time until my commission reaches a level that supports my needs My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on or qualifying over the past 3 to 6 months. I will also need about $500 per month to secure an office, phone and internet service

5. Start Date – timely based on agreeable terms

I will call you today to discuss these points and the questions you raised on Friday. Thanks again for your interest in me and the opportunity to partner with you in the near future

Regards,

Dave

EXHIBIT C

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2012-CP-23-02887
)
)
)
)
DAVID WILSON, INDIVIDUALLY)
AND DERIVATIVELY ON BEHALF OF)
CAROLINA CUSTOM CONVERTING,)
LLC,)
PLAINTIFF,)
)
vs.) TRANSCRIPT OF RECORD
)
JOHN GANDIS, ANDREA) ORIGINAL
COMEAU-SHIRLEY, AND ZOI FILMS,)
LLC,)
DEFENDANTS.)

June 26, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

W. ANDREW ARNOLD, ESQ.
Attorney for the Plaintiff

MASON A. GOLDSMITH, ESQ.
ROBERT L. MEBANE, JR., ESQ.
Attorneys for Andrea Comeau-Shirley and John Gandis

L. LEE PLUMBLEE, ESQ.
Attorney for the Defendant Zoi Films

HOLLIE M. JENKINS
Circuit Court Reporter

PROCEEDINGS

THE COURT: This is #2012-CP-23-02887, Wilson v. Gandis, et al. And I understand it's a motion to compel.

And what's the other motion?

MR. ARNOLD: For judgment on the pleadings.

THE COURT: All right. Yes, sir, Mr. Arnold.

MR. ARNOLD: May it please the Court:

I believe we only have contested motions, maybe some other things we want to address at the end.

But, first, the motion for judgment on the pleadings. Again, just briefly, by way of background, my client is Dave Wilson. And he has brought an action against John Gandis and Andrea Comeau-Shirley, who were members of CCC. It's an LLC formed by Mr. Wilson and Mr. Gandis back in 2008. And they sell film, essentially, which -- film used in packaging.

And Mr. Wilson had -- prior to the time of forming this business, he had been in the film business for a number of years and had his own business at the time, and brought a book of business, which he values at about a million dollars to the table.

Mr. Gandis indicated that he had a building and access to capital. And that with Mr. Wilson's business and his building, and capital, they could form CCC. And that's what they did. And so they operated as equal

EXHIBIT D

From: Namaste Consulting <namasteconsult@bellsouth.net>
Sent: Friday, January 06, 2012 4:40 PM
To: 'Dave Wilson'
Cc: 'John Gandis'; 'John Zamer'; 'Clayton L. Jennings'; 'Ray Harrison'
Subject: RE: Offer to Buy
Attachments: image001.jpg

Dave, thanks for your response. We have not reviewed it in detail, but will do so.

But before we go much further, your answer on sharing Company information with any third parties was not in line with our thinking. To be more specific, information about the Company is an asset of the Company , not any of its equity holders, and you will need the express permission of the Company to provide any Company information to any third party - - whether a competitor or not. As a legal matter, that consent can only effectively given by John, and only after he is provided the name of a proposed recipient of the Company information, as well as a complete description of what information is proposed to be provided. Should John approve the disclosure, before it is effected, we would also need a non-disclosure agreement signed with the recipient, and that agreement would need to be of a form approved by Company counsel

If any material information has been given to third parties, we should go back and obtain a non-disclosure agreement from those parties, and you should inform us of the names of those parties, and the scope of the information provided, and we can provide a form of non-disclosure agreement to accomplish this.

I have previewed this response with John and he has approved it

So, please proceed in this regard only consistent with the foregoing.

- Andrea

From: Dave Wilson [mailto:dave@ccc-films.com]
Sent: Friday, January 06, 2012 1:43 PM
To: 'Namaste Consulting'
Cc: 'John Gandis'; 'John Zamer'; Clayton L. Jennings; Ray Harrison
Subject: RE: Offer to Buy

Hi Andrea,

Very good points. I am talking with several potential buyers, none of which are really competitors. If I was speaking with a competitor about the business, I certainly would not divulge information that could be potentially harmful to the company in the hands of a competitor. That really should not be a concern of yours since I have a vested interest in protecting the company I own 45% of, and if I was to leave, I am under no legal obligation to keep the information confidential. While I am extending a counter proposal below for the company to buy me out and offer employment, my desire is to continue discussions with the interested parties about buying out the company as a whole. I have been very clear with all parties that both you and John require cash at closing (no escrows) and that John requires the building to be sold in the transaction. All parties understand that the potential transaction would need to happen quickly without months of due diligence. I hope to have some indication of intent from one or more parties next week.

Since John and I began discussions regarding CCC buying me out and extending an employment agreement, John has insisted that the goal was not to force me out of the company but to give me some security and incentive to help grow the business. He said he wanted to make a fair buyout offer and a fair, attractive employment offer. Your recent offers

for buyout and employment do not accomplish this. I don't view the buyout offer as fair since it is based solely on my capital account which you have recently devalued with $300,000 of bonus depreciation and a non-binding, non-legal "preference to minority" of $100K. While I agree that the bonus depreciation benefits me to the tune of maybe $30000 to $45000 in tax relief, the net result is a devaluation of my capital account at $135000. The "preference to minority" liability reduces my capital account by $45000 and even if this was legal, it should not be used to determine the value of my interest when the preference would most likely not be paid if I was bought out and you stayed on as a member. Businesses do not typically sell for the value of the total equity unless they are in great distress. Neither do businesses sell for tax value when there is going concern and a history of decent earnings. Because of this, I feel you have incorrectly valued my capital account (even if that were a fair measurement of my interest). I don't see how any reasonable person would believe that your valuation is unbiased since you stand to benefit from the low value you have placed on my interest. Without spending time and money on a proper valuation, there should be some consensus and give and take on how my interest is valued.

Please review the following counter proposal which I feel addresses my desires and meets the stated goals John has offered verbally. This offer is largely performance based, limits the risk to the company in the event we don't perform or shut down, and gives me ample incentive to grow the business and bottom line. I share some risk with compensation in that I have no control over the bottom line once I become an employee. If John wants to have final say on selling pricing and film cost, and he is responsible for operating costs, I could perform well and the company still not be very profitable due to management decisions out of my control (i.e. poor decisions on capital expansion, staffing levels, financing the company, etc) Without spending time and money on a proper valuation, there should be some consensus and give and take on how my interest is valued.

1. Buyout price - $250,000
2. $50000 paid at closing
3. Balance paid out over 2 years as follows with interest at 6%
    a. $50000 paid on September 1, 2012
    b. $40000 paid on Dec 31, 2012
    c. $30000 paid on Mar 31, 2013
    d. $30000 paid on June 31, 2013
    e. $30,000 paid on Sept 31, 2013
    f. $20000 paid on Dec 31, 2013
4. Existing loan is forgiven or absorbed by the company.
5. Dave is allocated $325,000 of ordinary operating loss from 2011 on his K-1
6. If the allocation of loss is not extended, the buyout price is $300,000 under a new 30 month schedule similar to the schedule for the 2 year buyout.
7. Employment agreement given to Dave for a period of 3 years.
8. Non-compete given to company for a period of 4 years starting at the time of closing
9. Salary of $12000 monthly guaranteed for year one.
10. Salary of not less than $10000 monthly guaranteed for years 2 and 3
11. Dave keeps the Lexus with the company making payments until the car is paid off.
12. Bonus package based on sales with Dave to receive 1.5% of gross sales quarterly provided gross sales equal or exceed $1,200,000 for the quarter and the company has positive net income before salaries or compensation to owners of at least $75,000 Net income and sales may be verified by Dave with full disclosure from the company of all P&L and Balance sheet transactions. If quarterly sales are not achieved but sales in subsequent quarters equal or exceed an average of $1,200,000 and net income is achieved then Dave is still paid his bonus. Full set of detailed financials provided quarterly to Dave Wilson If quarterly sales are achieved but net income is not achieved, then Dave is paid .75% of gross sales in bonuses.
13. Personal guarantee from John and Andrea on buyout. If the company is sold or shut down before the end of the buyout, the balance of the buyout is due within 90 days.
14. If the company is sold before the end of the employment agreement, Dave's employment agreement must be intact under the new ownership. If the company is shut down before the end of the employment agreement,

the company is free of its obligation to Dave with the exception that Dave is paid for 2 months after the business closes.

I look forward to your reply.

Sincerely,

Dave

From: Namaste Consulting [mailto:namasteconsult@bellsouth.net]
Sent: Friday, January 06, 2012 9:21 AM
To: Dave Wilson
Cc: John Gandis; John Zamer
Subject: Offer to Buy

Dave – I wanted to take a moment and follow-up with you on your proposal to buy-out our interests as we have not seen a letter of intent nor received a confirmation from you about their ability to fully fund at closing We are not rushing the process, but we want to clarify an important point that should have been explicit in our initial response to your inquiry. Our willingness to consider an offer to sell our shares was NOT a blanket authorization for you to shop our company around. Rather, you had already indicated to John that your family might be willing to step up; specifically John understood that you were talking to your brother-in-law and other family members about putting together the financing.

We are not comfortable with the idea of you shopping the company to competitors as those companies would likely say "yes, we are interested in seeing what you are about" – but are highly unlikely buyers of the real estate that MUST be included in our offer to sell. Additionally – we provided to you a list of general terms that we expected to see in ANY offer that was proposed and we have not heard from you that your group will be willing to move forward under those terms (especially regarding the escrows). Without giving us that assurance, you should not proceed to discuss the offer with anyone – including your brother-in-law.

I hope that you are working with your attorney to ensure that the confidential nature of our information is protected AND that you first qualify a potential prospect before you share any information. You probably are being careful ... but we didn't want any confusion over the level of authority extended in our initial reply.

On the other hand, if you have already started discussions with anyone outside of your immediate family, John would like to see the list of people as well as the list of any potential "suitors" that you have considered so he could evaluate the risks involved in sharing information with that company.

Thanks,

Andrea

****To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice included in this written or electronic communication is not intended or written to be used, and it cannot be used by the taxpayer, for the purpose of avoiding any penalties that may be imposed on the taxpayer by any governmental taxing authority or agency*****

This message (including any attachments) may contain confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. Any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited.

EXHIBIT E

From: Dave Wilson <davewilson@easternfilms.net>
Sent: Friday, January 13, 2012 9:52 AM
To: Mark McGarel (mmcgarel@filmtechinc.com)
Subject: FW: McGarel- FILMtech
Attachments: _Certification_.txt; _Certification_.htm

Hi Mark,

Thanks for the email. I'll work on my response. Please send all future emails pertaining to our working together to my eastern films email address. I can't be 100% sure that the CCC email is secure. Back to you soon.

Regards,

Dave

From: Dave Wilson [mailto:dave@ccc-films.com]
Sent: Friday, January 13, 2012 9:48 AM
To: 'Dave Wilson'
Subject: FW: McGarel- FILMtech

From: Mark McGarel [mailto:mmcgarel@filmtechinc.com]
Sent: Friday, January 13, 2012 9:34 AM
To: Dave Wilson
Subject: McGarel- FILMtech

Dave; some ideas/Concepts for further discussion about a possible sales agency agreement.

Would you re start Eastern Film Solutions or a new entity? Are there any lingering issues with EFS if you restarted? Conflicts with CCC?
Do you want an exclusivity? By territory? By market?
Would you sell (if you can) the UL listing from Eastern Film Solutions? If you can't sell, we would need to discuss timing and cost to get a UL listing

Can you break out the business sections and the film types needed to service:

Folding Carton – PET/BOPP
Window Bag – BOPP/PET
Flex Duct – PET
Bakery overwrap – BOPP 2 side sealable
Cable wrap - PET
Plastic cutlery – LDPE/BOPP
Toll Slitting - ???
Others - ???

What is the standard lead time for servicing orders?
What is sales price less raw material costs?
What are standard terms of sale?
What is typical order size by market?
What is typical pallet/packaging configurations?
How much stock do we need to have for what level of sales?

What are your expectations for compensation?
What legal repercussions might result from our collaboration?

I'm sure there is more but this should get us started.....

Regards;

Mark McGarel
FILMtech Inc
865.767.3533 ext 103
www.filmtechinc.com

--
This message has been scanned for viruses and
dangerous content by MailScanner, and is
believed to be clean.

EXHIBIT F

From: Dave Wilson <davewilson@easternfilms.net>
Sent: Monday, January 16, 2012 12:11 PM
To: Mark McGarel (mmcgarel@filmtechinc.com)
Subject: Filmtech

Hi Mark,

I look forward to the opportunity to join your organization. I'm eager to start with Filmtech as quickly as possible and work to grow Filmtech revenue in new areas. Here are the points of discussion for our agreement

1. Commission rate – 5% on gross sales for all customers I bring to Filmtech X% commission (TBD) to manage any existing Filmtech business.

2. More than 5% on sales exceeding normal margins - % TBD by Mark

3. Territory – domestic and international

4. Full time employee with draw or salary of $8k per month for a period of time until my commission reaches a level that supports my needs. My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on or qualifying over the past 3 to 6 months. I will also need about $500 per month to secure an office, phone and internet service

5. Start Date – timely based on agreeable terms

I will call you today to discuss these points and the questions you raised on Friday Thanks again for your interest in me and the opportunity to partner with you in the near future

Regards,

Dave

EXHIBIT G

AFFIDAVIT OF JOHN E. ZAMER

STATE OF GEORGIA)
) ss.:
FULTON COUNTY)

I, John E. Zamer, having been duly sworn, state as follows:

1. My name is John E. Zamer. I am over the age of 21, suffer no legal disability, and am competent to give this affidavit. I have personal awareness of the facts herein, including knowledge based on my review of documents referenced in this affidavit.

2. I am a lawyer admitted to practice in Georgia. I practice law at Jones Day, in its Atlanta office.

3. For a number of years, Jones Day has performed legal services for Carolina Custom Converting, LLC ("Carolina Custom Converting"), and I have served as Jones Day's primary contact with Carolina Custom Converting.

4. I have reviewed my files, and billing records, to assist me in preparing this Affidavit. Exhibit A to this Affidavit is a true and correct copy of an invoice sent to Carolina Custom Converting on or about February 16, 2012. Exhibit A contains a description of entries generated from billing information, and my review of Exhibit A refreshes my recollection that on or about January 17, 2012 I spoke by telephone with an attorney for Dave Wilson.

5. Exhibit B to this Affidavit is a true and correct copy of a handwritten note that I made and maintained concerning my telephone call with Clayton Jennings, an attorney for Dave Wilson. The conversation reflected in Exhibit B to this Affidavit is the conversation that I had on or about January 17, 2012, as referenced in Exhibit A to this Affidavit.

6. On that telephone call, Mr. Jennings advised me that Mr. Wilson had reached the "point of no return" with Carolina Custom Converting and that he was "throwing in the towel" and "raising a white flag," and in a "peaceful" manner "walking away" from Carolina Custom Converting, and that Mr. Wilson would sign a document to reflect this peaceful walk-away. Mr. Jennings also stated that Mr. Wilson was willing to sell his equity in Carolina Custom Converting for $100,000 plus forgiveness of a debt for $125,000, for a total of $225,000.

Further affiant sayeth not.

John E. Zamer

SWORN TO AND SUBSCRIBED before me this 18th day of June, 2014.

Notary Public

(SEAL)

JEANNA OBRYANT NOTARY PUBLIC GWINNETT COUNTY GEORGIA EXPIRES AUG. 3, 2015

My Commission Expires:

Exhibit A

IN ACCOUNT WITH

JONES DAY
Atlanta Office
1420 Peachtree Street, N.E. – Suite 800
Atlanta, GA 30309-3053
(404) 521-3939
Federal Identification Number: 34-0319085

February 16, 2012

354524-600001

Invoice: 32439738

Carolina Custom Converting, LLC
Post Office Box 2726
Anderson, SC 29622

For legal services rendered for the period through January 31, 2012:

Carolina Custom - Non-Adversarial Corporate Advice	USD	1,631.25
TOTAL	USD	1,631.25

Exhibit A

SERVICES DETAIL SCHEDULE

Date of Service	*Timekeeper Name*	*Hours*
01/06/12	J E ZAMER	0.50
	Attention to emails; call Andrea Comeau-Shirley, draft email response on confidential information, etc.	
01/11/12	J E ZAMER	0.75
	Attention to emails; call Andrea Comeau-Shirley; draft letter; email attorney; additional discussions with Andrea; attention to note precedent for draft note.	
01/12/12	J E ZAMER	0.50
	Draft and revise Note and Security Agreement	
01/17/12	J E ZAMER	0.25
	Call attorney for Dave Wilson; call Andrea Comeau-Shirley; call Andrea and John Gandis.	
01/23/12	J E ZAMER	0.25
	Review email traffic; telephone call with Andrea Comeau-Shirley.	
TOTAL		2.25

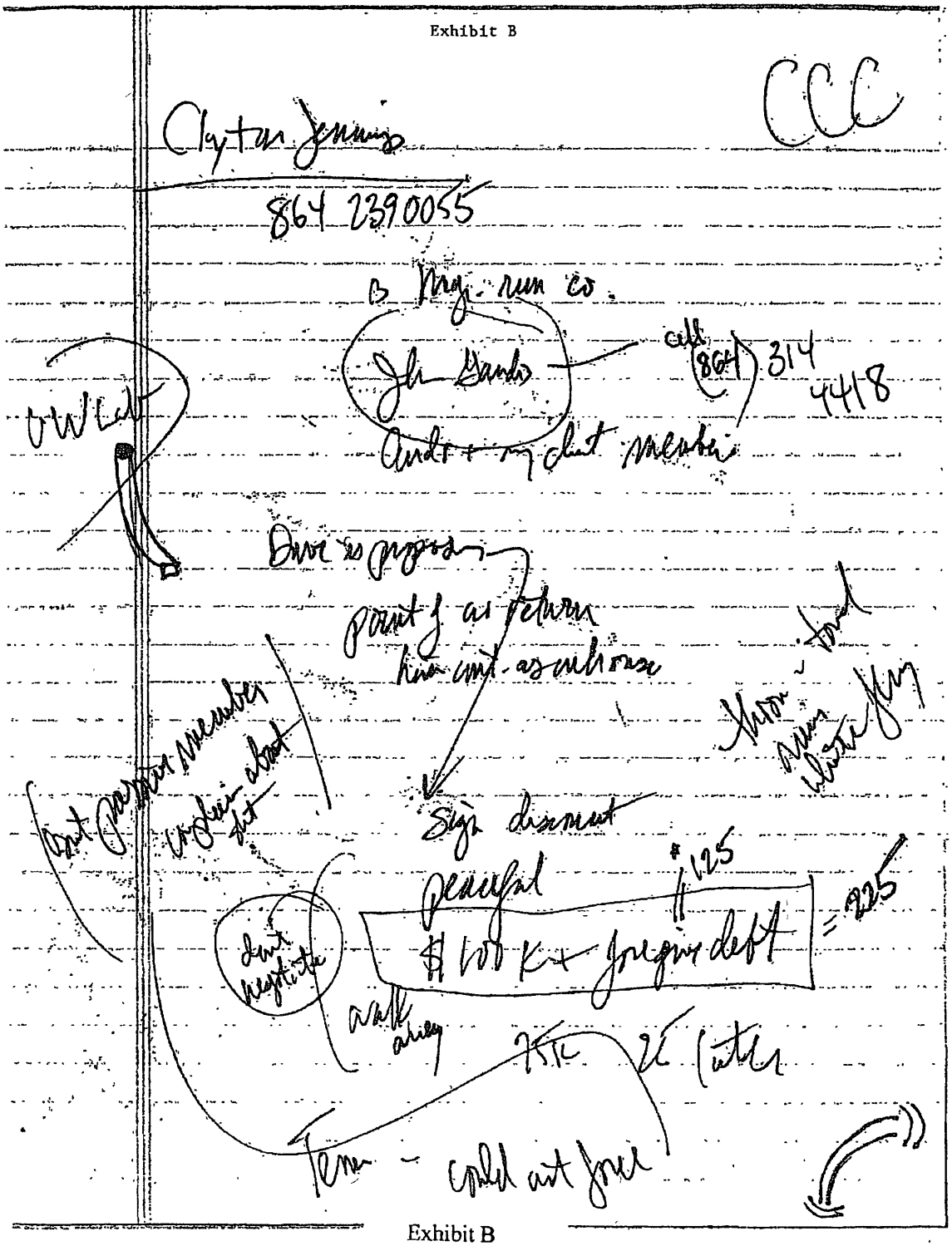

CCC
Clayton Jennings
864 239 0055
Mag. run Co.
Jh Sands
cell (864) 314 4418
Andr + my client member
Drive as passenger
point of return
him out as witness
Sign document
pedestal
$1,000 + forgive debt
$125
=925
walk away
75%
2% (title
Term - called out for

EXHIBIT H

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, Carolina Custom Converting, LLC, Counterclaim Plaintiff, vs. Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc., Counterclaim Defendants.	Civil Action No. 2012-CP-23-02887 **AFFIDAVIT OF KENNY MCLEAN**

PERSONALLY APPEARED before me Kenny McLean who, first being duly sworn, deposes and state as follows:

1. I am a resident of Richland County, South Carolina.
2. I am over the age of eighteen, and have personal knowledge of the facts stated herein.
3. I am the owner of Computer Forensics Lab, located at 1924 Barnwell Street, Columbia, South Carolina, 29201
4. I have been retained by Nexsen Pruet ("Client") to review and analyze three devices: (1) Blackberry Bold; (2) Acer Mini Laptop; and (3) HPdv7 Laptop.
5. My analysis of the Blackberry Bold yielded the following information:

a. I received the cellular device from Client on or about February 2, 2012.

b. The cellular device was turned off.

c. I turned the cellular device on, and it contained an alert notifying that it had a new SIM card inserted.

d. The cellular device had a default image with no user data present; the cellular device had been wiped.

6. My analysis of the Acer Mini Laptop yielded the following information:

a. I received the Acer from Client on or about February 2, 2012.

b. A forensic image of the hard drive was created from the original hard drive on February 3, 2012.

c. The hard drive from the Acer Mini Laptop contained 2 partitions. The second partition is the working partition for the computer.

d. The working partition had 3,043 document type files with MAC timestamps that are inclusive and after January 18, 2012 at 0:00 hr.

e. Of the 3,043 files these show an accessed date after January 18, 2012. These files appear to have been deleted to the recycle bin between January 18, 2012 through January 31, 2012.

7. My analysis of the HPdv7 yielded the following information:

a. I received the HP from Client on or about February 3, 2012.

b. A forensic image of the hard drive was created from the original hard drive on February 3, 2012.

c. I found the BIOS time of the HP DV7 laptop had a zero offset from local time.

d. The hard drive from the HP DV7 laptop contained 5 partitions. The third (3rd) partition is the working partition for the computer.

e. The working partition had 1,275 document type files with MAC timestamps that are inclusive and after January 18, 2012 at 0:00 hr.

f. I found reference to software "File Restore.exe" having a last run date of February 01, 2012 at 9:37 a.m. and a run count of 5.

g. I found reference to software "SAFEITMAILSHREDDER.EXE" having been last run ("executed") at January 23, 2012 at 4:42 p.m.

h. I found evidence of a software program called "Eraser" having been installed on or about February 01, 2012 10:01 a.m.

i. I found a directory where the "eraser.exe" software program was installed and the software manual in file format was located.

j. I found references to software "Eraser" in the Windows registry file USERS showing a run (execution) count of 16 and a last run date of February 02, 2012 at 10:06 a.m.

k. I found in the Windows registry where the last system start time of the computer was February 01, 2012 at 9:48 p.m. and a last system shutdown time of February 02, 2012 at 10:25 a.m.

l. I found evidence that external media (such as a USB device or "thumb drive") had been connected to the laptop.

FURTHER AFFIANT SAYETH NAUGHT.

KENNY McLEAN

SWORN and subscribed to before me
this 18 day of June, 2014.

Notary Public for South Carolina

My Commission Expires: 2/20/20

EXHIBIT I

Read. 11-30-12

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, -vs- John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and DecoTex, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs, -vs- Carolina Custom Converting, LLC, Third Party Defendant.	IN THE COURT OF COMMON PLEAS C.A. NO.: 2012-CP-23-02887 **PROTECTIVE ORDER**

FILED-CV-23
GREENVILLE COUNTY
SC CLERK OF COURT
2012 NOV 26 PM 3:44

This matter is before on the Court on Plaintiff's Motion to Compel Discovery and upon Third-Party Defendant's Motion to Quash or to Modify Subpoena. The Plaintiff, Defendants, and Third-Party Defendant Carolina Custom Converting, LLC, having consented to on order for the production of certain information requested by Plaintiff, but recognizing the confidential and sensitive nature of the information being produced, and having agreed to conditions governing the disclosure and use of said information,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1

1. Within 10 days of the date of this order, Third-Party Defendant Carolina Custom Converting, LLC will produce to counsel for Plaintiff all e-mails (including attachments) and correspondence requested in the subpoenas issued by Plaintiff on August 29, 2012 and October 29, 2012, which are not subject to the attorney-client privilege; moreover, should a document be withheld subject to a privilege, CCC shall produce a privilege log identifying each email and/or document withheld by date, sender, recipient and basis for assertion of privilege;

2. Within 5 days of the date of this Order, Third-Party Defendant will produce to Plaintiff the following information in the uncondensed electronic QuickBook back-up file type (.qbb file extension) and any passwords necessary to access such information:

a. Complete QuickBooks report of all transactions of owner's equity from inception of the Third-Party Defendant until the present date;

b. Complete 2011 and 2012 QuickBooks Account Registers for any and all accounts maintained by Third-Party Defendant in QuickBooks.

3. Information produced pursuant to this Order may be viewed by and disclosed only to the parties, their counsel, retained experts, and the staff of counsel for the parties involved in the prosecution of this action. Information produced pursuant to this Order may be used solely for the purpose of prosecuting and defending this action and may not be used or disclosed by any party to any person or entity other than those designated above nor may it be use by any party to gain competitive advantage in the marketplace nor for any other purpose.

3. Dave Wilson shall not solicit any customer or contact any supplier of CCC who was not known to him ~~when he was locked out of CCC~~ as of January 17, 2012, which shall be presumed to be any customer and/or supplier who did not transact business with CCC prior to January 17, 2012.

~~4. John Gandis, as managing member of CCC, shall pay to W. Andrew Arnold~~ AH

AH

~~$937.00 as reasonable attorneys fees unnecessarily incurred as a result of its failure to comply with the subpoena.~~

AND IT IS SO ORDERED.

D. Garrison Hill
Judge, Thirteenth Judicial Circuit

November 14, 2012

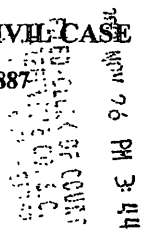
STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2302887



David Wilson *vs.* John Gandis

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed, ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 26th day of November, 2012.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 26th day of November, 2012, and a copy mailed first class this 26th day of November, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Arnold 712 E. Washington St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Mason A. Goldsmith PO Box 1887 Greenville, SC 29602
Daniel L. Draisen 207 E. Calhoun St. Anderson, SC 29621
John Robert Devlin Jr. Devlin & Parkinson, P.A P.O. Box 10387 Greenville, SC 29603
Larry Lee Plumblee PO Box 10066 Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

EXHIBIT J

Vendor
3M Film Manufacturing Operations
A.G. Transportation Systems, Inc
Abel Packaging
ALL FOILS
Ally Transportation, Inc
Amerifilm
Atlas Metallizing, Inc.
BL Plastic Slitting & Converting, LLC
BPR Plastics Inc.
Coating Excellence International
Custom Laminating Corporation
Dallas Plastics Corp.
DuPont Teijin Films
FILMtech Inc.
Flagship Converters Inc
Freightquote com
Futong LLC
GALEX
GLOBALTRANZ
HERITAGE
Heritage Truck Lines Inc.
Heritage Warehousing & Distribution Inc.
Honeywell International
Inteplast AmTopp
JBF RAK, LLC
LAMBRO
Lunan Hongcheng Telecomm Material Co.
Mitsubishi Polyester
Navis Industries Inc.
Packaging Industries Inc.
Palmetto
Parkside Warehouse, Inc.
PENNPAC
Plastic Connections, Inc.
Plastic Suppliers, Inc.
Polyplex Americas Inc.
ROGERS & BROWN
SHELCO
SKC Inc
SMITH AND WATERS, INC.
T & K Nationwide Trucking Inc.
TORAY
UNITED WAREHOUSE COMPANY
UPS
UWC Transportation

EXHIBIT K

Carolina Custom Converting LLC
Transaction List by Vendor
All Transactions

Type	Date	Num	Memo	Account	Clr	Split	Amount
Futong LLC							
Bill Pmt -Check	2/10/2012	wire	40 % Advanc...	Bank of America (75. .	X	Accounts Paya. .	-30,400.00
Bill	4/4/2012	CCC-. .	40 % Advanc ..	Accounts Payable		-SPLIT-	-75,984.80
Bill Pmt -Check	4/16/2012	7509	40 % Advanc...	Bank of America (75...	X	Accounts Paya .	-45,584.80

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

Type	Date	Num	Name	Account	Class	Amount
FUTONG						
Invoice	10/8/2012	2673	FUTONG	Accounts Receivable		11,132.71
Payment	10/17/2012	1054	FUTONG	Accounts Receivable		-11,132.71
Invoice	10/17/2012	2694	FUTONG	Accounts Receivable		1,855.70
Invoice	11/1/2012	2727	FUTONG	Accounts Receivable		8,152.48
Payment	11/9/2012	1025	FUTONG	Accounts Receivable		-10,008.18
Total FUTONG						0.00
TOTAL						0.00

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

Balance
11 132 71
0 00
1,855 70
10,008.18
0 00
0 00
0.00

EXHIBIT L

Carolina Custom Converting LLC
Vendor Balance Detail
All Transactions

	Type	Date	Num	Name	Account	Amount	Balance
Linan Hongcheng							
	Bill	04/08/2013	HC2013032802	Linan Hongcheng	Accounts Payable	18,206 00	18,206.00
	Bill	04/08/2013	HC2013032801	Linan Hongcheng	Accounts Payable	19,664.25	37,870.25
	Bill Pmt -Check	04/08/2013	WIRE	Linan Hongcheng	Accounts Payable	-37,870 25	0 00
	Bill	05/06/2013	HC2013032801	Linan Hongcheng	Accounts Payable	38,614.96	38,614 96
	Bill Pmt -Check	05/06/2013	EFT	Linan Hongcheng	Accounts Payable	-38,614.96	0.00
	Bill	05/23/2013	HC2013032802	Linan Hongcheng	Accounts Payable	40,940 97	40,940 97
	Bill Pmt -Check	05/24/2013	WIRE	Linan Hongcheng	Accounts Payable	-40,962.59	-21.62
	Bill Pmt -Check	07/08/2013	WIRE	Linan Hongcheng	Accounts Payable	-19,000.00	-19,021.62
	Bill	07/08/2013	HC2013070403	Linan Hongcheng	Accounts Payable	19,000 00	-21 62
	Bill	07/24/2013	HC2013070403/1121	Linan Hongcheng	Accounts Payable	0.00	-21.62
	Bill	08/02/2013	HC2013070403	Linan Hongcheng	Accounts Payable	45,552.15	45,530 53
	Bill Pmt -Check	08/05/2013	WIRE	Linan Hongcheng	Accounts Payable	-45,552.15	-21 62
Total Linan Hongcheng						-21.62	-21.62
TOTAL						-21.62	-21.62

EXHIBIT M

Customer
ALL FOILS, INC.
American Color Technology
Amerifilm Corp.
ASG, INC.
Brown Paper Goods
Composites One LLC
Composites USA, Inc.
Elliott Schultz & Associates, Inc.
Engineered Laminates & Coatings, LLC
Filtros y Mallas Industriales, S.A. de CV
Flagship Converters Inc.
FLEXEAZE, INC.
Florida Packaging & Graphics, Inc.
Grafix Inc
Gnff Paper and Film
Horizon Energy Systems
Imperial Manufacturing Group Inc
INDUSTRIAS VERMONT S A DE C V
Lambro Industries
Lithotype
Lithotype Chicago
Navis Industries Inc
Peppertree Air
Plastic Packaging Technologies KS
Prime Packaging, LLC
ROL-VAC
Supply One Rockwell, Inc.
Triton International Enterprises
Valencia Specialty Films

EXHIBIT N

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

	Type	Date	Num	Name	Account	Class	Amount	Balance
Engineered Laminates & Coatings, LLC								
	Invoice	04/05/2012	2267	Engineered Laminates & Coatings, LLC	Accounts Receivable		8 104 20	8,104 20
	Payment	05/11/2012	9576	Engineered Laminates & Coatings, LLC	Accounts Receivable		-8,104 20	0 00
	Invoice	08/21/2012	2563	Engineered Laminates & Coatings, LLC	Accounts Receivable		1,117 60	1,117.60
	Payment	09/24/2012		Engineered Laminates & Coatings, LLC	Accounts Receivable		-1,117.60	0.00
	Invoice	11/20/2012	2785	Engineered Laminates & Coatings, LLC	Accounts Receivable		847.40	847 40
	Payment	12/24/2012	10155	Engineered Laminates & Coatings, LLC	Accounts Receivable		-847 40	0.00
	Invoice	06/10/2013	3143	Engineered Laminates & Coatings, LLC	Accounts Receivable	55*	0 00	0.00
Total Engineered Laminates & Coatings, LLC							0.00	0 00
TOTAL							0 00	0 00

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EXHIBIT O

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

	Type	Date	Num	Name	Account	Class	Amount	Balance
Florida Packaging & Graphics Inc								
	Invoice	10/07/2013	3368	Florida Packaging & Graphics Inc	Accounts Receivable	07 5"	261 65	261 65
	Payment	10/09/2013	47802481	Florida Packaging & Graphics Inc	Accounts Receivable		-261 65	0 00
Total Florida Packaging & Graphics Inc							0 00	0 00
TOTAL							0 00	0.00

2118

EXHIBIT P

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2012-CP-23-02887
	)	
	)	
	)	
	)	
	)	
DAVID WILSON,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND ZOI FILMS, LLC,	)	ORIGINAL
DEFENDANTS.	)	
	)	

December 6, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

W. ANDREW ARNOLD, ESQ.
Attorney for the Plaintiff

MASON A. GOLDSMITH, ESQ.
LARRY LEE PLUMBLEE, ESQ.
Attorneys for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

disassociated from the entity. And we would --

THE COURT: Wait a minute now. Who do you want to be disassociated?

MR. ARNOLD: Mr. Gandis and Ms. Shirley.

THE COURT: Okay.

MR. ARNOLD: And so we've asked to disassociate them for their wrongful acts.

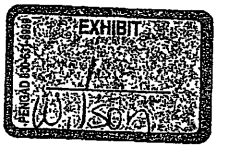
THE COURT: Okay.

MR. ARNOLD: We don't want to gut the entity. We think the business has value. Remember, we were here not long ago because they didn't want to give us the customer list because that customer list has such value. Well, we agree it has value. And we want -- well, actually, we've made an offer to purchase this business for almost half a million dollars, their interest. That hasn't been -- they haven't accepted or rejected that yet. But we think this business has value. We don't want to dissolve the entity unless it's absolutely necessary. We want a disassociation.

And so we've pled a cause of action for disassociation. Our prayer for relief, clearly, states that we're asking for an order disassociating the Defendants from CCC, or in the alternative dissolving CCC. What they want you to do is say, well, before we litigate the issues, I just -- we're going to do away with your

EXHIBIT Q

Subject: Email from Andy Arnold - I can't forward the email from my computer but I have cut and pasted it below



Lee and Andy:

I am a lunch break and will be until 2 pm. 864.230.6531. I am available by email.

My client will agree to buy John and Andrea's interests (55%) for a combined $442,700--this is based upon the value of company based upon the financials produced and the amount of debt that John says he is personally obligated to repay. Of course, we think the financials contain much false information (much recently added), but your clients claim this business has lost about $400,000 this year. The balance sheet produced by your clients shows a net asset value of $314,000. So, 45% of the net asset value is $141,300. This combined with repayment of the debt plus Andrea's 10% gets you $442,700.

This offer is contingent on getting updated financials (in electronic format) on ZOi as well as CCC; contingent on ZOi having a positive asset value (even of $1). Moreover, this would include a 6 month non-compete/non-solicit, although John could continue to operate Deco-Tex. Finally, this is contingent on continued leasing of current premises for some period to be negotiated (short-term). This would include a complete release of all claims of all parties. We are prepared to move as quick as possible.

Moreover, I do believe we may be amenable to purchasing John's interest only and litigating the dissociation claim against Andrea. Moreover, if your client's disagree with their own balance sheet, what do they contend their interests are worth?

As for dissolution order, you are right, the ball is your court. Will await your response and if it does not come in time, we can simply let the judge decide.

Andy Arnold
Law Office of W. Andrew Arnold, P.C.
712 E. Washington St.
Greenville, SC 29601
864.242.4800
864.242.4885 (fax)

Robin G. Smith • Legal Assistant

Elmore Goldsmith, PA
55 Beattie Place, Suite 1050 (29601)
Post Office Box 1887 • Greenville, SC 29602
Telephone. 864-255-9500 • Fax. 864-255-9505
rsmith@elmoregoldsmith.com • www.elmoregoldsmith.com • vCard

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EXHIBIT R

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE CASE NO. 2013-CP-23-03474

Carolina Custom Converting, LLC,
Plaintiff,
vs.
David Wilson and Neologic Distribution, Inc.,
Defendants.

DEPOSITION OF DAVID WILSON

DATE TAKEN: December 4, 2013

TIME BEGAN: 9:00 a.m.

TIME ENDED: 11:58 a.m.

LOCATION: Nexsen Pruet, LLC
55 East Camperdown Way
Suite 400
Greenville, South Carolina

REPORTED BY: Traci L. Barr, RPR
GALLAGHER COURT REPORTING
864-234-5744

You made an offer to buy CCC?
A. I believe so.
Q. I can show you an e-mail that I received from your counsel if you would like me to.
A. I don't need to see it.
Q. Okay. The offer was for somewhere south of or very close to $500,000? I'm asking.
A. That sounds about right, yeah.
Q. How did you arrive at that number?
Scratch that.
Who was going to loan you the money to get the 500,000?
A. I had mentioned to my brother-in-law that --
Q. Who is?
A. Steve Norvell.
Q. Okay.
A. -- that it might make sense for us to buy the company, to make an offer, and he said, you know, that's fine.
I think I probably told him it would be, you know, half a million dollars or less, our offer, and he said that that was fine. I think at that point we weren't real optimistic about it being accepted, but --
Q. Is it your testimony that Steve Norvell was

prepared to put that money up?
A. I think in general terms he may have been.
Q. Yes or no?
A. That he was prepared?
Q. You made an offer to purchase the company?
A. Uh-huh.
Q. Did you have the financial backing?
A. I think Steve probably would have gone along with that had he seen -- you know, had he done his due diligence. I think at that time, too, we had received some information from John, some updated financials, QuickBooks files, and at that point we had some concerns about the numbers, the validity of the numbers.
(Exhibit Number 1 marked for identification.)
EXAMINATION RESUMED BY MR. WILLIAMS:
Q. Let me show you Exhibit 1, which is an e-mail, I believe, from your counsel that was cut and pasted. For some reason, whoever sent it couldn't forward it. The top, I'll tell you, has been redacted because that's communications.
A. Okay.
Q. First of all, do you agree that this is the offer?

EXHIBIT S

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-23-03474

Carolina Custom Converting, LLC,
Plaintiff,
vs.
David Wilson and Neologic
Distribution, Inc ,
Defendants.

DEPOSITION OF STEVEN NORVELL

DATE TAKEN: October 15, 2013
TIME BEGAN: 9:59 a.m.
TIME ENDED: 3:32 p.m.
LOCATION: Nexsen Pruet, LLC
55 East Camperdown Way
Suite 400
Greenville, South Carolina

REPORTED BY: Traci L. Barr, RPR
GALLAGHER COURT REPORTING
864-234-5744

APPEARANCES:

THOMAS L. STEPHENSON, ESQUIRE
BURL F. WILLIAMS, ESQUIRE
Nexsen Pruet, LLC
55 East Camperdown Way
Fourth Floor
Post Office Box 10648
Greenville, SC 29603
....On behalf of the Plaintiff

W. ANDREW ARNOLD, ESQUIRE
Law Office of W. Andrew Arnold
712 E. Washington Street
Greenville, SC 29601
....On behalf of the Defendants

MASON A GOLDSMITH, ESQUIRE
Elmore Goldsmith
55 Beattie Place
Suite 1050
Greenville, SC 29601
. . . ..On behalf of John Gandis and Andrea Comeau
shirley

ALSO ATTENDING: John Gandis, David Wilson

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure. NON-WAIVER: Examination and reading of the deposition are not hereby waived by the witness and the parties.

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Examination by Mr. Stephenson. 4
Examination by Mr Arnold. 146
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EXHIBITS
(No exhibits introduced)

STEVEN NORVELL, being first duly sworn, testified as follows:
EXAMINATION BY MR. STEPHENSON:
Q. Mr. Norvell, would you state your full name, please
A. Steven Bruce Norvell.
Q For the record, my name is Tom Stephenson. I'm an attorney for a company called Carolina Custom Converting, and I'm here to ask you some questions that relate to a lawsuit brought by Carolina Custom Converting against Mr Wilson and Neologic. Do you understand that?
A. Yes.
Q. Did you receive a subpoena from me to appear today?
A. Yes, our office did.
Q. Did you get it?
A. Me personally?
Q. Yes.
A I was not personally served, but our office received the letter.
Q. After your office got it, did you get a copy of it? Did they give it to you?
A. Yeah, they eventually gave it to me
Q. What's your address?

A 19 Donatello Court
Q What is your job?
A. I'm president of Fresh Water Systems and Neologic.
Q Are you president of Neologic, too?
A. Yes
Q. Do you have any ownership in any other entities other than Fresh Water and Neologic?
A. I don't have ownership of Neologic.
Q You're president but --
A. You can be a president without being an owner
Q Do you have any ownership in any other companies other than Fresh Water?
A Companies?
Q Yes
A. Including LLC's?
Q Yes.
A. Norvell Properties, LLC, and Norvell Bauer Rental Real Estate.
Q. Who is Bauer?
A. Pete Bauer is a long-time friend of mine from California.
Q Y'all just own some rental properties?
A. Yes
Q Is there actually an entity called Norvell

Bauer?
A No, there's not. It's just a partnership that we refer to it as Norvell Bauer.
Q. Norvell Properties, Norvell Bauer, Fresh Water. Any other entities you have ownership in today?
A. Oh, yeah. Tucker Insurance Company.
Q. What is that?
A. We insure property and casualty
Q. Here?
A. It's an E31B.
Q. Is it here?
A. No, it's not Domesticated in South Carolina, no
Q Where is it?
A I believe it's Montana.
Q Where is the actual office?
A. I believe it's in Montana.
Q. Are you represented today?
A. Yes, under Neologic.
Q Okay In our conversations yesterday, you said you did not have an attorney and were going to appear at this deposition unrepresented I need to know which it is.
A. If it's here for Steve Norvell, I'm unrepresented. If it's under Neologic, I'm

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Q. All right So the way he writes that, I assume by then you knew who John Gandis was because he didn't say, by the way I got a new partner He says, I spoke with my partner John Gandis
A. I don't know the intricacies with the relationship, other than they did business together.
Q. He calls him his partner
A. Okay.
Q. What did you know about John Gandis on March 16th, 2009? Had you met him by then?
A. That they had started working together, I suppose, based on this e-mail.
Q. You knew they started working together and you know that John had a company called CCC and Dave had a company called Eastern Film. Did you know what the deal was between them?
A. Sometime in 2009 Dave told me that he teamed up with John Gandis 50/50
Q. He said 50/50?
A. Yeah
Q. So they were equal partners, according to him?
A. Yeah.
Q Did he tell you what he did to acquire his 50 percent he claimed?

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A. No
Q. You never heard?
A No
Q Would it surprise you if Mr Gandis said what he did in 2007 was roll Eastern Film into CCC and for that he got 49 percent? Would that surprise you?
A. Completely surprise me
Q. Never heard that before?
A Never
Q You would agree with me that Dave Wilson certainly didn't have any money to buy 49 percent
A. I don't know Dave Wilson's financial status -- in 2007, you're saying?
Q No, this is 2009.
A. You're asking me if it would surprise me if they formed this thing in 2007 and he had 49 percent. I thought that was the content of the question And if he had money --
Q You know he went bankrupt, don't you?
A Yes. I don't remember what year it was.
Q You know you had to loan him money to pay his income taxes, don't you?
A I don't know the purpose of the -- I don't

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remember the purpose of the loan, but I remember I've loaned him money before
Q And you told me earlier, be fair with me, Steve, you knew he was broke
A At various times in his life he's been broke, but at other times in his life he made good money, when he was 50/50 partners with John Gandis Whenever he remodeled his house, he must have been in good times That was in maybe 2010
Q. You would agree with me on Monday, March --
A. So 2010 he wasn't broke.
Q You would agree with me on Monday, March 16th, 2009 you knew he was in partnership with John Gandis and he told you they were 50/50? You knew that?
A At some point I knew he was 50/50 partners, but I didn't know if he was partners in March 2009. I know he had some kind of partnership going with John Gandis, but I don't know the details of it.
Q. There is a check written to you by Eastern Film for commissions dated July 20th, '09 of $5,000, which is months after you knew he was in partnership with John Gandis Looking back on

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it, do you agree with me you should have questioned whether or not your brother-in-law could syphon off money from Eastern Film when he's in partnership with somebody called John Gandis?
A Absolutely not. In the year 2013 I collect money from Walgreens and Wal-Mart going back to 2008
Q. Steve, did there come a time where you looked at acquiring CCC?
A. That I looked into it? I briefly considered it
Q. Did you actually consider it enough to come up with a price?
A. Not that I'm aware of
Q. Did you ever even look at any numbers?
A. No, not that I'm aware of.
Q. How did you consider it?
A Dave approached me and throughout -- was it CCC? No, I'm sorry, I don't remember -- I don't recall that. I think it was PCFI that he wanted me to consider buying. I'll retract that. I think he approached me under PCFI. I retract that.
Q. After thinking about it, you never offered to

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buy CCC or even considered buying CCC?
A. I would never consider buying CCC.
Q And sitting here today, you would certainly remember it if you did, especially if it was 2011 or thereafter?
A Well, actually, now come to think of it, Dave may have approached me thinking that, hey, we're not getting along, maybe do like a Chinese put type of deal, would you be interested to help me finance to buy John out. That might have happened
Q. But it never got beyond that?
A. No
Q. You never made an offer or got into the numbers or even got into a range of what you might pay for it if you did?
A. Not that I recall.
Q This was just more or less a quick conversation between you and Dave?
A. That he initiated and I really had no interest in it.
Q I'm handing you a stack of e-mails that are in front of you. 181 is an e-mail from Dave Wilson so Mark McGarel. Do you know who Mark McGarel is?

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A No, I don't.
Q I'm going to tell you Mark McGarel is a fellow that Dave talked about selling CCC to or going to work for, depending on what time it was
A. Okay
Q. Do you know anything about that?
A. No.
Q You see this e-mail is dated Friday, January 13, 2012 to Mark McGarel from Dave at Eastern Film. Do you see that? We're looking at 181. Thanks for the e-mail. I'll work on my response. Please send all future e-mails pertaining to our working together to my Eastern Film's e-mail address. I can't be a hundred percent sure that the CCC e-mail is secure Do you see that?
A. Yeah.
Q So, obviously, it was something he didn't want CCC to know about, right?
A I can't answer that. I don't know if they've had someone hacked into their system I can't speculate on that.
Q Okay Look at 182
A. Okay.
Q. 182 is an e-mail from Mark, I guess to him.

EXHIBIT T

From: Dave Wilson <dave@neologicdistribution.com>
Sent: Monday, December 03, 2012 4:21 PM
To: Steve Norvell (snorvell@freshwatersystems.com)
Subject: CCC
Attachments: Balance sheet YTD Nov 2012.xlsx; YTD P&L Nov 2012.xlsx

Hi Steve,

Just a quick update on CCC. We have a hearing this Thursday regarding dissolution of CCC and Zoi. We have drafted our own dissolution order which will make it nearly impossible for John and Andrea to conduct business once the dissolution order is in place. Andy (my attorney) thinks we should make an offer this week to buy John and Andrea's interest based on the values they have given us in their obviously manipulated financials. They won't take the offer but will have a hard time explaining to the judge why our offer against their numbers is not fair. Essentially, we will be offering them a net asset offer based on roughly $350,000 not including Zoi Films (which we have yet to receive). CCC has a net asset value of close to $890,000.

Cash - $77865
AR - $408,000
Inventory - $330,000
Fixed Assets - $650,000 (based on market value given by appraiser)

Total Assets - $1,465,000

AP - $176,000 (after deducting Andreas recent postings of AP to her and John at $261,000)
Current liabilities - $289,000
Long term liabilities - $110,000

Total Liabilities - $575,000

I'd like to discuss this with you. If they actually took our offer, we'd have the whole company super cheap Again, I doubt that they will take our offer but it would force them to explain their devaluing of the business. Let me know when you have a few minutes to discuss over the next day or so. FYI –sales this year so far with CCC are at $3,400,000 and I am estimating sales within Zoi to be $400,000 minimum. See attached actual P&L and balance sheet from the books they gave us.

Regards,

Dave Wilson
Neologic Distribution
864 640 7402

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, Carolina Custom Converting, LLC, Counterclaim Plaintiff, vs. Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc., Counterclaim Defendants.	Civil Action No. 2012-CP-23-02887 **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Memorandum In Opposition to Plaintiffs' Motion for Partial Summary Judgment has been served upon the following counsel of record by electronic mail this 19th day of June, 2014.

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Law Office of W. Andrew Arnold, P.C.
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aarnold@aalawfirm.com

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-23-2887

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

-vs-

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC and Carolina Custom Converting, LLC,

Defendants.

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

-vs-

Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc.,

Counterclaim Defendants.

MOTION TO DISQUAILFY PLAINTIFF'S EXPERT CATHERINE STODDARD

Defendant Andrea Comeau-Shirley ("Comeau-Shirley" or "Defendant") moves this Court for an Order disqualifying Plaintiff's expert, Catherine Stoddard, from testifying in this case for multiple grounds as explained below. Her deposition testimony reflects that she is biased and incapable of contributing impartial testimony. She is not proficient in the exercise of her professional obligations. Her prior acts have cost the parties to this case tens of thousands of unnecessary dollars and proven incapable of reliability.

Initially, Plaintiff retained Stoddard, an accountant, to "determine the economic damages" (Stoddard deposition page 54) [1]; however her work morphed into offering an opinion as to the appropriateness of financial records based solely upon information from Plaintiff or his counsel. As a Certified Public Accountant, Stoddard was professionally bound to perform an objective review of the accounting records, and offer an objective opinion based on that review. Stoddard utterly failed to do so. Instead, from the outset Stoddard took sides and chose to be an advocate for her client, Plaintiff Dave Wilson, rather than an objective accountant. This admitted conduct severely compromises her ability to serve as an expert witness for Plaintiff. Stoddard should not be allowed to stand before this Court, let alone offer expert testimony in this case. Additionally, Stoddard is unqualified to offer expert testimony on the appropriateness of the subject accounting records, or anything else in this matter. Accordingly, Defendant respectfully requests this Court issue an Order disqualifying Stoddard from this case.

BACKGROUND

The Stoddard Affidavit

In March 2013, Plaintiff engaged Stoddard to "assist him with the financial aspects of the case." (Stoddard Affidavit ¶ 2).[2] More specifically, Stoddard was "asked to investigate the extent to which the accounting records [of CCC] have been changed, the impact of these changes, and the timing of these changes as they relate to [this case]." (Stoddard Aff. ¶ 2). Rather than perform a professional and objective review of the CCC accounting records, Stoddard did a hatchet-job on Comeau-Shirley. Stoddard insinuated that Comeau-Shirley somehow "cooked the books." Stoddard opined that the accounting records were "not reliable," and contained "significant discrepancies" and "unusual transactions." (Stoddard Aff. ¶ 7). Worse, Stoddard accused

[1] Referenced pages to her deposition are attached hereto as **Exhibit A**. The pages are in numerical order.
[2] The Stoddard Affidavit is attached hereto as **Exhibit B**.

Comeau-Shirley of "keeping or creating multiple sets of accounting records and reports for the purposes other than accurately reporting its historical results" (Stoddard Aff. ¶ 7); and opined "that some assets and sales may have been diverted to related entities that are owned or controlled by Andrea Comeau-Shirley or John Gandis" (Stoddard Aff. ¶ 12). Stoddard concluded that the "manipulation of the books beginning in the fall of 2011 is significant to the overall financial picture and valuation of [CCC]." (Stoddard ¶ 12). None of these allegations proved out when Del Bradshaw issued his report and each of those allegations could have been simply answered if Stoddard had merely asked[3].

The Stoddard Affidavit Leads to Unnecessary Costs

Stoddard's biased and unfair affidavit opened the flood gates of expensive and time-consuming discovery by Defendants (but largely Comeau-Shirley), which also included an independent and objective review of the CCC accounting records by a court-appointed accountant, Del Bradshaw of Bradshaw, Gordon & Clinkscales, LLC. In response to the Stoddard Affidavit, this Court (perhaps understandably) denied defense motions to limit overbroad and unreasonable discovery requests from Plaintiff. As a result, Comeau-Shirley incurred great costs, including significant attorney's fees, to respond to Plaintiff's discovery demands. This expense would not have occurred had Stoddard faithfully performed forensic accounting services when reviewing the CCC accounting records.

Moreover, this Court would likely not have appointed Bradshaw to perform the same review. In any event, Bradshaw reviewed the CCC accounting records and issued an independent and objective opinion that completely exonerates Comeau-Shirely from any wrongdoing. In the process it also exposes the Stoddard Affidavit for the sham that it is.

[3] Stoddard admitted in her deposition that she attended a portion of Ms. Comeau-Shirley's deposition and could have had any questions answered by providing them to Plaintiff's counsel but she did not. See, generally, page 118 of Stoddard deposition.

Because the Stoddard Affidavit was the wellspring of the enormous costs associated with this discovery, including the accounting services performed by Bradshaw, Comeau-Shirley will ask this Court at the appropriate time to shift the Defendants' payment of these costs and fees to Plaintiff.

ARGUMENT

It is now clear that the Stoddard Affidavit was just another front to Plaintiff's legal attack[4]. It does not rest on an objective, professional review of the accounting records, and is flatly contradicted by the Bradshaw report. This is unsurprising. Bradshaw exercised his professional judgment based on an independent and objective review of the CCC accounting records. Stoddard did not follow this same path. Rather, she became an advocate for Plaintiff, and did not exercise any objectivity before swearing that the CCC accounting records were improper and implying that Comeau-Shirley acted unprofessionally.

A. Stoddard Should Be Disqualified Because She Failed to Exercise Objectivity

Stoddard failed to formulate an objective plan or approach before performing the review of CCC's accounting records; failed to investigate or ask for any documents other than those that were provided to her by Plaintiff; failed to interview or perform any fact-finding beyond what was told to her by Plaintiff; and failed to keep notes of her review of the accounting records so as to hide her work and findings from Defendants *intentionally*. Stoddard also found Defendants had manipulated the books, but yet found not a single issue with anything Plaintiff did or did not do. Stoddard should be disqualified.

Stoddard Deposition

[4] **"I think your lawyer should bury them with discovery requests (or subpoenas)."** —*Advice to Plaintiff Dave Wilson from another of his accountants in September 2012*

Stoddard was deposed on August 18, 2014. Stoddard testified that she was a senior manager at Dixon Hughes, who works for the FLSVS (forensic, litigation support, valuation services) group. (Stoddard Dep. pg. 6). She admitted that it was her job to be an objective finder of fact for the benefit of the court. (Stoddard Dep. pg. 18). She also admitted that the rules of professional conduct for accountants—the rules propagated by the American Institute of Certified Public Accountants (the "AICPA")—require her to be objective, which in her words "is not to be persuaded by emotions or other people, but to have opinions based on the objective facts and draw those conclusions based on those facts." (Stoddard Dep. pg. 23). Stoddard further agreed that she is professionally prohibited from acting as an advocate for her client's position (Stoddard Dep. pgs. 23-24).

Unfortunately, in rendering opinions for Plaintiff, Stoddard did not remain objective—she did not objectively review the CCC accounting documents, and then reach an unbiased conclusion based on that review. Rather, Stoddard asked for no materials other than what was fed her by Plaintiff or his counsel and used that narrow scope to perform a biased-from-the-outset review of the accounting records and then, even worse, issued tainted findings accusing Comeau-Shirley of wrongdoing.

It is clear that from the beginning Stoddard would serve as a surrogate for Plaintiff's position. She said she was hired to "assist [Plaintiff's counsel] with this case" (Stoddard Dep. pg. 31) and that, before she even looked at the CCC accounting records, she lacked confidence in the financial statements (Stoddard Dep. pg. 30).

1. Stoddard Had No Written Objective Plan in Place Before She Reviewed the CCC Accounting Records

Stoddard had no written objective plan in place before she began reviewing the CCC accounting documents. She explained that she had a "goal" of getting comfortable with the CCC accounting documents, but did not have a written objective plan to achieve that goal:

> Q. In order to do that [achieve the goal], wouldn't you have in your mind's eye a set of steps you have to take to do that?
>
> A. Yes.
>
> Q. But you didn't write those down to leave a trail of what you were doing, did you?
>
> A. No.

(Stoddard Dep. pg. 32). She further explained that she did not document her plan at all:

> A. We have to keep adequate documentation, but it doesn't mean I have to document the plan as we go along.
>
> Q. And that's your testimony as an expert witness who's licensed in the State of South Carolina as a certified public accountant?
>
> A. Yes.

(Stoddard Dep. pg. 34) [Contrast this with Bradshaw's testimony on pp 46-47 of his deposition[5] where he acknowledges that it is his "professional obligation" to leave a trail of his work for others to follow.] Stoddard did not document her work, even though required by the AICPA, which included preparing a written plan to allow her to objectively perform the review of the CCC accounting records.

2. Stoddard Performed No Independent Investigation

Stoddard agreed that part of her responsibility for performing forensic accounting services was to obtain relevant data that is sufficient to provide a reasonable basis for her

[5] Referenced pages to his deposition are attached hereto as **Exhibit C**. The pages are in numerical order.

conclusions. (Stoddard Dep. pg. 40). And yet Stoddard performed no investigation beyond the information and documents that were spoon-fed to her by Plaintiff.

Stoddard never visited the CCC plant (Stoddard Dep. pg. 42), and, as a result, did not talk to any plant personnel (Stoddard Dep. pg. 77).

Stoddard also did not, or at least does not remember, asking for additional information from Plaintiff (or any other party). (Stoddard Dep. pgs. 40-41; 84). In that regard, Bradshaw testified that merely simple questions would have waved any accountant off the goose chase she created:

> *Q. Do you agree that Ms. Stoddard's affidavit contained numerous assumptions or erroneous assumptions that she could have dispelled had she done some investigation -- the investigation you did?*
>
> *A. I think in our report that we stated as such that had she known of the -- the two biggest issues was the inventory waste and the erroneous sale. And had she known of these, I think it would have made a huge difference in any type of projections or annualizations that she made with regards to her affidavit.*

(Bradshaw Deposition pgs. 47-48).

She did not know, for example, that a Counterclaim was filed against Plaintiff that alleged Plaintiff was stealing trade secrets. (Stoddard Dep. pgs. 63-64). She admitted this information would have been helpful to her review. (Stoddard Dep. pg. 64). She also did not know about the adverse market forces specific to CCC's business between 2010 and 2011:

> Q. Now, if I were to tell you at that point in time that [CCC] had made a lot of money in 2010, but they weren't going to be able to in 2011 because the glut came on the market and they were holding a lot of worthless inventory, would you have written such a rosy statement there?
>
> A. That would be important to know.

(Stoddard Dep. pg. 86). The fact of the matter is Stoddard performed no independent investigation before rending her opinion of CCC's accounting records. Stoddard apparently did not perform a single task that was not specifically dictated by Plaintiff or his attorney:

> Q. **What did you do that didn't involve Mr. Wilson or Mr. Arnold asking you to do it?** Not how did you do it, but what did you do. Tell me the big broad topics you said as a professional, this is what I'm going to add to this engagement, I'm going to tell them what needs to be done. What did you do?
>
> A. **Well, nothing really.**

(Stoddard Dep. pg. 38). (emphasis added)

Merely following professional standards, planning and asking questions would have potentially avoided the full blown review performed by Bradshaw:

> *Q. But you would have recognized that fairly quickly if you had been brought in and given a month-end statement, wouldn't you, and talked to the owners?*
>
> *A. No doubt about it, yes. One clarification.*
>
> *Q. Yes.*
>
> *A. We would have known about it. Had we understood the process, the manufacturing process. And once we had gotten into that part of the analysis we would have understood why inventory would have required more adjustments.*
>
> *Q. And in your role as doing that if you were in Ms. Stoddard's shoes you would have -- and had Mr. Wilson's ear you would have said to him, this is our plan, this is what we need to do, this is what you need to attack, can you explain these things to us as you learn the process; correct?*
>
> *A. Yes.*
>
> *Q. That would be the natural course of a professional accountant; right?*
>
> *A. If I had access to the information, yes, I would have done some of the things necessary or at least inquired or made a list or made a plan as to things that I needed to review and look at to go further with my analysis.*

(Bradshaw Deposition pgs. 49-50).

3. Stoddard Intentionally Left No Paper Trial for Defendants to Follow

Another incredible revelation from Stoddard's deposition was the fact that she intentionally failed to take any written notes memorializing her review of the CCC accounting records for the express purpose of evading discovery by Defendants. Stoddard agreed that to have fair and open discussions about the results of her review, Defendants would need to know how she performed that review and what she found, both positive and negative. (Stoddard Dep. pg. 53). And yet Stoddard, a retained expert who is professionally required to be objective, admitted that she intentionally did not detail her work because it would be disclosed to the opposing party. (Stoddard Dep. pgs. 51-52). She testified, for example, that she did not put any detail in her notes "because it's discoverable." (Stoddard Dep. pg. 52).

Additionally she acknowledged on page 41 of her deposition that "After I get them in the electronic file we destroy them. Or sometimes it's just something I need to do and once I'm done I get rid of it." It is impossible now to recreate what was converted electronically and what was merely "destroyed."[6]

4. Stoddard Found Not a Single Thing Wrong With Anything Plaintiff Did

Finally, in reviewing the accounting documents, Stoddard did not find a single unfavorable thing about Plaintiff:

> Q. Do you believe there's anything unfavorable about Mr. Wilson in your affidavit?
>
> A. I don't think so.

(Stoddard Dep. pg. 53).

[6] Again, contrasting this with Bradshaw's testimony in which he acknowledges that it is professional obligation not to destroy anything is illuminating (Bradshaw Dep. pg. 47).

Stoddard's conduct and opinion, under these circumstances, can only lead to the conclusion that Stoddard is the mouthpiece for Plaintiff. For this reason, she should be disqualified by this Court.

B. Stoddard Should Be Disqualified Because She Is Not Competent to Testify

Even assuming this Court did not disqualify Stoddard for intentionally avoiding information and destroying documents, she should be disqualified because she is not competent to provide an expert opinion on her review of the CCC accounting records.

South Carolina Rule of Evidence 702 governs the admissibility of expert testimony. In exercising its "gate keeping duties" under this rule, the trial court "must evaluate the substance of the testimony and determine whether it is reliable." *Watson v. Ford Motor Co.*, 699 S.E.2d 169, 175 (S.C. 2010). The obligation of the trial court to examine the substance of the testimony to determine if it is reliable applies regardless of whether the expert evidence is scientific, technical, or other specialized knowledge. *Id.* at 177.

Stoddard intends to testify based on her forensic examination of CCC's accounting records. Stoddard's testimony is not reliable. Stoddard is not a certified fraud examiner. (Stoddard Dep. pg. 16). Stoddard has no formal training on QuickBooks. (Stoddard Dep. pg. 8). The vast bulk of her work has been related to family court matters. (Stoddard Dep. pg. 9). Most importantly, Stoddard did not even know what standards applied to her scope of work. Stoddard admits that the engagement is proscribed by the standards of the AICPA (American Institute of Certified Public Accountants) (Stoddard Dep. pg. 18), and also admits that she ought to know the rules of the industry (Stoddard Dep. pg. 19). But Stoddard also admits that she has never read the Litigation Services and Applicable Professional Standards of the AICPA ("Accountant Litigation Standards") (Stoddard Dep. pg. 21). In fact, when shown the Accountant Litigation Standards at

her deposition she admitted that "this is the time first time I've read it...." (Stoddard Dep. pg. 21). Stoddard was completely unfamiliar with the standards that dictate how her profession requires her to perform expert services in a ligation setting.

Worse, Defendant was completely unable to confront Stoddard with what she did or did not do in her review because Stoddard intentionally failed to memorialize the steps of her review. She makes bold accusations—such as the statement that CCC (but the implication being Comeau-Shirely) is "keeping or creating multiple sets of accounting records and reports for the purposes other than accurately reporting its historical results" (Stoddard Aff. ¶ 7)—but then could not support the statement because she did not document it:

> Q. Did you document your file so I can go back in your file and see where there's an inconsistency such that it would lead you to believe there's multiple sets of accounting records?
>
> A. I probably don't have that documented, or I probably don't have that documented unless it was one of the multiple PDFs of the QuickBooks that I had printed. You know, you'd just have to compare those two.

(Stoddard Dep. pg. 108).

Therefore, in addition to her absolute failure to maintain an objective stance when performing her professional accounting duties, Stoddard should be disqualified for failing to know, let alone follow, the specific rules governing her work.

CONCLUSION

Comeau-Shirley respectfully requests this Court issue an Order disqualifying Stoddard from testifying in this matter.

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Attorney for Defendant
Andrea Comeau-Shirley

September 24, 2014

Exhibit A

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE C.A. NO. 2012-CP-23-2887

DAVID WILSON, individually and derivatively on behalf of Carolina Custom Converting, LLC,
Plaintiff,

VS

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC,
Defendants,

Carolina Custom Converting, LLC,
Counterclaim, Plaintiff,

VS

Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc.,
Counterclaim Defendants.

DEPOSITION OF:	CATHERINE STODDARD
DATE:	August 18, 2014
TIME:	9:15 a.m.
LOCATION:	Smith Moore Leatherwood 2 West Washington Street, Suite 1100 Greenville, SC
TAKEN BY:	Counsel for the Defendant
REPORTED BY:	MICHELE E. BECKER, Registered Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

A. I'm a senior manager.
Q. Is the senior manager the level below partner?
A. Yes.
Q. How long have you been at Dixon Hughes Goodman?
A. About three-and-a-half years.
Q. What did you do before that?
A. I had my own practice called Stoddard Consulting, and I had some traditional clients and then I also focused on litigation services.
Q. How many different big umbrella practice areas does Dixon Hughes have?
A. Oh, dear. Big umbrella would probably be like tax, audit, and then we have the FLSVS. And FLSVS is forensic, litigation support, valuation services group.
Q. And you're in that group?
A. Right.
Q. And have you been in that group your entire time at Dixon Hughes?
A. Yes.
Q. And were you brought in specifically to work in that group?
A. Yes.

Q. And a senior would be above an in charge?

A. They started with what they call staff, which was beginning to two-year. And then senior was anywhere from two, to three, or four, four, maybe five years.

Q. And did you work in the audit division there?

A. Yes. I was in the audit department.

Q. Okay. Now, at any time have you been trained on QuickBooks?

A. Not formally. But when I had my own practice I had a number of clients that were QuickBooks clients.

Q. Would you -- if somebody came to you -- when you had your own practice did you ever do bookkeeping services for clients?

A. A little bit. Some writeup type work.

Q. And when you were doing that writeup type work would you use QuickBooks as your program?

A. Yes.

Q. I asked you earlier you've been deposed before; is that correct?

A. Yes.

Q. Can you characterize what percentage

of your depositions have been related to family court matters?

A. Most -- probably all of them, actually. Yeah.

Q. Is this one of the rare times you've been deposed in a business dispute as opposed to a family court matter?

A. Yes.

Q. Have you ever been involved either in terms of consulting or in support of a lawsuit where there is a contentious split in a corporation in an LLC such as this?

A. Ever been involved in a lawsuit?

Q. Yes.

A. Yes.

Q. Where there's a contentious split such as this?

A. Yes.

Q. And would those be in the matrimonial areas?

A. No. I've dealt with other businesses.

Q. And so in that regard you would have been -- you would not have been testifying about those; is that correct?

A. Most of them settled before testimony.

A. No.
Q. Is there an exam you can sit for to become a forensic accountant?
A. Yes.
Q. Is there an exam you can sit for to become a certified fraud examiner?
A. Yes.
Q. Have you taken that test?
A. No.
(DFT. EXH. 2, Internet Bio for Catherine Stoddard, was marked for identification.)
BY MR. FARRAR:
Q. I'll show you Exhibit Number 2. And can you tell me what this reflects, please?
A. This is a bio from our ISO firm, bio on myself.
Q. Instead of making you remember, I thought I'd give you this so we could go through your licenses and certifications, okay?
A. Okay.
Q. You are a certified public accountant, we've talked about that, correct?
A. Right.
Q. You're accredited in business valuation by the AICPA?

Q. And that affidavit was written to the best of your ability at the time you prepared it; is that correct?

A. Yes.

Q. And do you believe you violated any ethical provisions of your profession in preparation of that report, that affidavit?

A. I don't believe so.

Q. Can you tell me what the general requirements of CPAs are involved in litigation engagements?

A. It's our job to be objective finders of fact for the benefit of the court.

Q. Do you know if the AICPA has issued a set of requirements for CPAs to follow when performing a litigation engagement?

A. This kind of work is considered under the consulting standards of the AICPA.

Q. Do you know if there's any specific standard that refers to litigation engagements?

A. Not that I'm aware of other than the consulting standard.

Q. And can you tell me the title of that consulting standard?

A. I think it's statement on standards

for consulting services.

Q. I'm sorry, it's what?

A. Statement on standards for consulting services, I believe.

Q. Okay. You're not aware of litigation services that are applicable to the professional standards of the AICPA?

A. No.

Q. If you're not aware of it how do you know that you followed it?

A. I -- well, I don't then.

Q. Are you aware that the applicable standards for the AICPA litigation service and applicable professional standards require that you follow the general standards of the AICPA?

A. I'm sorry, I believe your question is about a document I haven't seen, so...

Q. Well, I guess, Ms. Stoddard, the question I'm asking is, do you hold yourself out to be a litigation professional, litigation support professional, and you're testifying in a litigation matter? Would you agree with me that as a professional in your industry you ought to know the rules of your industry?

A. Yes.

responsibilities that affect litigation services.

So, I'm sorry, what was your question about this?

Q. My question is, first, have you read it? This is the first time you've read that, correct?

A. This is the time first time I've read it, yes.

Q. And, secondly, the standards for consulting services is actually a separate standalone document, isn't it?

A. It is.

Q. Okay. Let me have it back to ask you more questions, please.

In fact, this Exhibit 4 recognizes the standalone statement on standards for consulting services because they refer to it in paragraph 7 and say that adherence to that standard must be complied with; is that correct? Paragraph 7.

A. Yes.

Q. I'm sorry I didn't bring more copies.

And then it also says: You must also comply with the general standards of the accounting profession contained in the American Institute of Certified Public Accountants; is that correct?

BY MR. FARRAR:

Q. All right. You would agree that that appears to be what the rule comprises -- AICPA 201 says, correct?

A. Yes, that's right.

Q. Okay. You're also aware that the AICPA requires that you have to do your job while maintaining integrity and objectivity, correct?

A. Yes. That's right.

Q. Can you tell me what objectivity is?

A. It is an adherence to conclusions based on the facts presented before me.

Q. You think that's all objectivity requires?

A. Well, I probably didn't say that as gracefully as the standard does, but basically to be objective is not to be persuaded by emotions or other people, but to have opinions based on the objective facts and draw those conclusions based on those facts.

Q. Would you agree with me that the rules of professional conduct for the American Institute of Certified Public Accounting provide that the expert does not serve as an advocate for your client's position?

A. Yes. I agree with that.
Q. Do you believe anytime during the course of this you served as an advocate for your client?
A. I do not.
Q. When was the first time you met Dave Wilson?
A. I am not entirely certain. I believe I became involved in this case in the spring of 2013. I talked to him -- I think I met -- I'm pretty sure I met with him at least once before that affidavit in May. So sometime between March and May of 2013.
Q. Do you think that you provided me your time records on what you've done in this case?
A. I think so.
Q. Okay. I'll look again during a break, but I don't think so. But I'll double-check. Where would I look under in those folders?
A. They would be on the billing invoices.
Q. In what folder on the disk that you provided do you think it would be?
A. They should be all in one folder.
Q. Okay.
A. The bills.

Q. And Mr. Woodside is a CPA?
A. He is not a CPA.
Q. So he doesn't have the same rules applying to him, does he?
A. That's true.
Q. So if you work with somebody -- if you learn from somebody who doesn't have the same rules, do you believe you're following your profession's rules?
A. I believe I am.
Q. Okay. So where is the planning in this engagement that you're required to do?
A. We don't have planning documents.
Q. Well, tell me in your head what the planning was. When you talked to Mr. Arnold and got a sense of what you're supposed to do, what was your plan?
A. My plan was to try to understand what was going on in QuickBooks and try to get -- eventually to get to a place where we have some confidence in the financial statement numbers that we're looking at.
Q. Why were you lacking confidence?
A. Why did I lack confidence?
Q. Yeah. If you hadn't seen them why did

you lack confidence to plan to get confidence? Why wasn't the conversation, I want you to look at these numbers and see if they're right or wrong, but you just told me that your initial plan was to get the documents to where you had confidence in them? What made you not have confidence in them?

A. When I -- early on, I don't know if it was our initial meeting, but early on I was given several different financial statements that did not agree. And eventually I got a backup of QuickBooks and they didn't agree either. And so -- and we had trouble getting tax return documents. And so we had different sources of financial information and they didn't agree. And so it became pretty apparent early on that the first step to doing any kind of calculation or analysis of this company is to get something that we feel comfortable with in terms of financial statements.

Q. So you were hired to basically reach a valuation of this company?

A. Eventually, yes.

Q. What were you hired to do?

A. To assist Mr. Arnold with this case.

Q. I thought you weren't supposed to be an advocate?

A. I'm not an advocate.
Q. Well, what was the goal to assist Mr. Arnold, so his client would win?
A. No. To get to -- the goal initially was to get comfortable with some set of financial statements and to be able then to do some analysis on those financial statements.
Q. In order to do that, wouldn't you have in your mind's eye a set of steps you have to take to do that?
A. Yes.
Q. But you didn't write those down to leave a trail of what you were doing, did you?
A. No.
Q. In fact, if I look at what you have, you have notes discussing, having discussions with Mr. Arnold as your plan, correct?
A. I have notes with Mr. Arnold about what issues -- what the issues were that he needed my assistance with.
Q. Okay. I haven't seen any document. If you think it's there, we'll take a break and go look. I haven't seen a single document that shows where you're actually thinking about what you're doing in the case in terms of prospective steps,

I can't find that says when you do litigation support you can ignore these general standards of the AICPA?

A. We have to keep adequate documentation, but it doesn't mean I have to document the plan as we go along.

Q. And that's your testimony as an expert witness who's licensed in the State of South Carolina as a certified public accountant?

A. Yes.

Q. And you think that you don't have to document your work at all because you don't have to because you're in litigation services?

A. Okay. There's a difference between document -- I agree I have to document my work. I have to have support for my conclusions. But to document the plan, I'm not aware that that is a requirement.

Q. But you're just picking and choosing what you've got to document, aren't you? You can't show me a single rule that tells you that's appropriate, can you?

A. I might if I have an opportunity to look, but I...

Q. But you haven't even read the rule,

with Mr. Wilson, and he expressed some concern about the integrity of the accounting reports.

Q. But at no time did you sit down and come up with that on your own and say, well, this is what we need to do and here's my plan. You basically did whatever Mr. Wilson or Mr. Arnold asked you to do, correct?

A. I disagree with that.

Q. What did you do that they didn't ask you to do?

A. He asked me to take a look at -- he had some concerns about the financial statements and the different reports and asked me to investigate them. So the manner in which I investigated them and what I found was entirely my work.

Q. What did you do that didn't involve Mr. Wilson or Mr. Arnold asking you to do it? Not how did you do it, but what did you do. Tell me the big broad topics you said as a professional, this is what I'm going to add to this engagement, I'm going to tell them what needs to be done. What did you do?

A. Well, nothing really.

Q. Okay. Then wouldn't part of what you want to do is to say this is what I need to look at,

A. Yeah.

Q. So walking away from there you shouldn't get to say, I don't know why this is missing, because you would have had the opportunity to at least hear what the reason was, right?

A. I could have heard her explanation, yes.

Q. Okay. All right. Excuse me just a second.

Now, part of your responsibility as a CPA doing litigation services is you're required to obtain relevant data that's sufficient to provide a reasonable basis for your conclusions; isn't that right?

A. Yes. That's right.

Q. Okay. But you didn't ask for anything, you just took whatever Mr. Wilson and Mr. Arnold gave you. You didn't ask them for anything, right? Because we've established that.

A. I may have asked for something but not formalized discovery. We had a lot of conversations. We may have had a conversation where I said we need to try to get or obtain this or that or the other, and not have it formalized as a specific discovery request.

Q. You didn't document that either?
A. I didn't.
Q. Because you don't have any documentation requirements.
A. Yes.
Q. Do you have any desk files?
A. Desk files?
Q. Yeah. Do you have any written paper in your files as opposed to what you have on the computer?
A. I have notes occasionally from, like, if somebody makes a phone call, and then I try to incorporate those into my electronic file.
Q. You have them scanned in?
A. I try to.
Q. Do you type them or scan them?
A. Sometimes I type them, sometimes I scan them.
Q. What happens to the ones that you handwrite and then you typed in what you wanted to type in?
A. After I get them in the electronic file we destroy them. Or sometimes it's just something I need to do and once I'm done I get rid of it.

Q. Did anyone at Dixon Hughes Goodman assist you in the evaluation of the work you were doing other than the IT people?

A. I probably -- I have an associate and I also have a bookkeeper that helps me from time to time. I would have to look at the billing records to see who worked on the case.

Q. Who's the associate?

A. Zach Mueller. Although -- yeah. Zach Mueller. And the other one is Katherine Haskell. She is the bookkeeper. And I believe there was somebody in the Charleston office too that helped me with the affidavit. His name -- I don't remember now who worked on that.

Q. Have you ever visited the CCC plant?

A. No.

Q. Have you ever asked to?

A. I don't remember if I did or not.

Q. If you had written a planning note, you would have had that in your planning notes, correct? But you don't have planning notes.

A. I might have had a note of it.

Q. But that's if you were keeping your planning notes, correct?

A. Right.

A. That's correct.

Q. And so that's what I call, time detail. I assume you have to gather your time detail and put it in on a daily or weekly basis or something like that, correct?

A. Yes, that's right.

Q. And then you have the ability to push a button and spit all that out, don't you?

A. I have ability to spit out whatever is put in the computer. What Mr. Gilbert did there is enter -- the time allows you to enter notes and he apparently put some notes in his time entries.

Q. Do you not put notes in yours?

A. I don't on this type of matter.

Q. So that's one more way I can't follow your trail, correct?

A. I suppose that's accurate, yes.

Q. Okay. Do you intentionally do this so you don't have to be pressed about things that you found unfavorable to your clients?

A. I don't know about being unfavorable to the clients. But for this type of litigation that's what my partner in charge has told me to do.

Q. And who is that?

A. Roy Stickland.

Q. And he told you specifically, don't put any detail in your time?
A. Uh-huh.
Q. Yes?
A. Yes. That's right.
Q. And did he tell you why?
A. I don't know. Probably because it's discoverable. But in family court I do it all the time, so...
Q. But did he tell you why not? Why do you assume?
A. I think he said because it's discoverable.
Q. And you don't want the other side to see it?
A. Probably, yes, that's correct.
Q. And that's not being an advocate for your client?
A. I don't think so.
Q. So if you're trying to hide something from the other side, it's not being an advocate for your client in your mind? You don't think so at all?
A. I don't think so. No, I don't agree.
Q. Okay. But would you agree with me to

have a fair and open discussion about your results I'd need to know what you were doing, how you did it and what issues you found both positive and negative?

A. Yes.

Q. All right. But there's no way I can look for that, is there?

A. Well, my affidavit pretty much summarizes what I did and what I found.

Q. Does it say what you found unfavorable to your client in there? And you're welcome to take as much time as you want to read your affidavit. And I challenge you to find something that says anything unfavorable about Mr. Wilson. I've read your affidavit pretty carefully, okay?

A. Okay.

Q. Do you believe there's anything unfavorable about Mr. Wilson in your affidavit?

A. I don't think so.

Q. And you did all this work and never found one thing unfavorable about Mr. Wilson?

A. Not in -- I'm not saying there isn't anything unfavorable, but in that work, no.

Q. But you're -- if you found it and you didn't write it down, I can't find it anywhere,

correct? And you didn't put it in your report, and you didn't put it in your time. So anything unfavorable you found is gone, is to ether, I can't find it, correct? It's evaporated.

A. I didn't find anything like what you're describing at the time I wrote that affidavit.

Q. So you found nothing unfavorable with regard to Mr. Wilson, is your testimony?

A. Well, the scope of what I was trying to do was to try to understand or highlight the problems with the financial records so that this case could get to a point where we have some information we can rely on to start doing some analysis. And in that process I didn't find anything unfavorable to Mr. Wilson.

Q. Did you initially believe you were being engaged to prepare a valuation report of the company?

A. Initially I think I thought I was being engaged in order to determine the economic damages.

Q. At any time has your engagement been performed with the anticipation that you would come up with a value of the company?

support your conclusions?

A. Well, I think really my work was done for the affidavit in order to get to the place where we had access to get the information we need. And I really haven't done a whole lot since the affidavit.

Q. But you didn't ask Mr. Arnold at any time what have you got, let me see everything you've got?

A. I'd ask him if he had specific information about certain things.

Q. Like bank statements?

A. Yes. We did have bank statements. I did ask for those and we did get those, yeah.

Q. Okay. And what else would you -- I mean, I don't know what to ask you because quite frankly there's no way for me to check what you were doing, okay. I'm having to rely on you to remember these things just like that, okay.

A. Yeah. We did have bank statements. We did have those.

Q. What else did you have?

A. I'm sorry, I don't remember.

Q. Did you look at the counterclaim against you -- against Mr. Wilson by these defendants?

A. I believe I've seen that.
Q. Did you see where he was accused of stealing trade secrets?
A. Maybe I haven't seen that. That doesn't sound familiar.
Q. Okay. Were you aware he was accused of stealing confidential information?
A. I became aware of that recently.
Q. No. I mean --
A. Maybe at that mediation.
Q. Okay. When you were giving your opinion, were you aware of that?
A. No.
Q. Don't you think it would be good to at least know what both sides are saying?
MR. ARNOLD: I'm going to object to the form.
BY MR. FARRAR:
Q. Okay. You can answer the question.
A. I think it's helpful to see all of the, yeah, to see all of that is helpful.
Q. But you didn't ask for that from Mr. Arnold or Mr. Wilson, did you?
A. I probably asked for the complaint but I didn't realize that there were counterclaims.

A. No. The first I heard of Mr. Higgins was Bradshaw's report.

Q. If you had gone out and toured the plant, don't you think you would have had the opportunity to meet Mr. Higgins?

A. I could have, yes.

Q. That might have impacted your analysis, mightn't it?

A. It might have, yes.

Q. Okay. But sitting here today, under oath, you're telling me that you're not aware of any reasons why the relationships deteriorated between Mr. Wilson on one side and Mr. Gandis and Ms. Shirley on the other?

A. I really don't know what the source of the conflict was initially. I know there were accusations about cash, and but I really don't know. That came later. And I understand the deterioration started in the fall and it was later, I think, from my understanding when they started talking about cash flow.

Q. You know Mr. Wilson doesn't like Ms. Shirley, don't you?

A. I know that this lawsuit has caused some conflict between them. I don't have an idea of

printed off at different points in time that couldn't be reconciled back.

Q. And that's all materials supplied by these gentlemen, right? (Indicating)

A. Either that or through discovery, I'm not sure where the -- I'm not sure where the documents all came from. Some of them came through formal discovery.

Q. Did Mr. Arnold ever send you formal discovery and say, you got anything you want to add to this, here's my draft?

A. I don't recall that, uh-uh.

Q. Did you ever send him something saying, next time you ask for something, ask for this?

A. If we did -- if it's not in my file it would have been just a conversation.

Q. Do you remember doing that?

A. I don't remember that, no. I do remember I think asking for bank statements though.

Q. You got those before you did your affidavit, right?

A. I don't remember when I got those.

Q. We'll see. I don't know either, that's why I'm asking.

A. Right.

Q. But you didn't do that anywhere else on these numbers, did you? I mean, as far as what Mr. Wilson, Mr. Arnold gave you as numbers, you didn't footnote that saying, I don't have that, you're just saying the tax return on K-1 didn't have that, right? We'll see examples as we go forward, okay?

A. Okay.

Q. Now, going back to the last line of paragraph section -- number 5: CCC experienced tremendous growth between 2009 and 2010 and was a profitable, successful business.

Now, if I were to tell you at that point in time that they had made a lot of money in 2010, but they weren't going to be able to in 2011 because the glut came on the market and they were holding a lot of worthless inventory, would you have written such a rosy statement there?

A. That would be important to know.

Q. You might have put in there, but they were facing severe times coming, or something like that, right? Challenging times coming.

A. Yes. However, the 2011 wasn't -- this is based on tax return information, and the tax

Q. Did you document in your file so I can go back in your file and see where there's an inconsistency such that it would lead you to believe there's multiple sets of accounting records?

A. I probably don't have that documented, or I probably don't have that documented unless it was one of the multiple PDFs of the QuickBooks that I had printed. You know, you'd just have to compare those two.

Q. But you would have compared it and then say this is the one Ms. Stoddard was saying created that impression?

A. Yes.

Q. There's nothing in there that says, this gives me the impression that?

A. That's right.

Q. So there's an audit trail in QuickBooks but there's not an audit trail in Ms. Stoddard's work, correct?

A. That's true.

Q. And then going down further, paragraph 8 you say: There's some dispute about the integrity and legitimacy of accounting entries and business activity of CCC.

So what's the integrity issue there?

A. Sorry. M-1 totaled $155,000.

Q. That's what I'm saying. If you add up the hundred plus all the $5,000 entries they match $155,000 on M-1.

A. I see what you're saying, yes.

Q. And, in fact, F-2 is the transaction detail, and M-1 is a vendor balance detail and they're not exclusive, are they?

A. No, they're not.

Q. So you double counted those then, didn't you?

A. It appears that, yes, from this report.

Q. But you were sitting in the deposition where Ms. Shirley was testifying and you could have asked that question, had Mr. Arnold ask that question, right?

A. Well, the deposition was after this was written. Was it?

MS. COMEAU-SHIRLEY: (Moves head up and down.)

MR. FARRAR: Stop.

THE DEPONENT: Yes, I could have asked that question.

BY MR. FARRAR:

Exhibit B

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs, vs. Carolina Custom Converting, LLC, Third-Party Defendants.	IN THE COURT OF COMMON PLEAS C.A. NO.: 2012-CP-23-02887 AFFIDAVIT OF **CATHERINE STODDARD, CPA/ABV, CVA**

PERSONALLY appeared before me **CATHERINE STODDARD, CPA/ABV, CVA,** who being duly sworn, deposes and says:

1. I am a Certified Public Accountant (since 1989) in Greenville, South Carolina. I am a Senior Manager employed with Dixon Hughes Goodman, LLP, Certified Public Accountants and Advisors. My practice specializes in the area of forensic accounting, litigation support and business valuations. I have experience valuing businesses and hold the designation ABV which is accredited in business valuation from the American Institute of Certified Public Accountants (AICPA). I also hold the designation CVA which is certified valuation analyst from the National

Association of Certified Valuation Analysts. A copy of my current curriculum vitae is attached hereto and made a part hereof.

2. I was engaged by Mr. David Wilson on March 15, 2013 to assist him with the financial aspects of the case referenced above. Primarily, I have been asked to investigate the accounting records of Carolina Custom Converting, LLC ("CCC") to determine the true economic income and financial position of the CCC. I've also been asked to investigate the extent to which the accounting records have been changed, the impact of these changes, and the timing of these changes as they relate to the litigation referenced above.

3. CCC provides custom slit plastic film for a variety of markets, including industrial applications and food packaging[1]. The tax returns show that this business started on January 1, 2008. Mr. Wilson informs me that he and John Gandis each own 45% of CCC while Andrea Comeau-Shirley owns 10%.[2] The Company uses Quickbooks software for its accounting system. Andrea Comeau-Shirley is primarily responsible for the accounting of CCC and maintenance of Quickbooks records.

4. It is my understanding that David Wilson and John Gandis originally started the company, but Andrea Comeau-Shirley was admitted to the partnership early in its formation. The partnership relationships started to deteriorate in the fall of 2011.

5. The tax returns of CCC show gross revenue in 2009 and 2010 of $1.8 million and $6.9 million, cost of goods sold of $1.5 million (77% of Gross Revenue) and $4.9 million (72% of Gross Revenue), and net income of $97 thousand and $1.3 million, respectively. CCC experienced tremendous growth between 2009 and 2010 and was a profitable, successful business.

6. Mr. Wilson provided me with a CCC financial statement which he printed from

[1] CCC wesbsite www.ccc-films.com
[2] We were not provided copies of the K-1's.

Quickbooks on August 1, 2011 (Exhibit A-1) that shows for the seven months ending August 1, 2011 gross revenue was $3.5 million, Cost of Goods Sold was $2.9 million (83% of Gross Revenue), and net income was $654 thousand. Annualizing these results would equate to annual gross revenue of about $6 million and net income of $1.1 million. These results would have been consistent with the previous year. This financial statement indicates that CCC continued to be profitable and successful through August 1, 2011.

7. After August 1, 2011, the financial records lack consistency. Discerning CCC's financial results is difficult because the records are not reliable. There are significant discrepancies between different sources of financial information. In addition, unusual transactions were made to Quickbooks after August 1, 2011.

Quickbooks[3] reflects gross revenue for 2011 of $5.8 million, Cost of Goods Sold of $5.2 million (93% of Gross Revenue) and a net **LOSS** of $456 thousand (Exhibit B-1). A financial statement that was provided by CCC in response to a subpoena shows gross revenue for 2011 was $5.8 million[4], Cost of Goods Sold of $5.2 million (90% of Gross Revenue), and a net **LOSS** of $425 thousand (Exhibit B-2). A tax transcript for 2011 obtained from the Internal Revenue Service[5] shows 2011 gross revenue was reported to be $5.2 million, Cost of Goods Sold were $4.4 million (84% of Gross Revenue), and net **LOSS** was reported to be $163 thousand (Exhibit B-3). Depending upon the source of financial information, Gross Revenue is reported to be $5.8 million, or $5 2 million for 2011. Cost of Goods Sold is reported to be $5.2 million or $4.4 million. Net income is reported to be a **LOSS** of $456 thousand, **LOSS** of $425 thousand, or a **LOSS** of $163 thousand. While it is not uncommon to make book to tax adjustments for expenses like

[3] Electronic back up as of November 19, 2012 provided by CCC
[4] Operating Revenue appears to be the sum of "Total Income" and "Other Income" from the Quickbooks, Exhibit B-1
[5] This return was received by the IRS on September 17, 2012 per IRS Transcript

depreciation, meals, and donations or to group accounts differently for different reports, it is unusual for there to be inconsistency in the reported Gross Revenue and Cost of Goods Sold. It is also unusual for the detailed accounting records, like Quickbooks, not to match the company's financial statements. I am not aware of any legitimate reason for these discrepancies in CCC's reported financial results. It appears that CCC is keeping or creating multiple sets of accounting records and reports for the purposes other than accurately reporting its historical results.

8. After August 1, 2011, unusual accounting entries were recorded in Quickbooks that drastically changed the reported results of CCC. Through August 1, 2011, CCC's reported revenue and income were consistent with the previous year, and CCC was on track to make a net PROFIT of about $1.1 million (see paragraph 6 above). However, CCC ended the year with a loss of between $163 thousand and $456 thousand (paragraph 7 above). This represents a deterioration of profits in the range of $817 thousand to $1.6 million between August 1, 2011 and December 31, 2011. There is some dispute about the integrity and legitimacy of accounting entries and business activity of CCC after August 1, 2011. However, the decline is at least suspicious. Quickbooks reports indicate that CCC earned $2.1 million in gross revenue during the last five months of 2011 and incurred Cost of Goods Sold of $2.3 million. If this were accurate, CCC sold product during the last 5 months of 2011 for $200 thousand less than CCC's own direct cost. This loss is before considering general and overhead expenses. Cost of Goods Sold as a percentage of Gross Revenue ranged historically from 72% to 83% before August 1, 2011, but changes in Quickbooks reflect Cost of Goods Sold was 111% for the months August through December 2011. The deterioration of CCC's reported financial results continues in 2012 with Quickbooks reporting a Gross Revenue of $3.2 million and a net LOSS of $458 thousand

(Exhibit C-1).

9. Although my analysis is not yet complete, I have found the following accounting entries made after August 1, 2011 in Quickbooks that contributed to the deterioration of CCC's reported financial results:

a. On October 24, 2011, sixty-seven invoices were entered with a "WO" following the invoice number of a previously recorded transaction. These transactions were backdated to accounting periods ranging from April to June 2011. (Exhibit D-1) Between October 24, 2011 and January 27, 2012 an additional 5 transactions fitting this same pattern were entered and posted to accounting periods ranging from May 2011 to December 2011. These invoices show inventory being sold at zero sales dollars. (Exhibit D-2) The effect of these transactions was to increase Cost of Goods Sold (material cost) by $82,421 and remove $82,421 in inventory value from the books of CCC without any corresponding Gross Revenue or sales. (Exhibit D-3). This accounting treatment of sales, cost of sales, and inventory (including scrap) was unusual and did not begin until after August 1, 2011. This accounting treatment doesn't appear to have continued in any significant way after January 27, 2012.

b. On October 24, 2011, three journal entries were recorded to reduce accounts receivable (an asset). These transactions were backdated to July, August, and September 2011. Unlike previous write-offs, these journal entries were non-specific and included no explanations of specific customers. (Exhibit E-1) On December 15, 2011, an additional non-specific write-off was recorded and back dated to November 30, 2011. (Exhibit E-2) These transactions reduce Accounts Receivable (an asset) and increase bad

debt expense by $35,683. Although some of the journal entries include a "name" of "Allowance for Doubtful Accounts" and memo explanation of "Bad Debt Reserve," the transactions did not post to a reserve or allowance account. They were posted to accounts receivable (an asset) and bad debt expense.

c. On December 15, 2011, a journal entry was recorded to accrue legal expenses in the amount of $15,000. (Exhibit F-1) Subsequently, various other legal fees related to the Wilson matter were charged to CCC's books including a forensic investigation of computers. These transactions were entered throughout 2012. On August 12, 2012, an accrual for $100,000 was recorded to legal expense (Exhibit F-2) and on September 2, 2012, a series of accruals were recorded and backdated for the months January through August 2012. Similar accruals were subsequently made in September and October 2012. These accruals total $50,000. (Exhibit F-3) Another entry called "Due to LLC Manager – D&O Reimbursement for Legal" was recorded on September 2, 2012 and backdated to May 31, 2012. (Exhibit F-4) The result of these transactions is to increase legal fees expense and either decrease cash (when a legal expense was paid) or increase an accrued liability (when the fees were accrued but not paid). Total legal fees increased from $10,611 in 2010 to $118,650 in 2011 and $120,357 in 2012. (Exhibit F-5) It appears that John Gandis and Andrea Comeau-Shirley have been paying their legal bills related to the dispute with Wilson through CCC and have accrued additional reserves in CCC to cover expected future payments. These legal fees have decreased net income and net worth of CCC.

d. CCC rents its office from an entity called M-Tec, which is owned by John

Gandis, one of the partners involved in this dispute. CCC paid M-Tec $2,500 per month for a total of $30,000 per year for 2010 and 2011. However, in 2012, rent to M-Tec increased to $6,000 a month for a total of $72,000 for the year. (Exhibit G-1) According to Mr. Wilson, there was no written rent agreement with John Gandis, but this increase was not discussed with or approved by Mr. Wilson.

e. On February 22, 2012, a fixed asset called "Idle Equipment or CWIP: B3-86 Black Clawson DR-15" was removed from the balance sheet and expensed as repairs and maintenance (labor). The February transaction was backdated to October 31, 2011. (Exhibit H-1) Expenses for this asset accumulated during the months May to September 2011.

f. Zoi is an entity started and controlled by John Gandis and Andrea Comeau-Shirley. On August 18, 2012 and October 17, 2012, two vendor invoices were entered that related to an entity named "Zoi." (Exhibit I-1) The invoices were charged as a reduction to sales. The invoices were subsequently "paid" from various cash accounts of CCC in Quickbooks during the period August 2012 through November 2012. (Exhibit I-2) The result of these transactions was to decrease sales and decrease cash by about $190,000. In addition, there were corresponding customer invoices to Zoi. Although we have not yet fully untangled these transactions, it appears that CCC sold inventory to Zoi at reduced prices, often even below cost. These sales invoices to Zoi were paid through a cash clearing account that was offset by these outstanding payable invoices. Sales invoices to Zoi between April 2012 and November 2012 total $246,269. (Exhibit I-3) We have not fully determined the full financial statement impact of these transactions as

often the sales invoice did not represent the full value of the asset being sold to Zoi. John Gandis and Andrea Comeau-Shirley have indicated that Zoi is a subsidiary of CCC.[6] However, Quickbooks does not include the banking activity of Zoi and I have been unable to find any record of Zoi's sales or other financial activity in the Quickbooks records of CCC.

g. Certain transactions appear to be running through the payroll account. Some customer payments are deposited directly to the payroll account instead of the operating account. There are corresponding unusual transactions out of the payroll account. In addition, payroll expense has increased significantly and its increase is illogical in light of other financial statement activity. At this time we have insufficient records to test and fully analyze the payroll accounts. However, the increases in payroll are at least suspicious and inconsistent with the historical expenses and with other financial statement accounts. Furthermore, this treatment of customer deposits first started on August 4, 2011. (Exhibit J-1)

k. A customer sales invoice #2035 to BPR Plastics was originally entered December 1, 2011 for $6,273 (Exhibit K-1, page 18). The invoice was for Trim Waste Sales. The invoice was subsequently voided. After it was voided, additional inventory was added to the sales invoice on December 16, 2011 and January 27, 2012. (Exhibit K-1, pages 12-18). A similar customer sales invoice #2034 was also entered about the same time and voided. Although the invoices were voided, the inventory that was subsequently added to the invoice continues to reduce CCC's inventory and increase Cost of Goods Sold. Total inventory removed from CCC and expensed to Cost of Goods sold through

[6] Answer of Zoi Films, LLC FIRST DEFENSE (f)

sales to BPR Plastics in 2011 was $330,798 (Exhibit K-2). However, CCC only invoiced BPR Plastics $27,845 (Exhibit K-3) for these sales. These invoices represent 352,352 pounds of material. Material was historically sold for $1-$3 per pound with scrap being sold at $0.20 to $0.50 per pound. The result of these transactions was to decrease inventory and increase Cost of Goods (material) expense by $330,787 (Exhibit K-2) and record sales of $27,845 (Exhibit K-3). However, the full financial statement impact could be much larger because the sales value of this inventory is likely higher than its cost. I am still investigating these transactions but the impact could be a reduction in sales of $70 thousand to over $500,000.

l. In June 2012, CCC books started including an additional accrual of a liability for John Gandis. One of the invoices has the following description, "Management and Administrative Services." Most of these transactions were entered in September, October, and November of 2012. However, they were backdated throughout the year 2012. At first amounts were accrued as compensation to John. These accruals were later reversed through a series of vendor payables to John. The result of these transactions is to increase liabilities (either accrued payroll or accounts payable) and increase payroll expense by $95,250. (Exhibit L-1)

m. On October 31, 2012, a series of vendor invoices to Namaste Financial Services were entered and back dated to various months in 2012. Mr. Wilson believes Namaste Financial Services is an entity owned by Andrea Comeau-Shirley. This is the same entity whose name appears as the preparer of the Company's tax returns. These transactions total $155,000. (Exhibit M-1) We have not yet completed our analysis of

the transactions to Narnaste Financial Services to determine the full financial impact.

12. Our analysis is ongoing and not yet complete. However, based on the work we have done, it appears that certain accounting entries were made beginning in the fall of 2011 that were unusual in light of the historical transactions heretofore. These transactions had the effect of decreasing assets such as inventory, cash, accounts receivable, and fixed assets, increasing liabilities such as accruals, decreasing gross sales, and increasing expenses. My preliminary analysis also indicates that some assets and sales may have been diverted to related entities that are owned or controlled by Andrea Comeau-Shirley or John Gandis. We do not have adequate records to fully analyze these transactions or to determine the full extent of the impact to the financial statements. These unusual transactions that started in the fall of 2011, have a negative impact on the financial statements of CCC and would negatively impact the valuation of CCC if they are taken at face value.

In order to get an accurate accounting of the financial position and financial activity of CCC, these books and records need to be reconstructed. However, the adjustments that were made to the books of CCC beginning in the fall of 2011 have been buried among detailed sales and expense records and within vendor and sales invoices. Consequently, correcting and re-stating the books of CCC will be a very tedious, time-consuming, and expensive process. CCC needs a complete reconstruction of the financial records for the years 2011 and 2012 in order to get an accurate picture of its income and assets for purposes of a valuation. The manipulation of the books beginning in the fall of 2011 is significant to the overall financial picture and valuation of the Company. We have not yet compared the Quickbooks accounting records to the actual banking transactions or compared the inventory and sales invoices to the shipping records, which

are both necessary steps in this forensic investigation.

13. I have incurred fees of approximately $19,000 to date. I have been paid $16,073. Reconstruction of the accounting records to determine the extent to which assets have been removed by the shareholders since the fall of 2011 and to determine an accurate financial record from which the business interests can be valued, will be an expensive process. It would not be unrealistic to expect additional fees of $75,000 to $100,000 to complete this task.

_____

Catherine Stoddard, CPA/ABV, CVA

SWORN to before me this
_____ day of _____, 2013.
_____(SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

EXHIBIT A

Catherine Stoddard, CPA/ABV, CVA
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Curriculum Vitae

Professional Licenses and Certifications
Certified Public Accountant (CPA), South Carolina, No. 03222, since March 1989
Certified Valuation Analyst (CVA), NACVA, since May 2001
Accredited in Business Valuation (ABV), AICPA, since June 2006
Certified Family Court Mediator, South Carolina Bar, March 2012

Professional Associations
American Institute of Certified Public Accountants (AICPA)
South Carolina Association of Certified Public Accountants (SCACPA), served as member of Business Valuation/Litigation Services sub-committee since 2003, Chair 2008 and 2009
National Association of Certified Valuation Analysts (NACVA)
Institute of Business Appraisers (IBA)
International Academy of Collaborative Professionals (IACP)

Education
BA Accounting, Furman University, December 1986, *Cum Laude*

Specialty Seminars/Conferences

SC Bar Family Court Mediation Training, Greenville, SC, March 22-26, 2012
SC Bar Interdisciplinary Family Collaborative Practice, Charleston, SC, November 4-5, 2011
SC Bar Family Law Intensive, Asheville, NC, October 6 – 8, 2011
National Business Institute, Handling Divorce Cases from Start to Finish, October 5, 2011, faculty speaker
Globalview CPE for Accountants, Buy Sell Agreements, May 27, 2011, speaker
AICPA National Business Valuation Conference, Washington DC, November 7-9, 2010
SCACPA/SC Bar Litigation Conference, Columbia, SC September 16, 2010, speaker
AICPA National Business Valuation Conference, San Francisco, CA November 15 -17, 2009
SCACPA/SC Bar Litigation Conference, Columbia, SC September 17, 2009, speaker
NACVA State Chapter, Columbia, SC December 5, 2008, speaker
SCACPA/SC Bar Litigation Conference, Columbia, SC September 18, 2008, speaker
SCACPA/SC Bar Litigation Conference, Kiawah, SC, September 21-22, 2007, speaker
Institute of Business Appraisers Business Valuation Symposium, Denver CO, June 20-23, 2007
AICPA/ASA National Business Valuation Conference, Las Vegas, NV, November 14 -16,

2005
Current Update in Valuations, Atlanta, GA, September 18, 2004
SCACPA Litigation Conference, Columbia, SC, September 16, 2004
ABV Exam Review, Atlanta, GA, June 14-15, 2004
Critical Issues in Divorce, Telephone Conference, March 23, 2004
SCACPA Litigation Conference, Columbia, SC, September 18, 2003
AICPA/AAML National Conference on Divorce: Property and Complex Financial Issues, Las Vegas, NV, May 16-17, 2002
National Association of Certified Valuation Analysts 2000 Training Seminar, Atlanta, GA, August 21-25, 2000
American Institute of Certified Public Accountants' 2000 National Advanced Divorce Conference; Las Vegas, Nevada, May 20-23, 2000
World Trade Institute seminar; Doing Business in Mexico; Chicago, IL, August 27-29, 1994
American Institute of Certified Public Accountants' National Construction Industry Conference, New Orleans, LA, 1993

Professional Experience

Dixon Hughes Goodman– 2011 to present; Senior Manager Forensic, Litigation Support and Valuation Services.

Stoddard Consulting - 1994 to 2011; Sole Practitioner providing tax, compilation, consulting, litigation support, business valuation, forensic, expert witness, and divorce services.

Suitt Construction Company, Inc. and Suitt International Company, Inc. – 1991 to 1994; Suitt International Company, Inc. was a separate but affiliated company based in the USA with 5 subsidiaries in 3 European Countries and 1 subsidiary in Mexico. Responsibilities included financial reporting including international subsidiaries and job-sites.

Ernst & Young (formerly Ernst & Whinney) - 1987 to 1991; Provided various assurance, tax, and consulting services for public and privately owned companies and retirement plans in the following industries: manufacturing, distribution, healthcare, retail, utilities, and construction.

Testimony Experience

Sauro v Sauro	Family Court, Gaffney, SC	Trial
Maxon v Maxon	Family court, Laurens, SC	Trial
Powell v Powell	Family Court, McCormick, SC	Trial
Holeman v Holeman	Family Court, Greenwood, SC	Trial
Atwell v Atwell	Family Court, Greenville, SC	Trial
Winkler v Winkler	Family Court, Anderson, SC	Trial
Garber v Garber	Family Court, Laurens, SC	Deposition
Dickert v Dickert	Family Court, Greenville, SC	Deposition & Trial
Levato v Levato	Family Court, Greenville, SC	Deposition
Armstrong v Armstrong	Family Court, Greenville, SC	Trial
Johnston v Johnston	Greenville, SC	Arbitration
Scott v Scott	Greenville, SC	Arbitration
Price v Price	Columbia, SC	Deposition and Arbitration
McManus v McManus	Family Court, Greenville, SC	Arbitration
Wilburn v Wilburn	Family Court, Greenville, SC	Trial
Swinford v Swinford	Family Court, Rock Hill, SC	Trial
Duvall v Duvall	Columbia, SC	Arbitration
Conits v Conits	Greenville, SC	Trial
Terry v Terry	Greenville, SC	Deposition and Hearing

Exhibit C

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

DAVID WILSON, INDIVIDUALLY AND
DERIVATIVELY ON BEHALF OF
CAROLINA CUSTOM CONVERTING, LLC,
Plaintiff,
vs. CASE NO. 2012-CP-23-2887
JOHN GANDIS, ANDREA COMEAU-SHIRLEY,
ZOi FILMS, LLC, AND CAROLINA CUSTOM
CONVERTING, LLC,
Defendants.

CAROLINA CUSTOM CONVERTING, LLC,
Counterclaim, Plaintiff,
vs.
DAVE WILSON, STEVEN NORVELL, NEOLOGIC
DISTRIBUTION, INC., AND FRESH WATER
SYSTEMS, INC.,
Counterclaim Defendants.

DEPOSITION OF: DEL L. BRADSHAW AND PETER C. TIFFANY

DATE: September 18, 2014

TIME: 10:04 A.M.

LOCATION: Law Offices of
Smith Moore Leatherwood, LLP
2 West Washington Street, Suite 100
Greenville, SC

TAKEN BY: Counsel for the Defendants John
Gandis, et al.

REPORTED BY: LORI S. MORTGE,
Certified Court Reporter, CCR

invoice did imply that, yes.

Q. Talking about practicing accounting, have you ever agreed to provide hack passwords to any of your clients?

A. Hack passwords?

Q. If your client called and said, I'd like to get into -- I've been fired by this company, I'd like to get into the books and records, would you provide them with passwords of all individual members of the company that they left?

A. Well, first, I'm not an IT person and, secondly, no, I would not.

Q. Yeah. I'm not suggesting you have; okay? I'm just curious. And as I understand the standards of accounting, since we're talking about those and I've seen you do it, you basically plan what you're going to do; correct?

A. Yes.

Q. And you document to leave a trail; correct?

A. Yes.

Q. And you're doing this in a litigation role; correct?

A. Yes.

Q. In this instance. But you understand

it's your professional obligation to leave a trail; correct?

A. Correct.

Q. And it's your professional obligation not to destroy anything you do; correct?

A. Correct.

Q. And do you have a different rule as far as keeping your time entries when you're working on a litigation matter versus an audit in terms of what detail you put in there?

A. No.

Q. You had the opportunity to look at Ms. Stoddard's affidavit; correct?

A. Yes.

Q. Do you agree that Ms. Stoddard's affidavit contained numerous assumptions or erroneous assumptions that she could have dispelled had she done some investigation -- the investigation you did?

A. I think in our report that we stated as such that had she known of the -- the two biggest issues was the inventory waste and the erroneous sale. And had she known of these, I think it would have made a huge difference in any type of projections or annualizations that she made with

regards to her affidavit.

Q. Correct. I believe you say that it would have been inappropriate to annualize the midyear 2011 on year-end; correct?

A. That's correct. And we state in our report we found that the interim financial statements were probably not reliable. And the primary reasons for that, we know for a fact, was the uniqueness of this manufacturing which was it had waste. And that was a significant part and we did -- in our interviews we did confirm that -- Mr. Wilson seemed to have a fair amount of knowledge with regards to that. He did suggest that it was approximately 12 to 15 percent waste with regards to this manufacturing process. So, yes, that's -- that was a big issue.

The current QuickBooks is not equipped, at this moment in time, to account for that without some manual assistance.

Q. Without input?

A. Without input. And it's large enough that it should have been. That would have made the interim financial statements I think more meaningful, just from that standpoint.

Q. It's not unusual for financial

statements not to be as honed as a year-end financial statement, is it?

A. No, it's not, but we find that most of our small business owners, they want to have reliable information. And, for the most part, we found that the banks were being reconciled and we found that accounts receivable and accounts payable seemed to be relatively matched to their detailed records, although there probably was some adjustments for that. Primarily we found that the inventory, the bad sale --

Q. Sale off the dock? Is that what we're calling the bad sale?

A. We found adjustments such as depreciation, things like that, were not made. And so you would have had to do more work on a month-end to make it a little bit more reliable.

Q. But you would have recognized that fairly quickly if you had been brought in and given a month-end statement, wouldn't you, and talked to the owners?

A. No doubt about it, yes. One clarification.

Q. Yes.

A. We would have known about it. Had we

understood the process, the manufacturing process. And once we had gotten into that part of the analysis we would have understood why inventory would have required more adjustments.

Q. And in your role as doing that if you were in Ms. Stoddard's shoes you would have -- and had Mr. Wilson's ear you would have said to him, this is our plan, this is what we need to do, this is what you need to attack, can you explain these things to us as you learn the process; correct?

A. Yes.

Q. That would be the natural course of a professional accountant; right?

A. If I had access to the information, yes, I would have done some of the things necessary or at least inquired or made a list or made a plan as to things that I needed to review and look at to go further with my analysis.

Q. If Ms. Comeau-Shirley had recommended to Mr. Wilson and Mr. Gandis that they hire an in-house accountant and been rejected, would that be some knowledge to you that she had disdained or disclaimed the role of being the in-house accountant if she's telling them to hire one?

A. I don't know that I can render an

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, Carolina Custom Converting, LLC, Counterclaim Plaintiff, vs. Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc., Counterclaim Defendants.	)	**CERTIFICATE OF SERVICE** C.A. No. 2012-CP-23-2887

The undersigned certifies that on the 24th day of September, 2014, she caused to be served the **Motion to Disqualify Plaintiff's Expert Catherine Stoddard** upon the attorneys for Plaintiff and Co-Defendants, as indicated below, copies of the same addressed to:

VIA HAND DELIVERY
Mr. W. Andrew Arnold
Law Office of W. Andrew Arnold, P.C.
712 East Washington Street
Greenville, SC 29601
Attorney for Plaintiff

VIA EMAIL
Mr. Mason A. Goldsmith
Mr. K. Jay Anthony
Elmore Goldsmith, PA
Post Office Box 1887
Greenville, SC 29602
Attorney for Defendant
John Gandis

VIA EMAIL
Mr. L. Lee Plumblee
Eppes & Plumblee, P.A.
Post Office Box 10066
Greenville, SC 29603
Attorney for Defendant
ZOi Films, LLC

VIA EMAIL
Mr. Thomas L. Stephenson
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601

and

VIA EMAIL
Mr. Burl F. Williams
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400 (29601)
Post Office Box 10648
Greenville, SC 29603

Attorneys for Defendant
Carolina Custom Converting, LLC

VIA HAND DELIVERY
Mr. Bruce B. Campbell
Horton, Drawdy, Ward, Mullinax & Farry, P.A.
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Greenville, SC 29601
Attorney for Defendants
Steven Norvell, Neologic Distribution, Inc.,
and Fresh Water Systems Inc.

Sheron P. Sean

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Attorney for Defendant
Andrea Comeau-Shirley

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
DAVID WILSON,)
Plaintiff(s))
)
vs.)
)
JOHN GANDIS and ANDREA COMEAU-SHIRLEY,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-
2012-CP-23-2817

2012 APR 27 A 10:57

(Please Print)
Submitted By: W. Andrew Arnold
Address: 712 E. Washington Street
Greenville, SC 29601

SC Bar #: 65311
Telephone #: 864.242.4800
Fax #: 864.242.4885
Other:
E-mail: aarnold@aalawfirm.com

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

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☒ Other (199)

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case # 20___-CP-____-_____
☐ Notice/ File Med Mal (230)
☐ Other (299)

Torts – Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ Other (899)

Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** April 27, 2012

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief,

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures, and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No.
	)	
DAVID WILSON,	)	2012-CP-23-3887
	)	
Plaintiff,	)	SUMMONS
	)	
v.	)	
	)	
JOHN GANDIS and ANDREA COMEAU-SHIRLEY,	)	
	)	
Defendants.	)	

2012 APR 27 A 10:57

TO THE DEFENDANTS ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 712 E. Washington Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted,
LAW OFFICE OF W. ANDREW ARNOLD, P.C.

W. ANDREW ARNOLD
SC Bar No. 65311
712 East Washington Street
Greenville, SC 29601
aarnold@aalawfirm.com
864.242.4800 864.242.4885 fax
ATTORNEY FOR PLAINTIFF

April 27, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No.
DAVID WILSON,	)	2012-CP-23-2887
	)	
Plaintiff,	)	**COMPLAINT**
	)	
v.	)	
	)	
JOHN GANDIS and ANDREA COMEAU-SHIRLEY,	)	
	)	
Defendants.	)	

FILED-CLERK OF COURT
2012 APR 27 A 10: 57

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Complaint. and does hereby allege and complain as follows:

1. Plaintiff David B. Wilson (hereinafter Plaintiff) is a resident and citizen of Greenville County, South Carolina.

2. Defendant John Gandis (hereinafter "Defendant Gandis") is a resident and a citizen of the County of Greenville and the State of South Carolina.

3. Defendant Andrea Comeau-Shirley (hereinafter "Defendant Comeau-Shirley") is a resident and citizen of the state of Georgia.

4. Plaintiff and Defendants are members of Carolina Custom Converting, LLC (hereinafter CCC), a South Carolina limited liability company with its principal place of business in Anderson, South Carolina and formerly with an office in Greenville, South Carolina. CCC was formed in 2007.

5. Prior to the inception of the entity, Defendant Gandis and Plaintiff agreed to be equal members in a limited liability company, and accordingly Defendant Gandis filed Articles of Organization creating Carolina Custom Converting, LLC. Defendant Gandis filed Articles of Organization identifying CCC as a term company and identifying himself as the manager.

6. Plaintiff and Defendant never signed and/or agreed to a written operating agreement, and to this day, the parties have never agreed to a written operating agreement. Defendant Gandis and Plaintiff did agree at the inception of their partnership to be equal partners; to wind down their individual businesses; after such winding down, to operate those activities involving the sell of film for the benefit and profit of CCC; to share income equally; and to receive a monthly distribution and/or compensation.

7. However, there was no agreement by the parties as to whether CCC would be a term limited liability company, and absent such an agreement, CCC is an at-will limited liability company.

8. There was no express agreement that Defendant Gandis would be the only managing member; however, Plaintiff did understand that Defendant Gandis would manage the day to day operations of CCC.

9. In or about 2008, the Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with a ten percent (10%) interest and to reduce each of their respective membership shares to forty-five percent (45%).

10. As a manager, Defendant Gandis had fiduciary obligations under S.C. Code Ann. 33-44-409(h)(2) as well as other statutory provisions, which continue to this day and and will continue as long as he is the manager of CCC.

11. Nonetheless, for a time, Plaintiff participated in the management and operations of CCC and performed services for CCC on a full-time basis. The only compensation he received was in the form of distributions to him as a member, which was agreed upon at the inception of CCC.

12. In or around the beginning of 2010, Defendants began excluding Plaintiff from member meetings and discussions. Plaintiff did not have prior knowledge of these meeting(s).

Based upon information and belief, decisions were made during these meetings without Plaintiff's input and consent.

13. In January 2010, the members decided that CCC would purchase a vehicle to be used as a sales vehicle by Plaintiff; however, later, Defendants unilaterally treated this purchase as a charge against Plaintiff's capital account.

14. In 2011, Defendants unilaterally changed Plaintiff's membership interest from 45% to 44.1%. This was done without Plaintiff's knowledge and/or consent and such acts violated the agreement of the parties. The interest taken from Plaintiff was given to Defendant.

15. The parties had agreed that the members would receive equal monthly distributions. This practice continued as agreed until sometime in 2010. Such commitment to pay monthly compensation was material in Plaintiff's decision to wind up the business of Eastern Film Solutions.

16. Sometime in 2010, Defendant Gandis voluntarily decided to take a lesser monthly distribution than Plaintiff to improve cash flow of CCC. However, Defendant Gandis had outside income from his side film business in addition to CCC income. Plaintiff agreed that any distribution in excess of that taken by Defendant Gandis would be treated as a non-recourse "loan" from the entity to Plaintiff, secured only by his capital account.

17. In April 2011, Defendant Gandis ceased taking distributions, which resulted in a larger disparity between the capital accounts of the members. However, Plaintiff continued to have a positive balance in his capital account at all times, even when deducting the amount of the non-recourse "loan."

18. Sometime after April 2011, Defendant Gandis approached Plaintiff about the imbalance of distributions. Plaintiff reiterated the agreement of the parties which provided for monthly compensation. In response, Defendant Gandis proposed that Plaintiff forfeit his

membership interest and become an employee in exchange for a loss allocation to offset member income in 2010.

19. Although Plaintiff rejected this offer, Defendants persisted in pressuring him to forfeit and/or transfer his interest.

20. Pressure turned to coercion at the end of November 2011 when Defendants advised Plaintiff that Plaintiff would not be receiving his agreed upon distribution for December 2011 unless Plaintiff agreed to sell his interest and become an employee.

21. Plaintiff and Defendant Gandis met and discussed a buy-out of Plaintiff's membership interest. As part of one proposal, Plaintiff would be employed as an officer of the company with a guaranteed salary pursuant to a five year employment agreement. Defendant indicated he was agreeable to such proposal.

22. After Plaintiff and Defendant discussed this proposal, Defendants relented and paid Plaintiff his December 2011 distribution.

23. Later in December, Defendants presented Plaintiff with a written offer that was significantly different than the proposal discussed at the last meeting; the offer included an at-will employment contract, a five year non-compete and valued Plaintiff's interest at approximately $300,000.

24. Plaintiff requested a copy of the CCC balance sheet that was used to value Plaintiff's interest in CCC. The balance sheet submitted to Plaintiff contained several deceptive and/or fraudulent entries that devalued CCC and thus devalued Plaintiff's membership interest accordingly.

25. One of the deceptive and/or fraudulent entries included "a preference to minority" to Defendant Comeau-Shirley in the amount $100,000. When confronted, Defendant Comeau-Shirley indicated this was "based upon a conversation that [Defendant Gandis] had with [her]

sometime in 2009 or 2010 about higher participation at exit...." Defendant Gandis had never discussed such proposal with Plaintiff at anytime and such a commitment had not been previously listed on a CCC balance sheet.

26. Plaintiff rejected the offer of at will employment. Plaintiff raised objections and concerns regarding the deceptive and/or fraudulent accounting entries.

27. Plaintiff made a counter-offer, which valued his own membership interest at approximately $350,000 and included a four year employment agreement and a five year non-compete.

28. Defendants rejected Plaintiff's offer and advised Plaintiff in writing that he would not be receiving his January and February distributions as had been previously agreed upon.

29. Defendant Gandis had indicated that he would accept an offer to purchase his membership interest for $325,000 as long as the offer included the purchase of the building. Defendant Gandis owns the building in which CCC operates and rents the premises to CCC.

30. In response, Plaintiff had advised Defendant Gandis that Plaintiff would begin to seek qualified buyers. With Defendant Gandis' blessing, Plaintiff approached perspective buyers, all of whom executed non-disclosure agreements.

31. In or about late December 2012, Defendants requested to know the identity of any proposed purchasers Plaintiff had approached and the nature of the information shared. Plaintiff was reluctant to identify prospective buyers, although Plaintiff assured Defendants that he had not disclosed information that was damaging to the company and later advised that all information provided to any prospective buyer was subject to non-disclosure.

32. In or about January 2012, Defendant Comeau-Shirley advised Plaintiff in writing that "pursuant to the new operating plan" Plaintiff's privileges in the accounting system had been changed to sales only. Plaintiff had not consented to and/or voted on any such plan

33. On January 6, 2012, Defendant Comeau-Shirley advised Plaintiff that Defendant Gandis had identified himself as the sole manager of CCC in the Secretary of State filing.

34. On January 17, 2012, Plaintiff made a new offer to Defendants which reduced the valuation of his membership interest to $100,000 cash and the value of the outstanding "loan."

35. Approximately, fifteen minutes after making such offer, Defendants terminated Plaintiff's access to the CCC computer network.

36. On January 18, 2012, Defendant Gandis approached Plaintiff and advised him that "we have accepted your resignation" and that Plaintiff needed to vacate the office immediately. Plaintiff denied he had resigned and refused to vacate. Plaintiff did not resign.

37. To enforce his demand to vacate, Defendant Gandis had called law enforcement, and a law enforcement officer was with him when he made such demand. When Plaintiff refused to leave, Defendant Gandis asked the officer to remove Plaintiff from the premises. Plaintiff advised the officer of his membership interest; the officer indicated that he had no jurisdiction, although he remained at the location.

38. Also, Defendant Gandis had called a locksmith, who was present to change the locks of the Greenville office leased by CCC. The locksmith changed all locks on CCC's Greenville office. When Plaintiff left the office, he was refused reentry.

39. Immediately, Defendants disconnected Plaintiff's cell phone service without notice; Defendants also disconnected the service for Plaintiff's family. Defendant refuses to release to Plaintiff the cell phone number he has had for over 10 years.

40. Without prior notice, Defendants terminated Plaintiff's health insurance, which is provided to all members and employees And since, Defendants have refused to pay Plaintiff any distributions, while based upon information and belief, Defendants have continued to receive paid cell phone service, health insurance and/or distributions as members.

41. Since Plaintiff's ejection and involuntary dissociation by Defendants, Plaintiff has requested financial information for CCC, but Defendants have refused to provide Plaintiff with any such information.

42. Defendants have refused to return Plaintiff's personal property and are claiming that such property was contributed to CCC; however, Defendants have never accounted for such personal property as a contribution, have never listed and/or valued such property on the company balance sheet nor have Defendants credited Plaintiff's capital account with the value of such property as of the time of the alleged contribution.

43. Based upon information and belief, Defendants have used CCC funds to pay for their own personal attorneys fees in their power struggle with Plaintiff.

FOR A FIRST CAUSE OF ACTION
Dissolution
(S.C. Code § 33-44-801)

44. Plaintiff realleges and incorporates by reference paragraphs 1 through 43, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in First Cause of Action.

45. Defendants have acted in a manner that is unlawful, oppressive, fraudulent, and/or unfairly prejudicial to the Plaintiff. Such actions constitute grounds for statutory dissolution, including, but not necessarily limited to, the following:

A. Without cause, Defendant(s) called law enforcement to remove Plaintiff from his office and have since denied Plaintiff entry into his office;

B. Defendant(s) terminated Plaintiff's access to financial information and have denied his request for financial information to which a member is statutorily entitled;

C. Defendant(s) have unilaterally and without his consent attempt to alter Plaintiff's membership interest and produced false K-1s;

D. Defendant(s) have engaged in deceptive and/or fraudulent accounting practices designed to reduce the value of the CCC for their personal benefit;

E. Defendant(s) have terminated Plaintiff's family health insurance coverage;

F. Defendant(s) have failed to make agreed upon distributions and unilaterally changed agreements between Defendant Gandis and Plaintiff regarding monthly distributions;

G. Defendants have accounted for expenses, including the automobile expense, in such as way as to decrease Plaintiff's capital account;

H. Defendant(s) have terminated Plaintiff's cell phone service while maintaining that of other members;

I. Based upon information and belief, Defendant(s) have utilize company funds to pay for legal fees incurred as the individuals efforts to force Plaintiff to forfeit his membership interest, and thereby increasing their individual ownership; and

J. Defendant(s) have threatened to deplete the company bank accounts by funding litigation between individual members and thus devaluing Plaintiff's membership interest.

46. Based upon information and belief, Defendants have conspired together for the purpose of compelling Plaintiff to forfeit his membership interests and/or to transfer his interest for below fair market value.

47. Defendants' conduct relating to the company's business makes it not reasonably practicable to carry on the company's business with those members.

48. Plaintiff is entitled to equitable remedies and/ore legal remedies under the South Carolina Uniform Limited Liability Company Act, including the remedy of dissolution.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendant Gandis)

49. Plaintiff realleges and incorporates by reference paragraphs 1 through 48, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Second Cause of Action.

50. Defendant Gandis breached and continue to breach his statutory duty of loyalty, obligation of good faith and fair dealing and/or other fiduciary duties owed to Plaintiffs and to the CCC, LLC. and such breaches include, but are not limited to:

A. Refusing to provide financial information as requested by Plaintiff;

B. Paying for his personal attorney fees out of company funds in pursuit of Plaintiff's membership interest;

C. Terminating Plaintiff for seeking financial information and making efforts to review financial information to which he was entitled;

D. Calling law enforcement in an effort to forcibly remove Plaintiff from his office;

E. Filing Article of Organization which were contrary to the agreement of the equal members;

F. Conspiring with Defendant Comeau-Shirley to force Plaintiff to forfeit his membership interest and/or transfer such interest for less than fair market value;

G. Unilaterally and without authority promising Defendant Comeau-Shirley that she would get a $100,000 "a preference to minority"; and

H. Otherwise acting in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Plaintiffs.

51. Defendant Gandis represented that he intended to dissolve DecoTex and conduct all of his business on behalf of CCC, but Defendant Gandis continues to operate such side film business. Based upon information and belief, Defendant Gandis utilizes CCC resources in furtherance of such business efforts.

52. Based upon information and belief, Defendant Gandis receives income from his side business selling film, which exploits opportunities that could have generated profit for CCC.

53. Based upon information and belief, Defendant Gandis has misappropriated corporate opportunities for himself and/or DecoTex.

54. Based upon information and belief, Defendant Gandis has participated in and directed accounting practices that are fraudulent and/or deceitful.

55. Defendant Gandis' breach of his fiduciary duties, his obligation of good faith and fair dealing and his duty of loyalty are the proximate cause of damages to Plaintiff and his membership interest. Accordingly, Plaintiff is entitled to an award of actual and punitive damages for the breach of Defendant's fiduciary duties, including a disgorgement of profits for any sale of film not conducted through CCC.

56. Defendant Gandis' breach of his fiduciary duties is causing Plaintiff irreparable harm and entitles him to temporary and permanent injunctive relief.

FOR A THIRD CAUSE OF ACTION
Disassociation
(S.C. Code § 33-44-601(6))

57. Plaintiff realleges and incorporates by reference paragraphs 1 through 56, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Third Cause of Action.

58. Plaintiff never consented to CCC being a term limited liability company, and accordingly, CCC is an at will limited liability company.

59. Defendants have engaged in wrongful conduct that adversely and materially affect the company's business.

60. Defendant Gandis has willfully and/or persistently acted in breach of his fiduciary duties. Defendants have engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on business together.

61. Plaintiff is entitled to an judicial decree of dissolution.

FOR A FOURTH CAUSE OF ACTION
Conversion

62. Plaintiff realleges and incorporates by reference paragraphs 1 through 61, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Fourth Cause of Action.

63. Defendants have converted company funds to their own use by paying for their personal attorney fees in their efforts to force Plaintiff to dissociate from CCC. Based upon information and belief, Defendant Gandis has used LLC property in furtherance of his own personal business efforts selling film.

64. Defendants have converted Plaintiff's personal property to their own personal use and refuse to return such equipment.

65. Plaintiff is entitled to an award of actual and punitive damages for such conversions.

66. Moreover, Plaintiff is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from ulitizing LLC funds for their own personal purposes; requiring Defendants to account to Plaintiff for all profits and property, and to return Plaintiff's personal property.

67. Defendants actions will result in irreparable harm to Plaintiff's membership interest and to his property interests. In the alternative, Plaintiff is entitled to an award of damages.

HAVING FULLY SET FORTH HIS COMPLAINT, Plaintiff pray this Court award them the following relief:

(a) an award of Plaintiff's special and compensatory damages;

(b) an award of punitive damages against Defendants;

(c) an order enjoining continuing breaches of Defendant's fiduciary duties and Defendants' conversions;

(d) an order dissociating Defendants from CCC or in the alternative, dissolving CCC; and

(e) an order requiring a winding up of the affairs of CCC, LLC, ordering its assets liquidated, payment of Plaintiffs their share of profits and income, and a judicial order of dissolution;

(f) alternatively, appointing of a receiver to wind-up the affairs of the entity, to liquidate its assets, to account to Plaintiff for income and profits owed to Plaintiff, and filing Articles of Dissolution;

(g) prejudgment and post-judgment interest, and

(h) such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

Law Office of W. Andrew Arnold, P.C.

W. Andrew Arnold, Esq.
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712 E. Washington Street
Greenville, South Carolina 29601
(864) 242-4800
Attorney for Plaintiffs

Greenville, SC
April 27, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No.
DAVID WILSON,	)	2012-CP-23-2287
Plaintiff,	)	VERIFICATION
v.	)	
JOHN GANDIS and ANDREA COMEAU-SHIRLEY,	)	
Defendants.	)	

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2012 APR 27 A 10:57

Personally appeared before me the undersigned, who upon oath duly sworn, states as follows:

I am the Plaintiff in the above-captioned case. I have read the foregoing Complaint and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information and belief I believe to be true.

DAVID WILSON

SWORN to and subscribed before
me this 27th day of April, 2012

Notary Public for South Carolina
My Commission Expires: 10-18-14

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
David Wilson,	)	
	)	C.A. NO.: 2012-CP-23-02887
Plaintiff,	)	
	)	
John Gandis and Andrea Comeau-Shirley,	)	ANSWER, BY WAY OF SET-OFF AND COUNTERCLAIMS, AND MOTIONS TO DISMISS (Jury Trial Demanded)
	)	
	)	
	)	
	)	
Defendants.	)	

FILED CLERK OF COURT GREENVILLE CO. S.C. 2012 JUL -3 AM 9:14

Defendants John Gandis (hereinafter "Gandis") and Andrea Comeau-Shirley (hereinafter "Comeau-Shirley") answering the allegations of Plaintiff's Complaint would show unto the Court as follows:

1. Any allegations not specifically admitted herein are denied.

2. On information and belief, Defendants admit the allegations of Paragraph One.

3. Defendants admit the allegations of Paragraph Two.

4. Defendants admit the allegations of Paragraph Three.

5. Defendants admit the allegations of Paragraph Four. Further answering Paragraph Four, Defendants state that Carolina Custom Converting, LLC (hereinafter referred to as "CCC" or "the Company") was formed on November 2, 2007 pursuant to Articles of Organization filed with the Office of the South Carolina Secretary of State, as recognized by the South Carolina Secretary of State in the attached Certificate of Existence (attached hereto as "Exhibit A").

6. Defendants admit so much of Paragraph Five as alleges that Plaintiff and Defendant Gandis agreed to be members of an LLC. Defendants deny the remainder of the

allegations. Defendants state that Plaintiff and Defendant Gandis agreed to form a new entity which was to be owned 51% by Defendant Gandis and 49% by Plaintiff. The parties engaged attorney Stephen Potts to draft the Operating Agreement and, after meeting with both Plaintiff and Defendant Gandis, Potts – not Defendant Gandis – filed the Articles of Organization with the Office of the South Carolina Secretary of State, naming Defendant Gandis as the manager and designating CCC as a term company. Attorney Potts drafted these terms into the Articles because they were agreed to by Plaintiff and Defendant Gandis. The parties understood that Potts designated the company term as 50-year, per his usual practice, but that the members could set a shorter term in the future.

7. Defendants admit so much of Paragraph Six as alleges that Plaintiff and Defendants never signed an Operating Agreement and that Defendant Gandis agreed, at the inception of CCC, to wind down his individual business – Eastern Film Solutions (hereinafter referred to as "EFS") – which also related to the slitting and selling of film, and to participate in the slitting of and sale of film for the benefit and profit of CCC. Defendants deny the remainder of the allegations. Defendants state that Plaintiff and Defendant Gandis prepared drafts of an Operating Agreement, which still exist, but the Agreement was never signed. Plaintiff was informed at the inception of CCC and understood that all compensation would be in the form of distributions and that the amount and frequency of the distributions was not assured and would depend entirely on the availability of funds and the success of the Company, and other business factors, as is the case with most all start-up companies. On a number of occasions, Plaintiff, in conversation with Defendant Comeau-Shirley, referred to his distributions as "salary," but each time was corrected by Defendant Comeau-Shirley. Defendant Comeau-Shirley began work for the Company in 2008 after she was recommended by Defendant Gandis's father. At an initial

meeting with Plaintiff and Defendant Gandis, at which the parties discussed the venture, Defendant Comeau-Shirley asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up company or if he would prefer to be a salaried employee. Plaintiff assured Defendant Comeau-Shirley that he understood and was prepared for the uncertainties and risk. Later, on reviewing the books, she noticed a significant disparity in distributions as Plaintiff had received all distributions while Defendant Gandis had provided all or almost all funds to the business, which had provided funds for the distributions, but received no distributions himself. Consequently, on multiple occasions, Defendant Comeau-Shirley again asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up Company or if he would prefer to be a salaried employee. Each time, Plaintiff again stated that he accepted the uncertainty and risks.

8. Defendants deny the allegations of Paragraph Seven. Further answering Paragraph Seven, Defendants state that Plaintiff and Defendant Gandis agreed that CCC would be a term corporation and jointly instructed Stephen Potts to file the Articles of Organization designating the corporation as term. The Articles of Organization, as filed, list CCC as a term corporation.

9. Defendants deny the allegations of Paragraph Eight.

10. Defendants admit the allegations of Paragraph Nine.

11. Defendants object to the allegations of Paragraph Ten as the allegations are vague and cannot be answered by the Defendants. Specifically, the allegations do not make clear whether Plaintiff contends that CCC was manager-managed or member-managed and whether Plaintiff contends that Defendant Gandis was a manager within the meaning of S.C. Code Ann. § 33-44-409(h)(2). Subject to this objection, Defendants deny the allegations.

12. Defendants admit so much of Paragraph Eleven as alleges that Plaintiff performed some amount of services for CCC and did not receive compensation. Defendants deny the remainder of the allegations and specifically deny that Plaintiff performed any services beyond the scope of his original commitment. Plaintiff received distributions, but these distributions were due to his interest as a member and not as compensation for services rendered. Despite a lack of measurable success at the time, Plaintiff began receiving distributions from CCC in July 2008 of $8,000/month. These distributions were largely funded by loans from Defendant Gandis, who did not take distributions at the time. When Defendant Comeau-Shirley began working with CCC in late 2008, she noticed this situation and informed Defendant Gandis and Plaintiff that Defendant Gandis should take an equal distribution given his interest, despite the fact that Defendant Gandis would essentially be paying himself. The parties raised their distributions to $9,000/month in January 2009 but then, at Defendant Comeau-Shirley's urging, both reduced the distributions to $6,802.84/month in September 2009 in order to better afford the purchase of certain equipment. Though Defendant Gandis and Plaintiff each contributed $3,000 for the first purchase of film, to date, Plaintiff has made no further additional contributions to CCC, though he continued to take monthly distributions. Defendant Gandis, on the other hand, provided CCC with numerous loans totaling $229,332 in 2008, $849,908.10 in 2009, and $584,629.84 in 2010. From time to time, Defendant Gandis was repaid portions of these loans.

13. Defendants deny the allegations of Paragraph Twelve. It should be noted that, throughout the Complaint, Plaintiff frequently refers to actions of CCC, through its management, as actions taken by the Defendants individually. This is denied. In nearly every instance, what Plaintiff refers to was a business action taken by the Company and Defendants' actions were within the proper scope of their authority and on behalf of the Company. For purposes of this

Answer, unless Defendants specifically admit to some action taken in their individual capacities, all actions were taken by CCC.

14. Defendants deny the allegations of Paragraph Thirteen. Further answering the allegations, Defendants state that in late 2009, after Plaintiff blamed break-downs with his car as an excuse for his failure to appear for meetings with a number of prospective clients, Defendant Gandis proposed that CCC co-sign on a reliable car. Defendant Gandis believed that Plaintiff was not in a position to obtain such financing on his own due to his bankruptcy. Plaintiff then purchased the car with CCC as a co-signor. Defendants emphasize that the vehicle was not purchased as a sales vehicle as, just prior to the purchase, CCC had hired an additional salesman, James J. Bucks, who assumed responsibility for those sales accounts requiring travel. Because the vehicle was not purchased as a sales vehicle, CCC did not list it as such for tax purposes. On information and belief, Plaintiff personally paid all automotive expenses associated, though he at times attempted to charge expenses to the Company credit card, but relented when confronted by Defendant Comeau-Shirley and reimbursed the Company. Plaintiff was repeatedly reminded that only business expenses should be paid for on the company card.

15. Defendants deny the allegations of Paragraph Fourteen.

16. Defendants deny the allegations of Paragraph Fifteen. Plaintiff promised, at the inception of CCC, that he would wind up the business of EFS, make efforts to transfer the EFS client base to CCC, and thereafter put his efforts entirely toward the new venture. Plaintiff implies in his Complaint that Defendant Gandis had an interest in a business that competed with CCC. This is expressly denied. Defendant Gandis has an interest in Deco Tex, LLC, which does not buy or slit film, does not purchase film, and in no way competes with CCC.

17. Defendants deny the allegations of Paragraph Sixteen. As previously stated, both Defendant Gandis and Plaintiff agreed to reduce their monthly distributions from $9,000 to $6,802.84 beginning in September 2009 in order to better afford the purchase of certain equipment.

18. Defendants deny the allegations of Paragraph Seventeen. Both Defendant Gandis and Plaintiff continued to receive monthly distributions until April 2011. At this time, due to the long-standing disparity between Defendant Gandis shouldering all financial risk by continually making loans to CCC, without participation by Plaintiff, as well as the fact that, in 2010, the Company had distributed more than twice the cash flow that had been created by the Company, CCC informed Plaintiff that the Company would cease making monthly distributions. Plaintiff complained that he must receive monthly checks from CCC to meet his personal expenses, so the Company agreed to allow Plaintiff to have monthly loans made to him by CCC. This approach anticipated that, when the Company declared a distribution, Plaintiff's share would be applied to reduce his loan balance with any excess to be paid to Plaintiff. This was explained to Plaintiff, who stated his understanding. Such a distribution occurred in November 2011, at which point a distribution of $45,000 was applied to Plaintiff's outstanding loan balance of $131,859.46, thereby reducing the balance to $86,859.46.

19. Defendants admit so much of Paragraph Eighteen as alleges that Defendant Gandis ceased taking distributions in April 2011. Defendants state that, beginning in August 2010, Plaintiff began taking monthly loans at an amount set by Plaintiff. These loans were non-recourse but secured by Plaintiff's interest in CCC. Plaintiff soon decided to borrow more and increased the monthly amount to $12,000. By the fall of 2011, due to concerns over profitability and cash flow, the Company became concerned with Plaintiff's loan balance and advised

Plaintiff that no further loans would be given after 2011 until cash flow had returned to a positive position. At this point, Plaintiff asked what amount Defendants would pay to purchase his interest, and negotiations ensued.

20. Defendants deny the allegations of Paragraph Nineteen. After Plaintiff asked what amount Defendants would pay to purchase his interest in CCC, Defendants presented Plaintiff with a letter containing three options, on October 31, 2011. Plaintiff was offered (1) that Plaintiff become a salaried employee with bonus structure and have his capital paid out to him over the next few years, (2) that the membership agreement be modified to define his interest as a fixed dollar amount, thereby allowing Plaintiff certain tax benefits, or (3) that Plaintiff simply remain as a member. Plaintiff was to respond by November 21, 2011. On December 1, Plaintiff made a counter-proposal. The counter-proposal stated that Plaintiff believed his interest in CCC to be worth $770,000, that he wished half of this amount to be paid up front and for the remainder to be guaranteed by Defendants and to accrue interest at 8%. Additionally, Plaintiff demanded an employment agreement of not less than five years with a guaranteed monthly salary of $12,000, along with bonuses, commission, and stock. Defendants declined to consider the proposal and again directed Plaintiff to the three options previously presented, but now offered to buy Plaintiff's interest for $200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately $150,000, for a total offer value of approximately $350,000. In response, Plaintiff proposed that Defendants accept an offer for their interests at $200,000 (the cash to be received) if he could secure the funds. Defendant Gandis expressed tentative agreement, with certain general conditions, including that the purchase be in cash and include the purchase of the building, owned by Defendant Gandis, for $150,000, the original purchase price. Plaintiff stated that he would attempt to obtain the

necessary funds from his family. Contrary to Plaintiff's claim that he was pressured to "forfeit" his interest, Plaintiff was presented with various options, which he rejected, and Plaintiff expressed an intent to purchase Defendants' interests and was given the opportunity to do so. However, Plaintiff never came forward with funds.

21. Defendants deny the allegations of Paragraph Twenty. Plaintiff was notified in writing on November 2, 2011 that the Company was not in a position to make distributions and Defendant Gandis was not in a position to make additional loans to CCC to enable it to make loans to Plaintiff at the level of the prior several months until sales volumes return. Nonetheless, Defendant Gandis, though under no obligation to do so, offered to make one additional $12,000 loan to the Company so that it could loan funds to Plaintiff to enable him to put aside funds for expenses in early 2012.

22. Defendants admit so much of Paragraph Twenty-One as alleges that Plaintiff and Defendant Gandis met and discussed a buyout of Plaintiff's membership interest. There was also a discussion of Plaintiff's acquisition of Defendants' interests. This buyout was one of the three options referenced above. Though Plaintiff later made a counter-offer to Defendants which included a five-year employment agreement, Defendants deny that either indicated any agreement to Plaintiff's proposal.

23. Defendants deny the allegations of Paragraph Twenty-Two. As stated above, Defendant Gandis informed Plaintiff in early November that the Company would make Plaintiff one additional loan so as to allow him to set aside funds for future expenses.

24. Defendants deny the allegations of Paragraph Twenty-Three. As stated above, Defendants offered Plaintiff three options, including an offer to buy Plaintiff's interest for

$200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately $150,000, for a value of the offer being $350,000.

25. Defendants admit so much of Paragraph Twenty-Four as alleges that Plaintiff requested a copy of the CCC balance sheet. Defendants deny the remaining allegations. Defendants specifically deny that the balance sheet provided to Plaintiff contained any deceptive or fraudulent entries.

26. Defendants admit so much of Paragraph Twenty-Five as alleges that the balance sheet provided to Plaintiff included an entry for "preference to minority." Defendants deny the remaining allegations. Further answering Paragraph Twenty-Five, Defendants state that the amount listed under this entry was to denote the fact that professional accounting and financial services had been rendered by Defendant Corenau-Shirley's accounting practices since the beginning of her involvement with CCC in 2008. As the Company was unable to pay for her services, Defendant Comeau-Shirley had deferred billing and, at the time the balance sheet was provided to Plaintiff, the parties were in discussions as to whether the obligation might be exchanged for increased equity in the Company.

27. Defendants admit as much of Paragraph Twenty-Six as alleges that Plaintiff rejected Defendants' offer of continued at-will employment. Defendants deny the remaining allegations. The basis for Defendants' offer as well as the entries on the balance sheet were thoroughly explained to Plaintiff, in writing, and all questions posed by Plaintiff as to the balance sheets were answered.

28. Defendants deny the allegations of Paragraph Twenty-Seven. Further answering Paragraph Twenty-Seven, Defendants state that Plaintiff provided a counter-offer requesting buyout of his interest for $250,000 with $50,000 paid up front and the remainder at 6% interest.

The offer additionally included a three-year employment agreement with a guaranteed salary of $12,000/month for year one and not less than $10,0000/month for the following years, along with a bonus package, forgiveness of Plaintiff's loan, and a requirement that the buyout be personally guaranteed by Defendants.

29. Defendants admit so much of Paragraph Twenty-Eight as alleges that Defendants rejected Plaintiff's offer in writing. Defendants deny the remaining allegations. In the written communication, Defendants advised that they would all continue as members of CCC. The communication did not repeat the fact that Plaintiff would not receive future loans, as Plaintiff had been advised of this fact over two months prior, in a letter of November 2, 2011.

30. Defendants admit so much of Paragraph Twenty-Nine as alleges that, upon inquiry from Plaintiff, Defendants allowed that they would be willing to sell their interests in CCC to Plaintiff and his brother-in-law. Defendants deny the remaining allegations.

31. Defendants deny the allegations of Paragraph Thirty. Plaintiff did not seek permission nor have permission to seek "qualified buyers" other than his brother-in-law, Steve Norrell, and did not inform Defendants that he intended to seek out buyers other than his brother-in-law. Defendants also deny that all prospective buyers solicited by Plaintiff signed Non-Disclosure agreements before reviewing information provided to them by Plaintiff. On information and belief, Plaintiff shared sensitive and confidential information with other parties, including competitors of CCC.

32. Defendants admit so much of the allegations of Paragraph Thirty-One as alleges that Defendants requested to know the identity of any proposed purchasers Plaintiff had approached. Defendants deny the remaining allegations. Defendants state that when the Company became aware that Plaintiff was meeting with potential buyers other than his brother-

in-law, including Film-Tech, LLC, a highly-capitalized competitor of CCC, the Company immediately became alarmed. Defendants became aware that a meeting was scheduled during which Film-Tec representatives were to be given access to confidential CCC sales information, including sales forecasts. After consulting with the Company's counsel, Defendants provided Plaintiff with written notice that he did not have permission to speak to buyers other than his brother-in-law.

33. Defendants admit the allegations of Paragraph Thirty-Two. Defendants state that the matter of Plaintiff's day-to-day access to Quickbooks was not a matter requiring a vote of the members, but was a company decision to make. Plaintiff retained his rights to request an accounting.

34. Defendants admit the allegations of Paragraph Thirty-Three. Defendants state that, in the wake of the Company's letter to Plaintiff restricting his authority to solicit buyers, Plaintiff threatened to dissolve the Company, claiming that because no Operating Agreement had been signed, CCC was an at-will corporation. Defendant Comeau-Shirley obtained a copy of the Articles of Organization and provided the copy to Plaintiff's attorney, at the time Clayton Jennings.

35. Defendants deny the allegations of Paragraph Thirty-Four.

36. Defendants admit so much of Paragraph Thirty-Five as alleges that the Company terminated Planitiff's access to the CCC computer network on January 17, 2012. Defendants deny the remaining allegations. Plaintiff met with Defendant Gandis on the day in question. The meeting was cordial but, just minutes after Plaintiff left the meeting, John Zamer, counsel for Defendants, received a call from Clayton Jennings. Jennings informed Zamer that Plaintiff saw no possibility of continuing to work together with the Company. Based on the statements by

Jennings, Zamer advised the Company to terminate Plaintiff's access to the CCC computer network.

37. Defendants admit so much of Paragraph Thirty-Six as alleges that on January 18, 2012, Defendant Gandis advised Plaintiff that CCC had accepted his resignation and that Plaintiff should vacate the office immediately. Defendants deny the remaining allegations. The Company interpreted the statements by Plaintiff's attorney as effecting his resignation and therefore drafted a letter acknowledging Plaintiff's resignation and, given Plaintiff's prior actions, took steps to ensure the protection of all company secrets and assets. To this end, The Company hired a locksmith and enlisted the help of a sheriff's deputy, in the event that Plaintiff was uncooperative. When given the letter, Plaintiff informed Defendant Gandis "I was not ready yet."

38. Defendants admit so much of Paragraph Thirty-Seven as alleges that the Company had contacted the local sheriff's office to be on hand in the event that Plaintiff was uncooperative. Plaintiff was instructed not to remove Company property but, after discussion, it was agreed that Plaintiff could remove his personal items but was to leave Company assets. Plaintiff then proceeded to make three trips to his car, taking with him, among other things, a cell phone and two laptop computers, over Defendant Gandis's objections that these were Company assets. Plaintiff then remained in the office, making phone calls and packing documents into his briefcase.

39. Defendants admit the allegations of Paragraph Thirty-Eight.

40. Defendants admit so much of Paragraph Thirty-Nine as alleges that the Company terminated Plaintiff's cell phone service. Defendants deny the remaining allegations. Further answering Paragraph Thirty-Nine, Defendants state that, despite the Company's request for

Plaintiff to leave the premises, Plaintiff remained in his office making phone calls on his Company cell phone. Defendant Gandis therefore requested that cell service to the phone be disconnected.

41. Defendants admit so much of Paragraph Forty as alleges that Plaintiff's health insurance was terminated. Defendants deny the remaining allegations. Further answering Paragraph Forty, Defendants state that CCC offers health insurance coverage to its employees, paying 75% of the employee's coverage and 50% of the coverage for the employee's family. As Plaintiff did not pay the premiums following his resignation, the coverage lapsed on February 1, 2012. With regard to distributions, Defendants state that there have been no distributions to any members in 2012.

42. Defendants deny the allegations of Paragraph Forty-One. Plaintiff has repeatedly stated to Defendants that he intends to compete with CCC and, on information and belief, Plaintiff has taken a position as the Director of Film Sales at Neologic Distributions. Given this, the Company offered to disclose the requested financial information to Plaintiff if he would complete a confidentiality agreement, which was provided to him. To date, Plaintiff has not signed the confidentiality agreement. Nonetheless, Plaintiff has been provided with timely updates as to the status of financial information that impacts his personal tax situation.

43. Defendants deny the allegations of Paragraph Forty-Two. Further answering Paragraph Forty-Two, Defendants state that CCC returned seven boxes of what was believed to be personal property of the Plaintiff and has offered to return any other property that Plaintiff can document as personal assets. When CCC was formed, Plaintiff agreed to contribute all of the business assets of EFS, which included all office equipment and one fork-truck. Thereafter, Plaintiff moved these assets to the offices of CCC.

44. Defendants admit so much of Paragraph Forty-Three as alleges that CCC funds were used to pay attorney's fees for attorneys Zamer and Floyd. Defendants deny the remaining allegations. Further answering Paragraph Forty-Three, Defendants state that all matters considered by attorneys Zamer and Floyd related to Company business and were properly paid by the corporation.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Dissolution)

45. Responding to Paragraph Forty-Four, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

46. Defendants deny the allegations of Paragraph Forty-Five. Defendants further answer the allegations as follows:

a. As stated above, Defendants admit requesting that the local sheriff deputy was requested to be on hand on January 17, 2012, so as to prevent the theft of Company property.

b. As stated above, the Company has offered to provide Plaintiff access to Company financial information if he will agree to sign a confidentiality agreement. This is, in part, due to Plaintiff's stated intention to compete with CCC and his new position as Director of Film Sales at Neologic Distributions.

c. Defendants deny this allegation.

d. Defendants deny this allegation.

e. As stated above, once Plaintiff resigned as an employee of CCC, he was no longer eligible for health insurance through the Company, unless he personally paid the premiums.

f. As stated above, at all times since the inception of CCC, all members could receive distributions but these ultimately were dependent on the success of the Company. At no point did the parties agree to pay Plaintiff a fixed monthly amount or to make distributions on a monthly basis.

g. As stated above, the purchase of Plaintiff's automobile was not a Company expense and therefore was not reported as such on CCC tax filings.

h. As stated above, Defendants admit to that Plaintiff's cell phone service was terminated when he continued to utilize his phone after CCC accepted his resignation.

i. As stated above, Defendants admit that CCC used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising CCC on Company business, including, but not limited to, Plaintiff's resignation.

j. Defendants deny this allegation.

47. Defendants deny the allegations of Paragraph Forty-Six.

48. Paragraph Forty-Seven constitutes a statement of opinion and conclusion of law by Plaintiff to which no response is required. To the extent a response is required, Defendants deny the allegations.

49. Defendants deny the allegations of Paragraph Forty-Eight.

FOR A SECOND DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

50. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

51. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for dissolution lies against CCC rather than the named Defendants.

FOR A THIRD DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Term Corporation)

52. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

53. If Plaintiff is allowed to proceed against the named Defendants under this cause of action, which is expressly denied and admitted solely for the purposes of this defense, Defendants state that CCC is a term corporation and may not be dissolved as the requirements of S.C. Code Ann. § 33-44-801 have not been met.

FOR A FOURTH DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Unclean Hands)

54. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

55. On information and belief, Plaintiff continued to transact business as EFS even months after the formation of CCC, thereby denying business and profits to CCC and taking such profits for himself.

56. On information and belief, Plaintiff has acted against the interests of CCC by disclosing sensitive and confidential Company information to competitors.

57. On information and belief, Plaintiff has utilized confidential and proprietary information from CCC to compete with CCC.

58. On information and belief, Plaintiff deleted numerous files and documents from the Company laptop before returning it to CCC, thereby depriving CCC of important useful information and hindering its sales.

59. Plaintiff has used the threat of dissolution in attempting to negotiate favorable terms of a purchase of his interest.

60. Given the above, based on the doctrine of unclean hands, Plaintiff is not entitled to equitable relief.

FOR A FIRST DEFENSE TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant Gandis)

61. Responding to Paragraph Forty-Nine, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

62. Defendants deny the allegations of Paragraph Fifty. Further answering Paragraph Fifty, Defendants state:

a. As stated above, CCC has offered to provide Plaintiff access to Company financial information if he will agree to sign a confidentiality agreement. This is, in part, due to Plaintiff's stated intention to compete with CCC and his new position as Director of Film Sales at Neologic Distributions.

b. As stated above, Defendants admit that CCC used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising CCC on Company business, including, but not limited to, Plaintiff's resignation.

c. Defendants deny that Plaintiff was terminated.

d. As stated above, Defendants admit that a local sheriff deputy was requested to be on hand on January 17, 2012, so as to prevent the theft of Company property.

e. Defendants deny that the Articles of Organization, as filed by the office of attorney Stephen Potts, were contrary to the agreement of the members. To the contrary, attorney Potts drafted the documents only after receiving input from both Plaintiff and Defendant Gandis. Additionally, Defendants deny that Plaintiff and Defendant Gandis are equal members.

f. Defendants deny this allegation.

g. Defendants deny this allegation. Plaintiff was aware that Defendant Comeau-Shirley would require compensation for the work she performed beginning in 2008.

h. Defendants deny this allegation.

63. Defendants deny the allegations of Paragraph Fifty-One.

64. Defendants deny the allegations of Paragraph Fifty-Two.

65. Defendants deny the allegations of Paragraph Fifty-Three.

66. Defendants deny the allegations of Paragraph Fifty-Four.

67. Paragraph Fifty-Five constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

68. Paragraph Fifty-Six constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations and specifically state that Plaintiff has failed to meet the standard for injunctive relief.

FOR A FIRST DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Disassociation)

69. Responding to Paragraph Fifty-Seven, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

70. Defendants deny the allegations of Paragraph Fifty-Eight. Further answering Paragraph Fifty-Eight, Defendants state that Plaintiff understood and agreed that CCC was to be a term Company.

71. Defendants object to the allegations of Paragraph Fifty-Nine as vague such that it cannot be properly answered. Subject to this objection, Defendants deny the allegations of Paragraph Fifty-Nine.

72. Defendants object to the allegations of Paragraph Sixty as vague such that it cannot be properly answered. Subject to this objection, Defendants deny the allegations of Paragraph Sixty.

73. Paragraph Sixty-One constitutes a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations. Further answering Paragraph Sixty-One, Defendants state that CCC is a term corporation, as reflected in the Articles of Organization, and therefore Plaintiff's disassociation does not trigger dissolution under S.C. Code Ann. § 33-44-601(6).

FOR A SECOND DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

74. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

75. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendants.

FOR A FIRST DEFENSE TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Conversion)

76. Responding to Paragraph Sixty-Two, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

77. Defendants deny the allegations of Paragraph Sixty-Three.

78. Defendants deny the allegations of Paragraph Sixty-Four.

79. Paragraph Sixty-Five constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

80. Paragraph Sixty-Six constitutes conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

81. Paragraph Sixty-Seven constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

FOR A SECOND DEFENSE TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

82. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

83. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendants.

FOR A FIRST DEFENSE TO ALL OF PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANTS
(Statute of Limitations)

84. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

85. On information and belief, some or all of Plaintiff's claims must be reduced or barred by the applicable statute of limitations or statute of repose.

FOR A SECOND DEFENSE TO ALL OF PLAINTIFF'S

ALLEGATIONS AGAINST DEFENDANTS
(Failure to Mitigate)

86. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

87. Defendants allege that Plaintiff has failed to mitigate his damages as required by law.

FOR A THIRD DEFENSE TO ALL OF PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANTS
(Laches, Waiver, Estoppel)

88. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

89. On information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, or estoppel.

FOR A FOURTH DEFENSE TO ALL OF PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANTS
(Set Off)

90. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

91. Over the course of his time with CCC, Plaintiff obtained numerous loans from the Company. These loans were non-recourse, but secured by Plaintiff's interest in CCC. The loans included interest at 10% and were due upon demand. Beginning in October 2011, the loans were recourse loans.

92. Additionally, Plaintiff charged personal expenses to his Company credit card and account.

93. Plaintiff is currently indebted to CCC in excess of $110,000.00.

94. In the event that it is determined that Plaintiff is entitled to an award of monetary damages against Defendants, which is denied and admitted solely for the purpose of this defense, Defendants contend that they are entitled to set-off against such award.

COUNTERCLAIMS

By way of counterclaim, Defendants, complaining of Plaintiff, respectfully show as follows:

95. Defendants' counterclaims stem from the same incidents and facts which form the basis for Plaintiff's Complaint. Therefore, jurisdiction is proper.

COUNTERCLAIM
(Breach of Fiduciary Duty)

96. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

97. As a member of CCC, Plaintiff had a fiduciary relationship with CCC and Defendants.

98. When CCC accepted Plaintiff's resignation on January 17, 2012, Plaintiff was instructed that, while he would be allowed to take personal items, he was not to remove Company property.

99. Nonetheless, Plaintiff left the offices with a cell phone and two laptop computers, both belonging to CCC.

100. After multiple requests from CCC and Defendants, Plaintiff later returned these items, but only after copying numerous Company records.

101. On information and belief, Plaintiff has since utilized confidential and proprietary information obtained from CCC to compete with CCC.

102. Plaintiff's actions constituted a breach of his fiduciary duty to CCC and Defendants.

103. As a result of Plaintiff's breach, Defendants suffered damages, including but not limited to lost profits.

COUNTERCLAIM
(Breach of Fiduciary Duty)

104. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

105. Upon receiving the laptops and cell phone, CCC discovered that the phone's SIM card had been removed.

106. CCC provided these items to a forensic technology firm for analysis. Based on this analysis, it was determined that Plaintiff had copied thousands of files from the computers and then "swept" the computer, attempting to perform a permanent delete. It is impossible to quantify the number of files deleted as the forensic team was only able to recover certain files not deleted by the "sweep" computer program Plaintiff ran.

107. On information and belief, the permanently deleted files included numerous files and information useful to the Company in its operations and included names of newly-identified suppliers, names of clients that were currently negotiating new deals and opportunities, and pricing information.

108. These actions constituted a breach of Plaintiff's fiduciary duty to CCC and Defendants.

109. As a result of Plaintiff's breach, Defendants suffered damages, including but not limited to lost profits.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendants pray that Plaintiff's Complaint be dismissed, with costs and attorneys fees, and for such other relief as the Court may grant.

ELMORE GOLDSMITH, PA

By: _____

MASON A. GOLDSMITH, S. C. BAR NO. 2182
K. JAY ANHONY, S.C. BAR NO. 77433
55 Beattie Place, Suite 1050 (29601)
Post Office Box 1887
Greenville, SC 29602
Telephone: 864-255-9500
Facsimile No: 864-255-9505

Attorneys for Defendants

June 29, 2012

The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

CAROLINA CUSTOM CONVERTING, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on November 2nd, 2007, with a duration that is until December 31st, 2057, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

EXHIBIT A

Given under my Hand and the Great Seal of the State of South Carolina this 5th day of June, 2012.

Mark Hammond

Mark Hammond, Secretary of State

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	Civil Action No. 2012-CP-23-2887
DAVID WILSON, Plaintiff, v. JOHN GANDIS and ANDREA COMEAU-SHIRLEY, Defendants.	**REPLY TO COUNTERCLAIMS**

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Reply to Defendants' Counterclaims as follows:

FOR A FIRST DEFENSE

1. Defendants fail to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

2. Plaintiff expressly denies any and all allegations of the Defendants Counterclaims not specifically admitted or denied herein.

3. Plaintiff admits so much of Paragraph 95 of the Counterclaim as states that this court has proper jurisdiction.

4 Paragraph 96 of the Counterclaim appears to require no response, but inasmuch as a response is required, the Plaintiff incorporates all allegations of his Complaint as if fully restated herein to the extent such allegations are relevant to this Reply to Counterclaims.

5. Plaintiff denies Paragraphs 97 and 98 of the Defendants' Counterclaim.

6. In response to Paragraph 99 of the Counterclaim, Plaintiff cannot recall who paid for the laptops but believes he purchased the cell phone. Plaintiff took his cell phone and laptops when

he left work on January 17, 2012. Plaintiff denies the remaining allegations contained Paragraph 99 of the Defendants' Counterclaim.

7. In response to Paragraph 100 of the Counterclaim, Plaintiff copied emails, some financial information and various other documents related to his dispute with the Company. Plaintiff denies the remaining allegations contained in Paragraph 100 of the Defendants' Counterclaim.

8. Plaintiff denies Paragraphs 101, 102, and 103 of the Defendants' Counterclaim.

9. Paragraph 104 of the Counterclaim appears to require no response, but inasmuch as a response is required, the Plaintiff incorporates all allegations of his Complaint as if fully restated herein to the extent such allegations are relevant to this Reply to Counterclaims.

10. In response to paragraph 105, Plaintiff is without information and belief as to what CCC discovered. Plaintiff does not recall removing the SIM card. Plaintiff denies the remaining allegations contained in paragraph 105.

11. Plaintiff is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 106 of the Counterclaim as to any forensic analysis, therefore denies those allegations.

12. Plaintiff denies the allegations of Paragraphs 107, 108, and 109 of the Counterclaim.

FOR A THIRD DEFENSE

13. Defendants' Counterclaims are barred by the defense of unclean hands.

WHEREFORE, Plaintiff respectfully prays this court to dismiss Defendants' Counterclaims and to enter judgment for the Plaintiff and to grant all of the relief sought in Plaintiff's Complaint.

Respectfully submitted,
LAW OFFICE OF W. ANDREW ARNOLD, P.C.

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864.242.4800 864.242.4885 fax
ATTORNEY FOR PLAINTIFF

July 16, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2012-CP-23-2887
	)	
DAVID WILSON,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
JOHN GANDIS and ANDREA COMEAU-SHIRLEY,	)	
	)	
	)	
Defendants.	)	
	)	

I, Jodie D. Fowler, Paralegal for W. Andrew Arnold, do hereby certify that on July 16, 2012, I served upon the below-named individual REPLY TO COUNTERCLAIM by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in an envelope addressed as shown below:

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, SC 29602

Jodie D. Fowler

JODIE D. FOWLER
Paralegal to W. Andrew Arnold

Read 10/12/12

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2012-CP-23-2887
DAVID WILSON, individually and derivatively on behalf of CAROLINA CUSTOM CONVERTING, LLC,	)	
Plaintiff,	)	**SUMMONS**
v.	)	
JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, and DECO-TEX, LLC,	)	
Defendants.	)	

2012 OCT 10 PM 4:32

TO THE DEFENDANTS ZOI FILMS, LLC AND DECO-TEX, LLC:

You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 712 E. Washington Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted,

LAW OFFICE OF W. ANDREW ARNOLD, P.C.

W. ANDREW ARNOLD
SC Bar No. 65311
712 East Washington Street
Greenville, SC 29601
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864.242.4800 864.242.4885 fax
ATTORNEY FOR PLAINTIFF

October 10, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Civil Action No. 2012-CP-23-2887
DAVID WILSON, individually and derivatively on behalf of CAROLINA CUSTOM CONVERTING, LLC,	)	
Plaintiff,	)	**AMENDED COMPLAINT**
v.	)	
JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC and DECO-TEX, LLC	)	
Defendants.	)	

FILED CLERK OF COURT GREENVILLE, S.C.
2012 OCT 10 PM 4:32

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Amended Complaint, and does hereby allege and complain as follows:

1. Plaintiff David B. Wilson (hereinafter "Plaintiff") is a resident and citizen of Greenville County, South Carolina.

2. Defendant John Gandis (hereinafter "Defendant Gandis") is a resident and a citizen of the County of Greenville and the State of South Carolina.

3. Defendant Andrea Comeau-Shirley (hereinafter "Defendant Comeau-Shirley") is a resident and citizen of the State of Georgia.

4. Plaintiff and Defendants Gandis andand Defendant Comeau-Shirley are members of Carolina Custom Converting, LLC (hereinafter "CCC"), a South Carolina limited liability company with its principal place of business in Anderson, South Carolina and formerly with an office in Greenville, South Carolina. CCC was formed in 2007.

5. Defendant Zoi Films, LLC is a Georgia limited liability company doing business in South Carolina and with its principal place of business in Anderson, South Carolina.

6. Defendant DecoTex, LLC is a South Carolina limited liability company doing business in South Carolina and with its principal place of business in South Carolina.

7. Prior to the inception of the entity, Defendant Gandis and Plaintiff agreed to be equal members in a limited liability company, and accordingly Defendant Gandis filed Articles of Organization creating Carolina Custom Converting, LLC. Defendant Gandis filed Articles of Organization identifying CCC as a term company and identifying himself as the manager.

8. Plaintiff and Defendant never signed and/or agreed to a written operating agreement, and to this day, the parties have never agreed to a written operating agreement. Defendant Gandis and Plaintiff did agree at the inception of their partnership to be equal partners; to wind down their individual businesses; after such winding down, to operate those activities involving the sell of film for the benefit and profit of CCC; to share income equally; and to receive a monthly distribution and/or compensation.

9. However, there was no agreement by the parties as to whether CCC would be a term limited liability company, and absent such an agreement, CCC is an at-will limited liability company.

10. There was no express agreement that Defendant Gandis would be the only managing member; however, Plaintiff did understand that Defendant Gandis would manage the day to day operations of CCC.

11. In or about 2008, the Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with a ten percent (10%) interest and to reduce each of their respective membership shares to forty-five percent (45%).

12. As a manager, Defendant Gandis had fiduciary obligations under S.C. Code Ann. 33-44-409(h)(2) as well as other statutory provisions, which continue to this day and will continue as long as he is the manager of CCC.

13. Nonetheless, for a time, Plaintiff participated in the management and operations of CCC and performed services for CCC on a full-time basis. The only compensation he received was in the form of distributions to him as a member, which was agreed upon at the inception of CCC.

14. In or around the beginning of 2010, Defendants began excluding Plaintiff from member meetings and discussions. Plaintiff did not have prior knowledge of these meeting(s). Based upon information and belief, decisions were made during these meetings without Plaintiff's input and consent.

15. In January 2010, the members decided that CCC would purchase a vehicle to be used as a sales vehicle by Plaintiff; however, later, Defendants unilaterally treated this purchase as a charge against Plaintiff's capital account.

16. In 2011, Defendants unilaterally changed Plaintiff's membership interest from 45% to 44.1%. This was done without Plaintiff's knowledge and/or consent and such acts violated the agreement of the parties. The interest that was taken from Plaintiff was given to Defendant Gandis.

17. The parties had agreed that the members would receive equal monthly distributions. This practice continued as agreed until sometime in 2010. Such commitment to pay monthly compensation was material in Plaintiff's decision to wind up the business of Eastern Film Solutions.

18. Sometime in 2010, Defendant Gandis voluntarily decided to take a lesser monthly distribution than Plaintiff to improve the cash flow of CCC. However, Defendant Gandis had outside income from his side film business in addition to CCC income. Plaintiff agreed that any distribution in excess of that taken by Defendant Gandis would be treated as a non-recourse "loan" from the entity to Plaintiff, secured only by his capital account.

19. In April 2011, Defendant Gandis ceased taking distributions, which resulted in a larger disparity between the capital accounts of the members. However, Plaintiff continued to have a positive balance in his capital account at all times, even when deducting the amount of the non-recourse "loan."

20. Sometime after April 2011, Defendant Gandis approached Plaintiff about the imbalance of distributions. Plaintiff reiterated the agreement of the parties that provided for monthly compensation. In response, Defendant Gandis proposed that Plaintiff forfeit his membership interest and become an employee in exchange for a loss allocation to offset member income in 2010.

21. Although Plaintiff rejected this offer, Defendants persisted in pressuring him to forfeit and/or transfer his interest.

22. Pressure turned to coercion at the end of November 2011 when Defendants advised Plaintiff that Plaintiff would not be receiving his agreed upon distribution for December 2011 unless Plaintiff agreed to sell his interest and become an employee.

23. Plaintiff and Defendant Gandis met and discussed a buy-out of Plaintiff's membership interest. As part of one proposal, Plaintiff would be employed as an officer of the company with a guaranteed salary pursuant to a five year employment agreement. Plaintiff indicated he was agreeable to such proposal.

24. After Plaintiff and Defendant discussed this proposal, Defendants relented and paid Plaintiff his December 2011 distribution.

25. Later in December, Defendants presented Plaintiff with a written offer that was significantly different than the proposal discussed at the last meeting; the offer included an at-will employment contract, a five year non-compete and valued Plaintiff's interest at approximately $300,000.

26. Plaintiff requested a copy of the CCC balance sheet that was used to value Plaintiff's interest in CCC. The balance sheet submitted to Plaintiff contained several deceptive and/or fraudulent entries that devalued CCC and thus devalued Plaintiff's membership interest accordingly.

27. One of the deceptive and/or fraudulent entries included "a preference to minority" to Defendant Comeau-Shirley in the amount $100,000. When confronted, Defendant Comeau-Shirley indicated this was "based upon a conversation that [Defendant Gandis] had with [her] sometime in 2009 or 2010 about higher participation at exit...." Defendant Gandis had never discussed such proposal with Plaintiff at anytime and such a commitment had not been previously listed on a CCC balance sheet.

28. Plaintiff rejected the offer of at will employment. Plaintiff raised objections and concerns regarding the deceptive and/or fraudulent accounting entries.

29. Plaintiff made a counter-offer, which valued his own membership interest at approximately $350,000 and included a four year employment agreement and a five year non-compete.

30. Defendants rejected Plaintiff's offer and advised Plaintiff in writing that he would not be receiving his January and February distributions as had been previously agreed upon.

31. Defendant Gandis had indicated that he would accept an offer to purchase his membership interest for $325,000 as long as the offer included the purchase of the building. Defendant Gandis owns the building in which CCC operates and rents the premises to CCC.

32. In response, Plaintiff had advised Defendant Gandis that Plaintiff would begin to seek qualified buyers. With Defendant Gandis' blessing, Plaintiff approached perspective buyers, all of whom executed non-disclosure agreements.

33. In or about late December 2012, Defendants requested to know the identity of any proposed purchasers Plaintiff had approached and the nature of the information shared. Plaintiff was reluctant to identify prospective buyers, although Plaintiff assured Defendants that he had not disclosed information that was damaging to the company and later advised that all information provided to any prospective buyer was subject to non-disclosure.

34. In or about January 2012, Defendant Comeau-Shirley advised Plaintiff in writing that "pursuant to the new operating plan" Plaintiff's privileges in the accounting system had been changed to sales only. Plaintiff had not consented to and/or voted on any such plan.

35. On January 6, 2012, Defendant Comeau-Shirley advised Plaintiff that Defendant Gandis had identified himself as the sole manager of CCC in the Secretary of State filing.

36. On January 17, 2012, Plaintiff made a new offer to Defendants which reduced the valuation of his membership interest to $100,000 cash and the value of the outstanding "loan."

37. Approximately fifteen minutes after making such offer, Defendants terminated Plaintiff's access to the CCC computer network.

38. On January 18, 2012, Defendant Gandis approached Plaintiff and advised him that "we have accepted your resignation" and that Plaintiff needed to vacate the office immediately. Plaintiff denied that he had resigned and refused to vacate. Plaintiff did not resign.

39. To enforce his demand to vacate, Defendant Gandis had called law enforcement, and a law enforcement officer was with him when he made such demand. When Plaintiff refused to leave, Defendant Gandis asked the officer to remove Plaintiff from the premises. Plaintiff advised the officer of his membership interest; the officer indicated that he had no jurisdiction, although he remained at the location.

40. Also, Defendant Gandis had called a locksmith, who was present to change the locks of the Greenville office leased by CCC. The locksmith changed all of the locks on CCC's Greenville office. When Plaintiff left the office, he was refused reentry.

41. Immediately, Defendants disconnected Plaintiff's cell phone service without notice; Defendants also disconnected the service for Plaintiff's family. Defendant refuses to release to Plaintiff the cell phone number he has had for over 10 years.

42. Without prior notice, Defendants terminated Plaintiff's health insurance, which is provided to all members and employees. And since, Defendants have refused to pay Plaintiff any distributions, while based upon information and belief, Defendants have continued to receive paid cell phone service, health insurance and/or distributions as members.

43. Since Plaintiff's ejection and involuntary dissociation by Defendants, Plaintiff has requested financial information for CCC, but Defendants have refused to provide Plaintiff with any such information.

44. Defendants have refused to return Plaintiff's personal property and are claiming that such property was contributed to CCC; however, Defendants have never accounted for such personal property as a contribution, have never listed and/or valued such property on the company balance sheet nor have Defendants credited Plaintiff's capital account with the value of such property as of the time of the alleged contribution.

45. Based upon information and belief, Defendants have used CCC funds to pay for their own personal attorneys fees in their power struggle with Plaintiff.

46. After filing this action, Plaintiff discovered that Defendants Gandis and Comeau-Shirley had formed Zoi Films, LLC (hereinafter "Zoi Films"), which engages in activities competitive with CCC.

47. Based upon information and belief, Defendants Gandis and Comeau-Shirley caused Michael Shirley, Defendant Comeau-Shirley's husband, to organize Zoi Films in Georgia in an attempt to conceal its existence from Plaintiff; these Articles of Organization identify Michael Shirley as Zoi Films, LLC's registered agent.

48. The email address listed Defendant Comeau-Shirley's email address as Zoi Films on the transmittal form to the Georgia Secretary of State's office.

49. On or about March 27, 2012, Defendant Gandis engaged John Gurley of Cyber Solutions to secure the internet domain ZoiFilms.com.

50. Defendant Gandis is listed as the registrant of the ZoiFilms.com domain. Defendant Gandis provided his personal email address on the registration, although he provided CCC's phone number as Defendant Zoi Film's phone number and CCC's post office box as Defendant Zoi Films' address.

51. Defendants Gandis and Comeau-Shirley hired a web design company to create Zoi Films web site, which contains photographs of CCC's equipment and listing the identical services and products as CCC.

52. Based upon information and belief, Defendants Gandis and Comeau-Shirley hired employees to work for Defendant Zoi Films for the purpose of competing with CCC.

53. Based upon information and belief, Defendants Gandis and Comeau-Shirley used CCC funds as seed money for Defendant Zoi Films.

54. Based upon information and belief, Defendants Gandis and Comeau-Shirley made attempts to conceal their involvement in Zoi Films, including listing a false physical address for Zoi Films, LLC.

55. Based upon information and belief, Defendants Gandis and Comeau-Shirley are operating Defendant Zoi Films using CCC facilities, resources and employees.

56. Upon being confronted with this duplicity, Defendant Gandis engaged legal counsel, who drafted a document which stated that CCC was the sole member of Zoi Films, LLC; Defendant Gandis executed this document and presented it with documents filed with the Georgia Secretary of State's office 7 weeks earlier. Based upon information and belief, Defendant Gandis' intent was to deceive Plaintiff.

57. Based upon information and belief, Defendant Gandis and Defendant Comeau-Shirley have conspired to convert opportunities, funds, resources belonging to CCC for the benefit of others, including themselves and including Defendant DecoTex, LLC and Defendant Zoi Films, LLC.

58. Defendants have taken steps to conceal their breaches of fiduciary duty, fraud, and conversion and efforts to persuade Defendants to cease their activities and pursue an action against themselves is not likely to succeed.

59. Plaintiff owns a forty-five percent ownership interest in CCC; Plaintiff has been a member at all times alleged herein and fairly and adequately represents the members similarly situated.

60. CCC business and financial interests are being harmed by the actions of Defendants, and a derivative action is necessary to protect those interests and to remedy the harm to the entity.

61. After failing to respond to Plaintiff's requests for financial information for months, Defendants produced some financial information pursuant to a subpoena issued to CCC. Although this information is stored electronically, Defendants did not produce an electronic copy.

62. Defendants downloaded the information into Excel, and based upon information and belief, Defendant Comeau-Shirley altered the financial data from its original form prior to producing it to Plaintiff.

63. Defendants failed to produce emails subpoenaed relating to their activities.

FOR A FIRST CAUSE OF ACTION
Dissolution
(S.C. Code § 33-44-801)

64. Plaintiff realleges and incorporates by reference paragraphs 1 through 63, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this First Cause of Action.

65. Defendants have acted in a manner that is unlawful, oppressive, fraudulent, and/or unfairly prejudicial to Plaintiff individually. Such actions constitute grounds for statutory dissolution, including, but not necessarily limited to, the following:

A. Without cause, Defendant(s) called law enforcement to remove Plaintiff from his office and have since denied Plaintiff entry into his office;

B. Defendant(s) terminated Plaintiff's access to financial information and have denied his request for financial information to which a member is statutorily entitled;

C. Defendant(s) have unilaterally and without his consent attempted to alter Plaintiff's membership interest and produced false K-1s;

D. Defendant(s) have engaged in deceptive and/or fraudulent accounting practices designed to reduce the value of the CCC for their personal benefit;

E. Defendant(s) have terminated Plaintiff's family health insurance coverage;

F. Defendant(s) have failed to make agreed upon distributions and unilaterally changed agreements between Defendant Gandis and Plaintiff regarding monthly distributions;

G. Defendants have accounted for expenses, including the automobile expense, in such as way as to decrease Plaintiff's capital account;

H. Defendant(s) have terminated Plaintiff's cell phone service while maintaining that of other members;

I. Based upon information and belief, Defendant(s) have utilized company funds to pay for legal fees incurred as the individuals' efforts to force Plaintiff to forfeit his membership interest, and thereby increasing their individual ownership;

J. Defendant(s) have threatened to deplete the company bank accounts by funding litigation between individual members and thus devaluing Plaintiff's membership interest; and

K. Based upon information and belief, Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use.

66. Based upon information and belief, Defendants have conspired together for the purpose of compelling Plaintiff to forfeit his membership interests and/or to transfer his interest for below fair market value.

67. Defendants' conduct relating to the company's business makes it not reasonably practicable to carry on the company's business with those members.

68. Plaintiff is entitled to equitable remedies and/ore legal remedies under the South Carolina Uniform Limited Liability Company Act, including the remedy of dissolution.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendant Gandis)

69. Plaintiff realleges and incorporates by reference paragraphs 1 through 68, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Second Cause of Action.

70. Defendant Gandis breached and continues to breach his statutory duty of loyalty, obligation of good faith and fair dealing and/or other fiduciary duties owed to Plaintiff and to CCC, and such breaches include, but are not limited to:

A. Refusing to provide financial information as requested by Plaintiff;

B. Paying for his personal attorney fees out of company funds in pursuit of Plaintiff's membership interest;

C. Terminating Plaintiff for seeking financial information and making efforts to review financial information to which he was entitled;

D. Calling law enforcement in an effort to forcibly remove Plaintiff from his office;

E. Filing Article of Organization which were contrary to the agreement of the equal members;

F. Conspiring with Defendant Comeau-Shirley to force Plaintiff to forfeit his membership interest and/or transfer such interest for less than fair market value;

G. Unilaterally and without authority promising Defendant Comeau-Shirley that she would get $100,000 as "a preference to minority";

H. Otherwise acting in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff; and

I. Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use.

71. Defendant Gandis represented that he intended to dissolve DecoTex and conduct all of his business on behalf of CCC, but Defendant Gandis continues to operate such side film business. Based upon information and belief, Defendant Gandis utilizes CCC resources in furtherance of such business efforts.

72. Based upon information and belief, Defendant Gandis receives income from his side business selling film, which exploits opportunities that could have generated profit for CCC.

73. Based upon information and belief, Defendant Gandis has misappropriated corporate opportunities for himself and/or DecoTex.

74. Based upon information and belief, Defendant Gandis has participated in and directed accounting practices that are fraudulent and/or deceitful.

75. Defendant Gandis' breach of his fiduciary duties, his obligation of good faith and fair dealing and his duty of loyalty are the proximate cause of damages to Plaintiff, his membership interest and to CCC. Accordingly, Plaintiff and CCC are entitled to an award of

actual and punitive damages for the breach of Defendant's fiduciary duties, including a disgorgement of profits for any sale of film not conducted through CCC.

76. Defendant Gandis' breach of his fiduciary duties is causing Plaintiff and CCC irreparable harm and entitles him to temporary and permanent injunctive relief.

FOR A THIRD CAUSE OF ACTION
Disassociation
(S.C. Code § 33-44-601(6))

77. Plaintiff realleges and incorporates by reference paragraphs 1 through 76, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Third Cause of Action.

78. Plaintiff never consented to CCC being a term limited liability company, and accordingly, CCC is an at will limited liability company.

79. Defendants have engaged in wrongful conduct that adversely and materially affect the company's business.

80. Defendant Gandis has willfully and/or persistently acted in breach of his fiduciary duties. Defendants have engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on business together.

81. Plaintiff is entitled to a judicial decree of dissolution.

FOR A FOURTH CAUSE OF ACTION
Conversion

82. Plaintiff realleges and incorporates by reference paragraphs 1 through 81, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Fourth Cause of Action.

83. Defendants have converted CCC funds to their own use by paying for their personal attorney fees in their efforts to force Plaintiff to dissociate from CCC.

84. Defendants have converted Plaintiff's personal property to their own personal use and refuse to return such equipment.

85. Based upon information and belief, Defendants have used CCC assets in furtherance of their own personal business efforts selling film and/or in furtherance of Defendants Zoi Films and DecoTex.

86. Plaintiff is entitled to an award of actual and punitive damages for such conversions.

87. CCC is entitled to an award of actual and punitive damages for such conversions.

88. Plaintiff is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to Plaintiff for all profits and property, and returning Plaintiff's personal property.

89. CCC is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to CCC for all profits, assets and property and returning CCC profits, assets and property.

90. Defendants' actions will result in irreparable harm to Plaintiff's membership interest, to his property, and to the interest of CCC.

HAVING FULLY SET FORTH HIS COMPLAINT, Plaintiff prays this Court award them the following relief:

(a) an award of Plaintiff's special and compensatory damages;

(b) an award of punitive damages against Defendants;

(c) an order enjoining continuing breaches of Defendants' fiduciary duties and Defendants' conversions;

(d) an order dissociating Defendants from CCC or in the alternative, dissolving CCC;

(e) an order requiring a winding up of the affairs of CCC, LLC, ordering its assets liquidated, payment of Plaintiff his share of profits and income, and a judicial order of dissolution;

(f) alternatively, appointing of a receiver to wind-up the affairs of the entity, to liquidate its assets, to account to Plaintiff for income and profits owed to Plaintiff, and filing Articles of Dissolution;

(g) an accounting;

(h) prejudgment and post-judgment interest; and

(i) such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

Law Office of W. Andrew Arnold, P.C.

W. Andrew Arnold, Esq.
S.C. Bar No. 065311
712 E. Washington Street
Greenville, South Carolina 29601
(864) 242-4800
Attorney for Plaintiff

Greenville, SC
October 10, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2012-CP-23-2887
DAVID WILSON, individually and derivatively on behalf of CAROLINA CUSTOM CONVERTING, LLC,	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, and DECO-TEX, LLC,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 OCT 10 PM 4:

I, Jodie D. Fowler, Paralegal for W. Andrew Arnold, do hereby certify that on October 10, 2012, I served upon the below-named individual Amended Complaint by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in an envelope addressed as shown below:

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, SC 29602

Jodie D. Fowler

JODIE D. FOWLER
Paralegal to W. Andrew Arnold

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, -vs- John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third Party Plaintiff, -vs- Carolina Custom Converting, LLC, Third Party Defendant.	IN THE COURT OF COMMON PLEAS C.A. NO.: 2012-CP-23-02887 **VERIFIED SECOND AMENDED COMPLAINT (JURY TRIAL DEMANDED)**

FILED-CLERK OF COURT
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2013 SEP 20 P 12:31
PAUL S. WICKENSIMER

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Amended Complaint, and does hereby allege and complain as follows:

1. Plaintiff David B. Wilson (hereinafter "Plaintiff") is a resident and citizen of Greenville County, South Carolina. As Plaintiff is a member of Carolina Custom Converting, LLC (hereinafter CCC) at all times herein and the actions complained about are those of others members acting as fiduciaries on behalf CCC who were in breach of those fiduciary duties and engaged in self-dealing as describe herein, Plaintiff has brought this action derivatively on behalf of CCC as well as individually.

2. Defendant John Gandis (hereinafter "Defendant Gandis") is a resident and a citizen of the County of Greenville and the State of South Carolina.

3. Defendant Andrea Comeau-Shirley (hereinafter "Defendant Comeau-Shirley") is a resident and citizen of the State of Georgia.

4. Defendant CCC is a South Carolina limited liability company and has been added as a party so that Plaintiff may pursue all the relief he is entitled to individually and derivatively on behalf of CCC.

5. Plaintiff and Defendants Gandis and Defendant Comeau-Shirley are members of CCC, a South Carolina limited liability company with its principal place of business in Anderson, South Carolina and formerly with an office in Greenville, South Carolina. CCC was formed in 2007.

6. Defendant Zoi Films, LLC is a Georgia limited liability company doing business in South Carolina and with its principal place of business in Anderson, South Carolina.

7. Prior to the inception of the entity, Defendant Gandis and Plaintiff agreed to be equal members in a limited liability company, and accordingly Defendant Gandis filed Articles of Organization creating CCC . Defendant Gandis filed Articles of Organization identifying CCC as a term company and identifying himself as the manager.

8. Plaintiff and Defendant never signed and/or agreed to a written operating agreement, and to this day, the parties have executed a written operating agreement. Defendant Gandis and Plaintiff did agree at the inception of their partnership to be equal partners and that certain actions would require both parties consent; to wind down their individual businesses; after such winding down, to operate those activities involving the sell of film for the benefit and profit of CCC; to share income equally; and to receive a monthly distribution and/or compensation.

9. However, there was no agreement by the parties as to whether CCC would be a term limited liability company, and absent such an agreement, CCC is an at-will limited liability company.

10. There was no agreement that Defendant Gandis would be the only managing member; however, Plaintiff did understand that Defendant Gandis would manage the day to day operations of CCC subject to the limitations agreed upon by Plaintiff and Defendant Gandis.

11. In or about 2008, the Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with a ten percent (10%) interest and to reduce each of their respective membership shares to forty-five percent (45%).

12. As a manager, Defendant Gandis had fiduciary obligations under S.C. Code Ann. 33-44-409(h)(2) as well as other statutory provisions, which continue to this day and will continue as long as he is the manager of CCC. As a member with delegated authority of a manager, Defendant Shirley had fiduciary obligations as to such delegated matters.

13. Nonetheless, for a time, Plaintiff participated in the management and operations of CCC and performed services for CCC on a full-time basis. The only compensation he received was in the form of distributions to him as a member, which was agreed upon at the inception of CCC.

14. In or around the beginning of 2010, Defendants began excluding Plaintiff from member meetings and discussions. Plaintiff did not have prior knowledge of these meeting(s). Based upon information and belief, decisions were made during these meetings without Plaintiff's input and consent.

15. In January 2010, the members decided that CCC would purchase a vehicle to be used as a sales vehicle by Plaintiff; however, later, Defendants unilaterally treated this purchase as a charge against Plaintiff's capital account.

16. In 2011, Defendants unilaterally changed Plaintiff's membership interest from 45% to 44.1%. This was done without Plaintiff's knowledge and/or consent and such acts violated the agreement of the parties. The interest that was taken from Plaintiff was given to Defendant Gandis.

17. The parties had agreed that the members would receive equal monthly distributions. This practice continued as agreed until sometime in 2010. Such commitment to pay monthly compensation was material in Plaintiff's decision to wind up the business of Eastern Film Solutions.

18. Sometime in 2010, Defendant Gandis voluntarily decided to take a lesser monthly distribution than Plaintiff to improve the cash flow of CCC. However, Defendant Gandis had outside income from his side film business in addition to CCC income. Plaintiff agreed that any distribution in excess of that taken by Defendant Gandis would be treated as a non-recourse "loan" from the entity to Plaintiff, secured only by his capital account.

19. In April 2011, Defendant Gandis ceased taking distributions, which resulted in a larger disparity between the capital accounts of the members. However, Plaintiff continued to have a positive balance in his capital account at all times, even when deducting the amount of the non-recourse "loan."

20. Sometime after April 2011, Defendant Gandis approached Plaintiff about the imbalance of distributions. Plaintiff reiterated the agreement of the parties that provided for monthly compensation. In response, Defendant Gandis proposed that Plaintiff forfeit his membership interest and become an employee in exchange for a loss allocation to offset member income in 2010.

21. Although Plaintiff rejected this offer, Defendants persisted in pressuring him to forfeit and/or transfer his interest.

22. Pressure turned to coercion at the end of November 2011 when Defendants advised Plaintiff that Plaintiff would not be receiving his agreed upon distribution for December 2011 unless Plaintiff agreed to sell his interest and become an employee.

23. Plaintiff and Defendant Gandis met and discussed a buy-out of Plaintiff's membership interest. As part of one proposal, Plaintiff would be employed as an officer of the company with a guaranteed salary pursuant to a five year employment agreement. Plaintiff indicated he was agreeable to such proposal.

24. After Plaintiff and Defendant discussed this proposal, Defendants relented and paid Plaintiff his December 2011 distribution.

25. Later in December, Defendants presented Plaintiff with a written offer that was significantly different than the proposal discussed at the last meeting; the offer included an at-will employment contract, a five year non-compete and valued Plaintiff's interest at approximately $300,000.

26. Plaintiff requested a copy of the CCC balance sheet that was used to value Plaintiff's interest in CCC. The balance sheet submitted to Plaintiff contained several deceptive and/or fraudulent entries that devalued CCC and thus devalued Plaintiff's membership interest accordingly.

27. One of the deceptive and/or fraudulent entries included "a preference to minority" to Defendant Comeau-Shirley in the amount $100,000. When confronted, Defendant Comeau-Shirley indicated this was "based upon a conversation that [Defendant Gandis] had with [her] sometime in 2009 or 2010 about higher participation at exit...." Defendant Gandis had never discussed such proposal with Plaintiff at anytime and such a commitment had not been previously listed on a CCC balance sheet.

28. Plaintiff rejected the offer of at will employment. Plaintiff raised objections and concerns regarding the deceptive and/or fraudulent accounting entries.

29. Plaintiff made a counter-offer, which valued his own membership interest at approximately $350,000 and included a four year employment agreement and a five year non-compete.

30. Defendants rejected Plaintiff's offer and advised Plaintiff in writing that he would not be receiving his January and February distributions as had been previously agreed upon.

31. Defendant Gandis had indicated that he would accept an offer to purchase his membership interest for $325,000 as long as the offer included the purchase of the building. Defendant Gandis owns the building in which CCC operates and rents the premises to CCC.

32. In response, Plaintiff had advised Defendant Gandis that Plaintiff would begin to seek qualified buyers. With Defendant Gandis' blessing, Plaintiff approached perspective buyers, all of whom executed non-disclosure agreements.

33. In or about late December 2012, Defendants requested to know the identity of any proposed purchasers Plaintiff had approached and the nature of the information shared. Plaintiff was reluctant to identify prospective buyers, although Plaintiff assured Defendants that he had not disclosed information that was damaging to the company and later advised that all information provided to any prospective buyer was subject to non-disclosure.

34. In or about January 2012, Defendant Comeau-Shirley advised Plaintiff in writing that "pursuant to the new operating plan" Plaintiff's privileges in the accounting system had been changed to sales only. Plaintiff had not consented to and/or voted on any such plan.

35. On January 6, 2012, Defendant Comeau-Shirley advised Plaintiff that Defendant Gandis had identified himself as the sole manager of CCC in the Secretary of State filing.

36. On January 17, 2012, Plaintiff made a new offer to Defendants which reduced the valuation of his membership interest to $100,000 cash and the value of the outstanding "loan."

37. Approximately fifteen minutes after making such offer, Defendants terminated Plaintiff's access to the CCC computer network.

38. On January 18, 2012, Defendant Gandis approached Plaintiff and advised him that "we have accepted your resignation" and that Plaintiff needed to vacate the office immediately. Plaintiff denied that he had resigned and refused to vacate. Plaintiff did not resign.

39. To enforce his demand to vacate, Defendant Gandis had called law enforcement, and a law enforcement officer was with him when he made such demand. When Plaintiff refused to leave, Defendant Gandis asked the officer to remove Plaintiff from the premises. Plaintiff advised the officer of his membership interest; the officer indicated that he had no jurisdiction, although he remained at the location.

40. Also, Defendant Gandis had called a locksmith, who was present to change the locks of the Greenville office leased by CCC. The locksmith changed all of the locks on CCC's Greenville office. When Plaintiff left the office, he was refused reentry.

41. Immediately, Defendants disconnected Plaintiff's cell phone service without notice; Defendants also disconnected the service for Plaintiff's family. Defendant refuses to release to Plaintiff the cell phone number he has had for over 10 years.

42. Without prior notice, Defendants terminated Plaintiff's health insurance, which is provided to all members and employees. And since, Defendants have refused to pay Plaintiff any distributions, while based upon information and belief, Defendants have continued to receive paid cell phone service, health insurance and/or distributions as members.

43. Since Plaintiff's ejection and involuntary dissociation by Defendants, Plaintiff has requested financial information for CCC, but Defendants have refused to provide Plaintiff with any such information.

44. Defendants have refused to return Plaintiff's personal property and are claiming that such property was contributed to CCC; however, Defendants have never accounted for such personal property as a contribution, have never listed and/or valued such property on the company balance sheet nor have Defendants credited Plaintiff's capital account with the value of such property as of the time of the alleged contribution.

45. Based upon information and belief, Defendants have used CCC funds to pay for their own personal attorneys fees in their power struggle with Plaintiff.

46. After filing this action, Plaintiff discovered that Defendants Gandis and Comeau-Shirley had formed Zoi Films, LLC (hereinafter "Zoi Films"), which engages in activities competitive with CCC.

47. Based upon information and belief, Defendants Gandis and Comeau-Shirley caused Michael Shirley, Defendant Comeau-Shirley's husband, to organize Zoi Films in Georgia in an attempt to conceal its existence from Plaintiff; these Articles of Organization identify Michael Shirley as Zoi Films, LLC's registered agent.

48. The email address listed Defendant Comeau-Shirley's email address as Zoi Films on the transmittal form to the Georgia Secretary of State's office.

49. On or about March 27, 2012, Defendant Gandis engaged John Gurley of Cyber Solutions to secure the internet domain ZoiFilms.com.

50. Defendant Gandis is listed as the registrant of the ZoiFilms.com domain. Defendant Gandis provided his personal email address on the registration, although he provided

CCC's phone number as Defendant Zoi Film's phone number and CCC's post office box as Defendant Zoi Films' address.

51. Defendants Gandis and Comeau-Shirley hired a web design company to create Zoi Films web site, which contains photographs of CCC's equipment and listing the identical services and products as CCC.

52. Based upon information and belief, Defendants Gandis and Comeau-Shirley hired employees to work for Defendant Zoi Films for the purpose of competing with CCC.

53. Based upon information and belief, Defendants Gandis and Comeau-Shirley used CCC funds as seed money for Defendant Zoi Films.

54. Based upon information and belief, Defendants Gandis and Comeau-Shirley made attempts to conceal their involvement in Zoi Films, including listing a false physical address for Zoi Films, LLC.

55. Based upon information and belief, Defendants Gandis and Comeau-Shirley are operating Defendant Zoi Films using CCC facilities, resources and employees.

56. Upon being confronted with this duplicity, Defendant Gandis engaged legal counsel, who drafted a document which stated that CCC was the sole member of Zoi Films, LLC; Defendant Gandis executed this document and presented it with documents filed with the Georgia Secretary of State's office 7 weeks earlier. Based upon information and belief, Defendant Gandis' intent was to deceive Plaintiff.

57. Based upon information and belief, Defendant Gandis and Defendant Comeau-Shirley have conspired to convert opportunities, funds, resources belonging to CCC for the benefit of others, including themselves and including Defendant DecoTex, LLC and Defendant Zoi Films, LLC.

58. Defendants have taken steps to conceal their breaches of fiduciary duty, fraud, and conversion and efforts to persuade Defendants to cease their activities and pursue an action against themselves is not likely to succeed.

59. Plaintiff owns a forty-five percent ownership interest in CCC; Plaintiff has been a member at all times alleged herein and fairly and adequately represents the members similarly situated.

60. CCC business and financial interests are being harmed by the actions of Defendants, and a derivative action is necessary to protect those interests and to remedy the harm to the entity.

61. After failing to respond to Plaintiff's requests for financial information for months, Defendants produced some financial information pursuant to a subpoena issued to CCC. Although this information is stored electronically, Defendants did not produce an electronic copy.

62. Defendants downloaded the information into Excel, and based upon information and belief, Defendant Comeau-Shirley altered the financial data from its original form prior to producing it to Plaintiff.

63. Defendants failed to produce emails subpoenaed relating to their activities.

FOR A FIRST CAUSE OF ACTION
Dissolution under S.C. Code § 33-44-801
(AS TO ALL DEFENDANTS

64. Plaintiff realleges and incorporates by reference paragraphs 1 through 63, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this First Cause of Action.

65. Defendants have acted in a manner that is unlawful, oppressive, fraudulent, and/or unfairly prejudicial to Plaintiff individually. Such actions constitute grounds for statutory dissolution, including, but not necessarily limited to, the following:

A. Without cause, Defendant(s) called law enforcement to remove Plaintiff from his office and have since denied Plaintiff entry into his office;

B. Defendant(s) terminated Plaintiff's access to financial information and have denied his request for financial information to which a member is statutorily entitled;

C. Defendant(s) have unilaterally and without his consent attempted to alter Plaintiff's membership interest and produced false K-1s;

D. Defendant(s) have engaged in deceptive and/or fraudulent accounting practices designed to reduce the value of the CCC for their personal benefit;

E. Defendant(s) have terminated Plaintiff's family health insurance coverage;

F. Defendant(s) have failed to make agreed upon distributions and unilaterally changed agreements between Defendant Gandis and Plaintiff regarding monthly distributions;

G. Defendants have accounted for expenses, including the automobile expense, in such as way as to decrease Plaintiff's capital account;

H. Defendant(s) have terminated Plaintiff's cell phone service while maintaining that of other members;

I. Based upon information and belief, Defendant(s) have utilized company funds to pay for legal fees incurred as the individuals' efforts to force Plaintiff to forfeit his membership interest, and thereby increasing their individual ownership;

J. Defendant(s) have threatened to deplete the company bank accounts by funding litigation between individual members and thus devaluing Plaintiff's membership interest; and

K. Based upon information and belief, Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use;

66. Based upon information and belief, Defendants have conspired together for the purpose of compelling Plaintiff to forfeit his membership interests and/or to transfer his interest for below fair market value.

67. Defendants' conduct relating to the company's business makes it not reasonably practicable to carry on the company's business with those members.

68. Plaintiff engaged in attempts to obtain accurate accounting records, complained about being locked out of CCC's Quickbooks, complained about financial practices engaged in by Defendants, sought to negotiate his dissociation from the company, and complained about Defendant's fraudulent efforts in regards to ZOi Films, all which have proved futile and any additional efforts would have proved futile as the individual Defendants have conspired to act in their own interests and against the interests of Plaintiff and the interests of CCC. Accordingly, Plaintiff is pursuing this action derivatively.

69. Plaintiff is entitled to equitable remedies and/orc legal remedies under the South Carolina Uniform Limited Liability Company Act, including the remedy of dissolution.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendants Gandis and Comeau-Shirely)

70. Plaintiff realleges and incorporates by reference paragraphs 1 through 69, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Second Cause of Action.

71. Defendants breached and continues to breached their statutory duty of loyalty, obligation of good faith and fair dealing and/or other fiduciary duties owed to Plaintiff and to CCC, and such breaches include not only those in paragraph 65, but also including but limited to the following:

A. Refusing to provide financial information as requested by Plaintiff;

B. Paying for his personal attorney fees out of company funds in pursuit of Plaintiff's membership interest;

C. Terminating Plaintiff for seeking financial information and making efforts to review financial information to which he was entitled;

D. Calling law enforcement in an effort to forcibly remove Plaintiff from his office;

E. Filing Article of Organization which were contrary to the agreement of the equal members;

F. Conspiring with Defendant Comeau-Shirley to force Plaintiff to forfeit his membership interest and/or transfer such interest for less than fair market value;

G. Unilaterally and without authority promising Defendant Comeau-Shirley that she would get $100,000 as "a preference to minority";

H. Otherwise acting in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff; and

I. Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use.

72. Defendant Gandis represented that he intended to dissolve DecoTex and conduct all of his business on behalf of CCC, but Defendant Gandis continues to operate such side film business. Based upon information and belief, Defendant Gandis utilizes CCC resources in furtherance of such business efforts.

73. Based upon information and belief, Defendant Gandis receives income from his side business selling film, which exploits opportunities that could have generated profit for CCC.

74. Defendant Gandis delegated certain responsibilities to Defendant Comeau-Shirley, primarily those involving maintaining the accounting records of CCC, and Defendant Comeau-Shirely has engaged in accounting fraud in an effort to cheat Plaintiff out of the value of his share of CCC.

75. Based upon information and belief, both Defendants has participated in and directed accounting practices that are fraudulent and/or deceitful.

76. Defendant Gandis' and Defendant Comeau-Shirley's breach of his fiduciary duties, his obligation of good faith and fair dealing and his duty of loyalty are the proximate cause of damages to Plaintiff, his membership interest and to CCC. Accordingly, Plaintiff and

CCC are entitled to an award of actual and punitive damages for the breach of Defendants' fiduciary duties, including a disgorgement of profits for any sale of film not conducted through CCC and damage to the value of CCC and/or Plaintiff's membership interest.

77. Defendants are using attorneys fees to pursue their own individual interests in forcing Plaintiff to forfeit his membership interest. Defendants have incurred over hundred thousand dollars in legal fees and continue to hire lawyers without regard the financial harm to CCC.

78. Defendant Comeau-Shirely has paid her personal attorney out of CCC's funds and based upon information and belief, plans to continue to pilfer CCC's business accounts for her own personal gain.

79. Defendant John Gandis paid his personal attorney out of CCC's funds and based upon information and belief, plans to continue to pilfer CCC's business accounts for his own personal gain. (Defendant's personal attorney upon being notified that his client engaged in such conduct has returned these funds, but Defendant Gandis has not indicated he will not pay his personal attorney's fees out of such funds."

80. According to financial records produced by the individual Defendants on behalf of CCC and ZOi, CCC has been operating at a loss and Defendants actions of hiring lawyer after lawyer to pursue their individual interests will leave CCC unable to continue in business, will reduce the value of Plaintiff's interest, and will not have personal assets to satisfy judgments in the amount of damages.

81. Accordingly, monetary damages are not sufficient to remedy the continued pilfering of CCC. The damage being done is irreparable.

82. The continued fraudulent accounting practices of Defendants will continue to harm the entity, and because such harm cannot be remedy with monetary damages, such damage is irreparable.

83. The individual Defendants breaches of their fiduciary duties are causing Plaintiff and CCC irreparable harm and entitles him to temporary and permanent injunctive relief.

FOR A THIRD CAUSE OF ACTION
Conversion
(AGAINST DEFENDANTS GANDIS, COMEAU-SHIRLEY AND ZOi Films)

84. Plaintiff realleges and incorporates by reference paragraphs 1 through 83, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Fourth Cause of Action.

85. Defendants have converted CCC funds to their own use by paying for their personal attorney fees in their efforts to force Plaintiff to dissociate from CCC.

86. Defendants have converted Plaintiff's personal property to their own personal use and refuse to return such equipment.

87. Based upon information and belief, Defendants have used CCC assets in furtherance of their own personal business efforts selling film and/or in furtherance of Defendants Zoi Films, DecoTex and/or other entities owned by the individual Defendants.

88. Plaintiff is entitled to an award of actual and punitive damages for such conversions.

89. CCC is entitled to an award of actual and punitive damages for such conversions.

90. Plaintiff in his derivative capacity is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to Plaintiff for all profits and property, and returning Plaintiff's personal property.

91. CCC is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to CCC for all profits, assets and property and returning CCC profits, assets and property.

92. Defendants' actions are resulting in irreparable harm to Plaintiff's membership interest, to his property, and to the interest of CCC.

HAVING FULLY SET FORTH HIS COMPLAINT, Plaintiff prays this Court award them the following relief:

(a) an award of CCC's and Plaintiff's special, compensatory damages and punitive damages;

(b) an order enjoining continuing breaches of Defendants' fiduciary duties and Defendants' conversions;

(c) temporary and permanent injunctive relief;

(d) an order dissolving CCC and ZOi Films;

(e) an order appointing a receiver, providing for an accounting, requiring a winding up of the affairs of CCC, LLC, ordering its assets liquidated, payment of Plaintiff his share of profits and income, and/or a judicial order of dissolution;

(f) prejudgment and post-judgment interest; and

(g) such other and further relief as this Court deems just and equitable.

Respectfully Submitted,
Law Office of W. Andrew Arnold, P.C.

W. Andrew Arnold, Esq.
S.C. Bar No. 065311
712 E. Washington Street
Greenville, South Carolina 29601
(864) 242-4800
Attorney for Plaintiff

Greenville, SC
September 16, 2013

VERIFICATION

I, Dave Wilson, being duly sworn, testify that I have read the Second Amended Complaint and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information and belief I believe to be true.

DAVID WILSON

SWORN to and subscribed before
me this 16th day of September 2013

Notary Public for South Carolina
My Commission Expires: 4-11-2020

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS C.A. NO.: 2012-CP-23-02887
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, -vs- John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs, -vs- Carolina Custom Converting, LLC, Third Party Defendant.	)	**CERTIFICATE OF SERVICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMER

2013 SEP 20 P 12:32

I, Jodie D. Fowler, Paralegal for W. Andrew Arnold, do hereby certify that on September 20, 2013, I served upon the below-named individuals Verified Second Amended Complaint by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in envelopes addressed as shown below:

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, SC 29602

L. Lee Plumblee, Esquire
EPPES & PLUMBLEE, P.A.
P.O. Box 10066
Greenville, SC 29603

Burl F. Williams, Esquire
Nexsen Pruet, LLC
P.O. Drawer 10648
Greenville, SC 29603

Steven Farrar, Esquire
Smith, Moore, Leatherwood, LLP
P.O. Box 87
Greenville, SC 29602

Jodie D. Fowler

JODIE D. FOWLER
Paralegal to W. Andrew Arnold

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, Carolina Custom Converting, LLC, Counterclaim Plaintiff, vs. Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc., Counterclaim Defendants.	Civil Action No. 2012-CP-23-02887 **CAROLINA CUSTOM CONVERTING, LLC'S ANSWER TO THE SECOND AMENDEND COMPLAINT AND COUNTERCLAIMS**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 NOV 19 PM 4:55

The Defendant, Carolina Custom Converting, LLC ("CCC") responds to the allegations of Plaintiff's Second Amended Complaint as follows:

PRELIMINARY STATEMENT

CCC is not a party to any of the direct claims alleged in the Second Amended Complaint ("the Complaint"). It is a party to this action based upon the purported derivative claims alleged in the Complaint, and the claim for a Dissolution of CCC. For these purported claims, CCC submits this Answer to the Complaint with general denials so as to preserve Plaintiff's obligation to prove all allegations not admitted by the other named Defendants. In addition to these general

denials, CCC submits this preliminary statement for the purpose of notifying the Plaintiff that it is preserving all rights that a nominal defendant retains in derivative litigation. *E.g.*, *Swenson v. Thibaut*, 250 S.E.2d 279, 293-94 (N.C. App. 1978).

FIRST DEFENSE

1. For Paragraph 1 of the Complaint, CCC admits that Dave Wilson, upon information and belief, is a resident of Greenville County, South Carolina, is a member of CCC, and purports to bring an action derivatively on behalf of CCC; as a nominal party to the direct claims CCC generally denies the allegations related to other defendants.

2. For Paragraphs 2-3 of the Complaint, CCC admits the allegations.

3. For Paragraph 4 of the Complaint, CCC admits that it is a Limited Liability Company; CCC responds that the remaining allegations assert legal conclusions for which no response is required; to the extent a response is required, CCC denies the remaining allegations.

4. For Paragraph 5 of the Complaint, CCC admits the allegations.

5. For Paragraphs 6- 11 of the Complaint, CCC generally denies the allegations asserted against other parties.

6. For Paragraph 12 of the Complaint, CCC responds that the allegations contain legal conclusions to which no responsive pleading is required; to the extent a response is required, CCC denies the allegations.

7. For Paragraph 13-63 of the Complaint, CCC generally denies the allegations asserted against other parties.

8. For Paragraphs 64-69 of the Complaint, CCC generally denies the allegations asserted against other parties; CCC further denies that Plaintiff is entitled to dissolution of CCC.

9. For Paragraphs 70 – 92 of the Complaint, CCC generally denies the allegations asserted against other parties.

10. Having responded to all of the Plaintiff's allegations, CCC hereby denies that the Plaintiff is entitled to the relief sought in his Prayer for Relief as it relates to CCC: CCC denies that the Plaintiff is entitled to an order dissolving the company; CCC denies that the Plaintiff is entitled to an order appointing a receiver for CCC and a liquidation of the company's assets.

SECOND DEFENSE

11. Plaintiff's derivative claims are barred in whole because he is an inadequate representative for this action.

THIRD DEFENSE

12. Plaintiff's derivative claims are barred in whole because he failed to comply with the Rule 23, SCRCP requirements for instituting derivative litigation.

FOURTH DEFENSE

13. Plaintiff's derivative claims are equitable, and he is barred from pursuing those equitable claims due to equitable defenses and namely that he has unclean hands.

FIFTH DEFENSE

14. CCC hereby gives notice that it intends to rely upon such other and further defenses and grounds for seeking dismissal of this action as may become available or apparent during pre-trial proceedings in this action and hereby reserves all rights to amend this Answer and to assert all such additional arguments and defenses

PRELIMINARY STATEMENT TO THE COUNTERCLAIMS OF CCC

Plaintiff is and was a member of CCC, and during his time at the company, he worked as the Vice President of Sales and Marketing. As a member, the Plaintiff owed to CCC the obligation of good faith and fair dealing. *See* S.C. Code Ann. § 33-44-409 (2006); *see also* Jean

H. Toal & W. Bratton Riley, *Fiduciary Duties of Partners & Limited Liability Company Members Under S.C. Law: A Perspective From the Bench*, 56 S.C. L. REV. 275 (2004). As a member, the Plaintiff also owed fiduciary duties to CCC. *Id.* As its Vice President of Sales and Marketing, the Plaintiff owed fiduciary duties to CCC, namely the duty of loyalty. *E.g.*, *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972).

CCC hereby names the following, where applicable, Counterclaim Defendants pursuant to Rule 13(h), SCRCP, and hereby joins these additional parties pursuant to Rules 19 and 20, SCRCP.

Background to the Counterclaims: The Parties

15. The Counterclaim-Plaintiff, Carolina Custom Converting, LLC, ("CCC") is a domestic South Carolina Limited Liability Company organized and existing pursuant to the laws of the State of South Carolina with its principal offices located in the County of Anderson, South Carolina.

16. Counterclaim-Defendant David B. Wilson, ("Wilson"), is upon information and belief, a citizen and resident of the County of Greenville, South Carolina.

17. Counterclaim-Defendant Neologic Distribution, Inc., ("Neologic") is a domestic South Carolina Corporation organized and existing under and by virtue of the laws of the State of South Carolina with its principal offices located in the County of Greenville, South Carolina.

18. Counterclaim-Defendant Steven Norvell ("Norvell") is upon information and belief, a citizen and resident of the County of Greenville, South Carolina.

19. Counterclaim-Defendant Freshwater Systems Inc. ("Freshwater") is a California corporation; it transacts business in South Carolina, and its principal offices are located in the County of Greenville, South Carolina.

20. All parties, matters, and things herein are within the jurisdiction of this Court.

Carolina Custom Converting is Formed

21. Prior to November 2, 2007, Wilson owned a company named Eastern Films Solutions LLC; Eastern Films was in the business of selling converted films; the plastic films referred to throughout the Complaint are the type of plastic films that a person would find in many commercial and industrial uses, including for example, packaging, labels, tapes, flexible ducts.

22. On November 2, 2007, CCC was officially formed, and registered with the South Carolina Secretary of State as a term company set to expire in 2057. CCC is in the business of slitting and selling plastic films.

23. Beginning on November 2, 2007, Wilson agreed to close Eastern Films, and transfer all of its business and corporate opportunities into, and by doing so, help form CCC. Wilson's purported contribution to CCC was his existing business, his film industry know-how, and contacts within the industry.

24. Wilson served in a management and leadership capacity at CCC, with the title of Vice President of Sales and Marketing.

25. Beginning on November 2, 2007, Wilson agreed that all future business transactions would belong to CCC, but that a reasonable wind-down period was required in order to complete existing deals, to notify customers of the existence of his new company, and to completely transfer the business of Eastern Films into CCC.

26. After Wilson joined and helped form CCC, he began working from the Greenville office of CCC, and there worked to carry out the business purpose of the company.

Wilson's Faithless Activities and Usurpation of Corporate Opportunities

27. Following the formation of CCC, Wilson did not honor his agreement that all future business transactions executed after the formation of CCC would belong to CCC. Upon information and belief, Wilson continued for the entirety of his employment with CCC to seek out and enter into new business transactions on the side; Wilson intentionally hid these side transactions from CCC and did not share any of the revenue with CCC. These side transactions were corporate opportunities that belonged to CCC.

28. CCC, at times, believed that Wilson may have usurped corporate opportunities during his work at the company, however, it did not fully learn of the habitual scope of Wilson's faithless activities and the stealing of its corporate opportunities until after Wilson left the company and the files he left behind were reviewed.

29. Wilson did not act alone in his faithless activities. He was aided and abetted by his brother-in-law, Norvell, who helped to oversee and finance these illegal side transactions. Following the formation of CCC, Wilson, aided by Norvell, continued to usurp new corporate opportunities from CCC and direct them toward himself and Norvell.

30. Norvell did not merely finance these new corporate opportunities; he was intimately involved in the accounting and reconciliation of these deals, in paying third parties, and communicating with customers.

31. Norvell affirmatively represented to lenders that he was a member of Eastern Films in order to receive lines of credit for these transactions. Notwithstanding those representations, upon information and belief, they were false as Norvell did not hold an equity position in Eastern Films.

32. Norvell had access to the bank accounts through which the proceeds of the corporate opportunities flowed, had check signing authority for these bank accounts, and in fact did sign numerous checks in order to effectuate these side deals.

33. Wilson and Norvell also transacted a portion of these side deals through, upon information and belief, a fictional entity referred to as Commerce Films.

34. In return for his involvement, Norvell typically received 30%-40% of the gross profits.

35. Upon information and belief, one of the driving factors for Norvell to invest in these new corporate opportunities was that Wilson was indebted to Norvell, and his investments provided a mechanism for Norvell to be paid back.

36. Norvell's involvement in financing and working on these corporate opportunities continued through the entirety of 2008, and at least through July 2009. Upon information and belief, his role in these side deals with Wilson could have continued for years past 2009. Again, CCC was formed on November 2, 2007.

37. Norvell is the brother-in-law of Wilson and lives in the same town as Wilson. The closeness of these two individuals makes it impossible that Norvell did not know that Wilson was an owner and Vice President of CCC, and was legally precluded from engaging in the side transactions with Norvell.

38. CCC did not learn of Norvell's involvement in these corporate opportunities until after its employees began reviewing boxes of files left behind when Wilson exited the company in 2012.

39. Notwithstanding that Eastern Films was supposed to cease at the formation of CCC, following a reasonable wind up period, Wilson continued to use his e-mail address at that company for other purposes, including the faithless usurpation of CCC's corporate opportunities.

40. Throughout Wilson's work at CCC, he also channeled various CCC business transactions through third parties. Upon information and belief, Wilson's decision to channel certain business through these third parties was based upon Wilson's personal reasons and for the repayment of his past debts to persons other than Norvell; the act of channeling business through these third parties was not in the best interest of CCC nor disclosed to CCC.

Wilson Begins Looking For an Exit Strategy Due to Financial Strains

41. During the summer of 2008, while continuing to secretly usurp corporate opportunities from CCC, Wilson began receiving monthly distributions from CCC. These monthly distributions continued in regular order until, in or around late 2010, they no longer become a viable business option for CCC based upon the financial condition of the company. Wilson alleged that he required monthly income to pay for the cost of living; accordingly, Wilson and CCC agreed that he would continue to receive monthly payments, but that the payments would serve as interest bearing loans payable at a later date.

42. Beginning in 2011 and continuing into 2012, Wilson became dissatisfied with the future of CCC, and began looking for an exit strategy.

43. Wilson reported to the other owners of CCC that he had initiated discussions with third parties interested in purchasing CCC; nevertheless, he refused to disclose who he had included in these discussions and what information he provided to these third parties.

44. CCC is aware of three would be purchasers, but has presently received the proposed deal-making information regarding only one of these would be purchasers: Filmtech, Inc.

45. Filmtech is a direct competitor of CCC.

46. Wilson did not look to Filmtech as a future purchaser for CCC, however, the correspondence shows that Wilson secretly looked to Filmtech for employment. In a January 13, 2012 e-mail to an officer or employee of Filmtech, Wilson requested that all "future emails pertaining to our working together [be sent] to my eastern films email address."

47. Wilson had no legitimate purpose for having an Eastern Films e-mail address over four years after that company was supposed to no longer exist; his real purpose for keeping the Eastern Films e-mail address, upon information and belief, was to allow him to engage in covert communications and continue his usurpation of corporate opportunities.

48. In a January 16, 2012 e-mail to an officer or employee of Filmtech, Wilson wrote that "I look forward to the opportunity to join your organization," and that, "I'm eager to start with Filmtech as quickly as possible." In that same e-mail, Wilson also stated that:

> My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on or qualifying over the past 3 to 6 months. I will also need about $500 per month to secure an office, phone and internet service.

49. Wilson was not trying to sell CCC to Filmtech; he was seeking employment at Filmtech, and with the specific intent of stealing clients and prospective clients from CCC at the same time. In seeking employment with Filmtech, upon information and belief, Wilson shared CCC's trade secrets with Filmtech.

50. On January 17, 2012, Wilson left CCC.

51. In an effort to "paper over" the fact that Wilson shared trade secrets with Filmtech, on January 26, 2012, he sent an e-mail to an officer or employee of Filmtech. In that e-mail he made the following request: "Can you sign the attached [non-disclosure agreement], date it Jan 3 and email back to me."

52. Filmtech did not hire Wilson.

Wilson Leaves CCC Taking Confidential Information and Trade Secrets and Destroys Evidence

53. As an officer and owner of CCC, Wilson had access to the confidential and trade secret information of the company. The company did not provide access to this information to everyone in the company, and it took steps to protect the same. In addition, some of the confidential and trade secret information was so complex, that if a passerby were to review the information, they would not know what it meant unless it were thoroughly explained.

54. On the day that Wilson left CCC, he took two CCC owned computers and a Blackberry phone with him. Those devices contained trade secrets and confidential business information.

55. Upon information and belief, Wilson transferred said trade secrets and confidential business information to Neologic, Freshwater, and Norvell.

56. Wilson later returned the two CCC owned computers and the Blackberry phone to CCC's attorney (not CCC), and the attorney immediately sent those computers to a company named Computer Forensics Lab.

57. That company examined the two CCC owned computers and the Blackberry phone and determined that thousands of documents and e-mails were copied, and that thousands of documents and e-mails were deleted.

58. That company also determined that an eraser program was run on the computers, which means that some of the information could not be restored. An eraser program, successfully executed, seeks to completely erase a computer's hard drive, making it impossible to retrieve any data. However, CCC was able to retrieve some of the information from these computers.

59. The destruction and attempted destruction of documents and e-mails, and the running of an eraser program upon the hard drive of these computers, is particularly troubling in light of Wilson's apparent recognition that litigation surrounding his decision to leave CCC could result. That recognition is inferred from a statement in the January 26, 2012 e-mail when he asked an officer or employee of Filmtech to back-date the non-disclosure agreement.

60. Upon information and belief, at the time Wilson decided to run an eraser program upon the computers he took from CCC, and to attempt to destroy documents relevant to this very litigation, he was in communication with legal counsel and understood that he may pursue litigation against these defendants, or be brought into litigation for his conduct.

Wilson Conspires to Sabotage CCC and Takeover its Customer Base

61. While Wilson was secretly planning to leave CCC, he placed approximately $750,000 worth of film orders in the name of CCC utilizing its credit and industry name, which required CCC to purchase said film upon receipt. Wilson placed these purchased orders in secret and did not tell anyone at CCC what he had done. The film would not be delivered until well after he left, and Wilson knew that.

62. In the film industry that CCC operates in, the acquisition of film is almost always undertaken with a deal in place to sell that film. No one purchases $750,000 worth of film without knowing where it will be later sold. Accordingly, Wilson sought to intentionally place

immense financial burden upon CCC by requiring it to purchase $750,000 worth of film, with no ready or potential outlet for its sale.

63. In the alternative, Wilson placed this film order upon the credit and industry name of CCC with the expectation that it would be unable to pay for the film and return it to the distributors.

64. The vast majority of the film Wilson caused CCC to purchase was manufactured and shipped from East Asia and the Persian Gulf. CCC could not simply send the film back. If CCC had done so, it would have ruined its reputation within the industry and among its distributors.

65. Upon information and belief, the goal of Wilson in placing the purchase order was to bankrupt CCC or ruin its reputation.

66. CCC did not learn of these purchase orders until months after Wilson left the company. It learned of these purchase order when the goods began being delivered to CCC, along with significant bills for payment.

67. Upon information and belief, Wilson approached Norvell before his departure from CCC, and began discussions surrounding the idea of forming Neologic and, upon information and belief, stealing CCC's customer base with the use of its confidential information and trade secrets.

68. Norvell is an owner of Freshwater, and upon information and belief, Neologic is owned by the owners of Freshwater.

69. Freshwater and Neologic utilize the same employees, and operate out of the same location in Greenville County, South Carolina. By way of example, Neologic's Controller is the same individual as Freshwater's Controller.

70. Freshwater and Neologic also utilize the same funds in the operation of their companies. This fact is best demonstrated by an e-mail from the Controller of Neologic/Freshwater. On March 29, 2013, the Controller sent an e-mail to Neologic's employee, Bill Shaw, copy to Wilson:

> [I]f you could in the future give me some sort of notice of large cash requirements in advance, that would be great. Neologic has limited cash until some of the receivables generated in Dec/Jan start rolling in more regularly and FWS [*i.e*, Freshwater Systems] has been very tight on cash due to unexpected year end cash requirements and payments for "year end buys" that are typically due in Feb/March.

Wilson responded to that e-mail, in part by stating: "Thanks for the heads up on cash flow. We'll let you know sooner in the future."

71. Wilson, Norvell, and Freshwater, upon information and belief, started Neologic on March 22, 2012, roughly two month after Wilson left CCC and at about the same time that the $750,000 worth of film would start to be delivered to CCC.

72. Neologic is a direct competitor of CCC.

73. Upon information and belief, Norvell and/or Freshwater and/or Neologic are advancing attorney's fees and the costs of expert witnesses to fund this litigation against CCC.

74. After leaving CCC, and creating Neologic, Wilson has continued to access CCC's internal company information via a remote log-in. The internal company information accessible through the remote login included confidential information and trade secrets. Attached as **Exhibit A** is a screen shot showing that Wilson accessed the company's internal network on April 11, 2012, at 11:55 am.

75. Upon information and belief, a Neologic employee or contractor has continued to access CCC's internal company information via remote log-in.

FOR A FIRST CAUSE OF ACTION
Violation of the Obligation of Good Faith and Fair Dealing and
Breach of Fiduciary Duties Against David Wilson

76. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein.

77. Defendant Wilson owed a fiduciary duty to CCC to protect its trade secrets and confidential information, and to protect and work for the best interests of CCC.

78. Despite this duty, Wilson misappropriated assets and trade secrets belonging to CCC and has used those assets and secrets to compete with CCC.

79. In violation of his obligation of good faith and fair dealing and in violation of the fiduciary duties owed to CCC, David Wilson stole corporate opportunities during his time at CCC, and converted those corporate opportunities for his personal gain; Wilson also entered into agreements with third party distributors that were not in the best interest of CCC, but rather benefited Wilson individually.

80. By engaging in the misappropriation of trade secrets and assets, Defendant Wilson has breached his fiduciary duty to CCC, thus causing damage to the Plaintiff.

81. As a direct and proximate result of Defendant David Wilson's breach of his fiduciary duties, CCC has been damaged; CCC has also had to incur the expense of retaining counsel to protect its trade secrets and enforce its rights.

FOR A SECOND CAUSE OF ACTION
Aiding and Abetting Wilson's Breach of Fiduciary Duty Against Norvell

82. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

83. Norvell is the brother-in-law of Wilson, and lives in the same town as Wilson. Based upon this close relationship, upon information and belief, Norvell knew that Wilson had helped form CCC, was a member of CCC, and served as its Vice President of Sales and Marketing.

84. Based upon the close relationship between Norvell and Wilson, Norvell, upon information and belief, knew that Wilson was acting disloyal to CCC when he undertook new corporate opportunities in the film industry, and hid those opportunities from CCC.

85. Norvell participated in Wilson's faithless activities by financing these corporate opportunities, and working to ensure their completion.

86. Norvell benefited by receiving between 30%-40% of the profits generated from these corporate opportunities.

87. CCC has been damaged based upon the loss of revenue and profits, and from the loss of an opportunity to build business relationships with the companies that Wilson and Norvell transacted business with.

88. Norvell is liable to CCC for the damages that he has caused.

FOR A THIRD CAUSE OF ACTION
Conspiracy against Wilson, Neologic, Norvell, and Freshwater

89. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

90. During the final months that Wilson worked at CCC, upon information and belief, he began to secretly plan to leave CCC, take its trade secrets and customer lists that had been developed over the preceding four years, and set up a competing company.

91. Upon information and belief, Wilson approached various other persons and companies with the idea—for example, FilmTec, supra at ¶ 40-43—that he would leave CCC, take its trade secrets and customer lists, and set up a competing company.

92. Upon information and belief, part of Wilson's plan to successfully takeover CCC's customer base was that he would force CCC to go out of business. To that end, Wilson caused CCC to purchase approximately $750,000 worth of film. The bill for this purchase would come due within months after he left CCC, and Wilson believed that CCC would not be able to afford this financial burden.

93. In the film industry that CCC operates in, the acquisition of film from distributors is almost always undertaken with a deal in place to sell that film. Accordingly, Wilson intentionally placed the immense financial burden upon CCC to purchase $750,000 worth of film, with no ready or potential outlet for its sale, with the intention that it would bankrupt CCC.

94. Upon information and belief Norvell agreed to work with Wilson in the creation of a competing entity. To that end, Norvell has utilized Freshwater funds to set-up and operate Neologic, and has instructed Freshwater employees to work with Wilson to set-up and operate Neologic. Neologic was formed less than two months after Wilson left CCC.

95. After Wilson left CCC, he initiated litigation against CCC and sought its dissolution.

96. Upon information and belief, Norvell and or Freshwater have funded the litigation against CCC by paying for Wilson's attorney's fees and paying for Wilson's expert witness fees.

97. CCC has been specially damaged by Wilson, Norvell, Freshwater, and Neologic in that these co-conspirators have sought to bankrupt the business and are now seeking to dissolve CCC to remove it as a source of competition in the marketplace.

FOR A FOURTH CAUSE OF ACTION
S.C. Trade Secret Act as to Wilson

98. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

99. While working at CCC, as a vice president and owner Wilson had unique access to and did have knowledge of company trade secrets and other confidential information.

100. Defendant Wilson has disclosed CCC's trade secrets to Defendant Neologic and used said secrets during his employment with Neologic, all to the detriment of CCC.

101. As an employee of CCC, Wilson was informed of or should reasonably have known from the circumstances of the existence of CCC trade secrets that he had a duty to refrain from using or disclosing the trade secrets without CCC permission independently of and in addition to any agreement between CCC and Wilson.

102. Defendant David Wilson has disclosed CCC's trade secrets without the express or implied permission of CCC.

103. CCC has been damaged by Wilson's misappropriation, wrongful disclosure, and wrongful use of its trade secrets.

104. CCC seeks damages in the form of actual losses, unjust enrichment, and/or reasonable royalty for Wilson's unauthorized disclosure and use of CCC's trade secrets.

FOR A FIFTH CAUSE OF ACTION
S.C. Trade Secrets Act as to Neologic and Freshwater

105. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein.

106. Neologic is in possession of, and is using CCC's trade secrets disclosed to it by Wilson.

107. Neologic is supported by funding from Freshwater, and the use of Freshwater employees. Neologic is also owned by Freshwater.

108. Neologic knows or has reason to know that Wilson, as a former vice president of CCC, had a duty to maintain the secrecy of those trade secrets.

109. Despite this knowledge, Neologic and Freshwater continue to use CCC's trade secrets.

110. CCC has been damaged by Neologic and Freshwater's misappropriation and wrongful use of its trade secrets.

111. CCC seeks damages in the form of actual losses, unjust enrichment, and/or reasonable royalty for Neologic and Freshwater's use of CCC's trade secrets.

FOR A SIXTH CAUSE OF ACTION
Breach of Contract as to Wilson

112. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein

113. Upon joining CCC, Wilson agreed to provide services to the company.

114. Wilson has now left CCC, and is no longer providing the agreed upon services to the company.

115. Furthermore, S.C. Code Ann. § 33-44-402(a) provides that if a member does not make the required contribution of services to the company, "the member is obligated to at the option of the company to contribute money equal to the value of that portion of stated contribution which has not been made."

116. Wilson stands in breach of his agreement to provide services to CCC, and the breach of that agreement has damaged CCC.

117. CCC has been damaged due to the failure of Wilson to contribute his services to the company as was required by Wilson's agreement and statute.

FOR A SEVENTH CAUSE OF ACTION
Breach of Contract Accompanied by Fraudulent Act as to Wilson

118. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein.

119. Upon the formation of CCC, David Wilson represented to CCC, and agreed, that he would channel all subsequent business transaction through CCC.

120. Notwithstanding that agreement, Wilson had no intention of channeling all of his subsequent business transactions through CCC, and intentionally continued to engage in side transactions, and hid his said side transactions from CCC.

121. CCC's decision to bring on Wilson as a co-owner was based on the material representation by Wilson that he would channel all future business transactions through CCC. CCC would not have brought Wilson in as an owner but for his representation that he would loyally channel all future business transactions through CCC.

122. When Wilson agreed to channel all future business transactions through CCC, he knew that was a false statement.

123. When Wilson agreed to channel all future business transaction through CCC, he knew that CCC would act upon that statement, and rely on that statement, in deciding to bring Wilson into CCC.

124. In good faith, CCC relied on the statement that Wilson would channel all future business transactions through CCC, and CCC did not know that Wilson's statement was false.

125. In reliance upon Wilson's statement that he would channel all future business transactions through CCC, CCC agreed to bring Wilson in as an owner and officer.

126. Wilson represented himself to CCC as a knowledgeable and trustworthy person in the plastic films slitting industry, and based upon that representation, CCC relied upon Wilson and the statements he made regarding his intent to channel all future business transaction through CCC, and to act in a manner that would bring success to CCC.

127. As a direct and proximate result of Wilson's representations that he would channel all future business transactions through CCC, Wilson was brought in as an officer and owner. Because CCC relied upon Wilson's statements it undertook debt obligations and financed sales in order to prosper. Because Wilson did not channel all future business through CCC, CCC has incurred losses and has been damaged in an amount to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION
Conversion as to Defendant Wilson, Neologic, and Freshwater

128. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

129. CCC owned and owns various assets, confidential information and trade secrets that it uses to operate its business.

130. Wilson took CCC's assets, confidential information and trade secrets, and he converted the same for his and for Neologic's and Freshwater's use.

131. Neologic is supported by funding from Freshwater, and the use of Freshwater employees. Neologic is also owned by Freshwater.

132. Wilson, Neologic, and Freshwater are in unlawful possession of CCC's assets, confidential information and trade secrets, and their use of the same is without the express or implied authority or permission of CCC.

133. Because of Wilson, Neologic, and Freshwater's unlawful use of CCC's assets, and conversion of its confidential information and trade secrets, CCC has been damaged in the marketplace, and said damages are a direct and proximate result of the conversion.

FOR A SEVENTH CAUSE OF ACTION AS TO DEFENDANT WILSON
Debt Owed to CCC against Defendant Wilson

134. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

135. Beginning on August 1, 2010, CCC began making cash loans to Wilson.

136. Throughout his time working at CCC, Wilson also fraudulently charged various expenses to CCC which he owes back to CCC.

137. Wilson is indebted to CCC, based upon the loans he received from the company, and the expenses he charged to CCC, in the approximate amount of $152,743.28.

138. The loans made to Wilson bore interest at the agreed-upon rate of ten percent (10%) per annum, and were payable upon demand as either a) demand recourse loans or b) loans for which no specified time for repayment was stated (making them payable upon demand).

139. Despite repeated demands for repayment of the loans, Wilson has failed and refused, and continues to fail and refuse, to pay CCC for the amounts loaned to him as set forth above.

140. As a direct and proximate result of the breaches by Wilson, CCC has been damaged in an amount equal to the total amount loaned to the defendant, plus the expenses he

charged to CCC, in the amount of One Hundred and Fifty-Two Thousand, Seven Hundred and Forty-Three and 28/100 Dollars ($152,743.28), plus prejudgment interest at the rate of ten percent (10%) per annum, post-judgment interest at the maximum rate allowed by law, and the costs of this action, all in an amount to be determined at the trial of this case.

WHEREFORE, CCC prays that, having answered the Complaint, and having set forth its Counterclaims against the named Counterclaim-Defendants, that claims against CCC be dismissed, and that it have judgment against the Counterclaim-Defendants as follows:

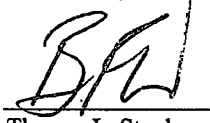
1. Judgment against David Wilson in the amount of One Hundred and Fifty-Two Thousand, Seven Hundred and Forty-Three and 28/100 Dollars ($152,743.28), plus prejudgment interest at the rate of ten percent (10%) per annum, post-judgment interest at the maximum rate allowed by law, the costs of this action;

2. Judgment against Wilson, Norvell, Neologic, and/or Freshwater for the above stated claims, said judgment to be entered following a jury trial wherein the proper amount of damages and punitive damages (where available) may be ascertained and decided by said jury;

3. Judgment against Wilson, Freshwater, and Neologic for the payment of CCC's attorneys fees and costs, pursuant to S.C. Code Ann. § 39-8-80 (Supp. 2012), for the protection of the trade secrets said Defendants willfully misappropriated.

4. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,



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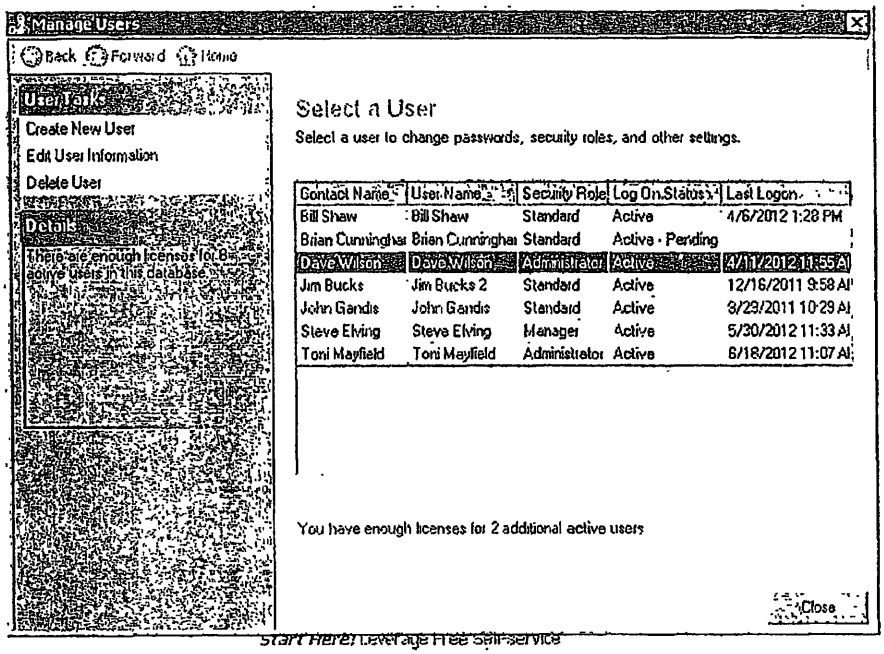
Attorneys for Carolina Custom Converting LLC

November 15, 2013
Greenville, South Carolina

EXHIBIT A



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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC,

Defendants.

Civil Action No. 2012-CP-23-02887

FILED CLERK OF COURT
2013 NOV 19 P 9 46

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing CAROLINA CUSTOM CONVERTING, LLC'S ANSWER TO SECOND AMENDED COMPLAINT has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 15th day of November, 2013.

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Brigid M. Jones

NEXSEN PRUET, LLC

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, -vs- John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs, -vs- Carolina Custom Converting, LLC, Third-Party Defendant.	**ANSWER OF DEFENDANT ANDREA COMEAU-SHIRLEY TO VERIFIED SECOND AMENDED COMPLAINT AND RESTATED DEFENSES AND COUNTERCLAIMS** C.A. No. 2012-CP-23-02887

Defendant Andrea Comeau-Shirley (hereinafter "Comeau-Shirley") answering the allegations of Plaintiff's Verified Second Amended Complaint would show unto the Court as follows:

1. Any allegations not specifically admitted herein are denied.

2. On information and belief, Defendant admits that Plaintiff is a citizen and resident of Greenville County, South Carolina. The remaining allegations of Paragraph 1 are denied, and it is also specifically denied that Plaintiff is a proper person to bring a derivative action on behalf of CCC because his interests are abhorrent to those of CCC.

3. Defendant admits the allegations of Paragraph 2.

4. Defendant admits the allegations of Paragraph 3.

5. Paragraph 4 is admitted to the extent it alleges that CCC is a South Carolina limited liability company. The balance of Paragraph 4 is denied.

6. Defendant admits the allegations of Paragraph 5. Further answering Paragraph 5, Defendant states that Carolina Custom Converting, LLC (hereinafter referred to as "CCC" or "the Company") was formed on November 2, 2007 pursuant to Articles of Organization filed with the Office of the South Carolina Secretary of State, as recognized by the South Carolina Secretary of State.

7. Defendant admits the allegations of Paragraph 6 with respect to its formation as a Georgia entity. However, Defendant notes that ZOi Films a wholly-owned subsidiary of CCC.

8. Defendant admits so much of Paragraph 7 as alleges that Plaintiff and Defendant Gandis agreed to be members of an LLC. Defendant denies the remainder of the allegations. Defendant states that Plaintiff and Defendant Gandis agreed to form a new entity which was to be owned 51% by Defendant Gandis and 49% by Plaintiff. Upon information and belief, the parties engaged attorney Stephen Potts to draft the Operating Agreement and, after meeting with both Plaintiff and Defendant Gandis, Potts- not Defendant Gandis – filed the Articles of Organization with the Office of the South Carolina Secretary of State, naming Defendant Gandis as the manager and designating CCC as a "term company." Attorney Potts drafted these terms into the Articles because they were agreed to by Plaintiff and Defendant Gandis. The parties understood that Potts designated the Company term as 50-year, per his usual practice, but that the members could set a shorter term in the future.

9. Upon information and belief, Defendant admits so much of Paragraph 8 as alleges that Plaintiff and Defendants never signed an Operating Agreement and that Plaintiff agreed, at the inception of CCC, to wind down his individual business - – Eastern Film Solutions (hereinafter referred to as "EFS") – which also related to the slitting and selling of film, to contribute all of the assets of EFS to CCC, and to participate in the slitting of and sale of film solely for the benefit and profit of CCC. Defendant denies the remainder of the allegations. Defendant further states, upon information and belief, that Plaintiff and Defendant Gandis prepared drafts of an Operating Agreement, which still exist, but the Agreement was filed with the Secretary of State. On a number of occasions, Plaintiff, in conversation with Defendant Comeau-Shirley, referred to his distributions as "salary," but each time was corrected by Defendant Comeau-Shirley. Defendant Comeau-Shirley began work for the Company in 2008 after she was recommended by Defendant Gandis' father. At an initial meeting with Plaintiff and Defendant Gandis, at which the parties discussed the venture, Defendant Comeau-Shirley asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up company or if he would prefer to be a salaried employee. Plaintiff assured Defendant Comeau-Shirley that he understood and was prepared for the uncertainties and risk. Later, on reviewing the books, she noticed a significant disparity in distributions as Plaintiff had received all distributions while Defendant Gandis had provided all or almost all funds to the business, which had provided funds for the distributions, but received no distributions himself. Consequently, on multiple occasions, Defendant Comeau-Shirley again asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up Company or if he would prefer to be a salaried employee or to restructure his

membership participation. Each time, Plaintiff again stated that he accepted the uncertainty and risks.

10. Defendant denies the allegations of Paragraph 9. Further answering Paragraph 9, Defendant states, upon information and belief, that Plaintiff and Defendant Gandis agreed that CCC would be a term corporation and jointly instructed Stephens Potts to file the Articles of Organization designating the corporation as "term." The Articles of Organization, as filed, list CCC as a term corporation.

11. Defendant denies the allegations of Paragraph 10 but admits that it was agreed that Defendant Gandis would handle the day-to-day operations of CCC. Further answering Paragraph 10, Defendant states that Plaintiff and Defendant Gandis agreed that CCC would be a manager-managed company. While Plaintiff asserts that there was no express agreement related to Defendant Gandis' status as the managing member, at their initial meeting Plaintiff represented to Defendant Comeau-Shirley that Defendant Gandis possessed the final authority in all matters. Defendant Comeau-Shirley did not put forth the option of exchanging services for a membership interest until both members had expressed their understanding that Defendant Gandis could act alone.

12. Defendant admits so much of Paragraph 11 as alleges that Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with at least an initial 10% percent interest and to reduce each of their respective shares accordingly. However, Defendant reiterates that the initial division of shares between Plaintiff and Defendant Gandis was 49% for Plaintiff and 51% for Defendant Gandis, and the resulting membership interest, subject to an agreed-upon increase in ownership to Defendant Comeau-Shirley, has been Defendant Gandis 46%, Plaintiff 44%, and Defendant Comeau-Shirley 10%.

13. Defendant denies that portion of Paragraph 12 which alleges that Defendant Comeau-Shirley assumed any fiduciary duties to any other member of CCC. Defendant denies that such duties are delegable under the law and reserves the right to file a motion to dismiss on this point. As to the remaining allegations of Paragraph 12, Defendant admits that as Manager, Defendant Gandis had duties under the law.

14. Defendant denies the allegations of Paragraph 13 to the extent that it alleges that Plaintiff performed services on a full-time basis for the Company. Plaintiff was never promised distributions. Plaintiff served in a role akin to Manager in that he made unilateral purchases of inventory and instructed staff to obey his distribution orders without approval of Defendant Gandis.

15. Defendant denies the allegations of Paragraph 14. It should be noted that, throughout the Complaint, Plaintiff frequently refers to actions of CCC, through its management, as actions taken by the Defendants individually. This is denied. In nearly every instance, what Plaintiff refers to was a business action taken by the Company and not this defendant. For purposes of this Answer all actions were taken by CCC.

16. Defendant denies the allegations of Paragraph 15. Further answering the allegations, Defendant states that in late 2009, after Plaintiff blamed break-downs with his car as an excuse for his failure to appear for meetings with a number of prospective clients, Defendant Gandis proposed that CCC co-sign on a reliable car. Defendant Gandis believed that Plaintiff was not in a position to obtain such financing on his own due to Plaintiff's bankruptcy. Plaintiff then purchased the car with CCC as a co-signor. Defendants emphasize that the vehicle was not purchased as a sales vehicle as, just prior to the purchase, CCC had hired an additional salesman, James J. Bucks, who assumed responsibility for those sales accounts requiring travel. Mr. Buck's travel expenses were embedded within his commission structure thereby eliminating most automobile expenses. As a result of this agreement, CCC had no business purpose for a sales vehicle. Because the vehicle was not purchased as a sales vehicle, CCC did not list it as such for tax purposes. On information and belief, Plaintiff personally paid all automotive expenses associated, though he at times attempted to charge expenses to the Company credit card, but relented when confronted by Defendant Comeau-Shirley and reimbursed a portion of the amount to the Company. Some remain unreimbursed in Plaintiff's loan balance. Plaintiff was repeatedly reminded that only business expenses should be paid for on the Company card.

17. Defendant denies the allegations of Paragraph 16.

18. Defendant denies the allegations of Paragraph 17 and refers to the history of actual payments made. Plaintiff promised, at the inception of CCC, that he would contribute the ongoing business of EFS to CCC by transferring the EFS client base to CCC and extinguishing all pre-contribution liabilities, and thereafter put his efforts entirely toward the new venture. Plaintiff further provides in his Complaint that Defendant Gandis had an interest in a business that competed with CCC. This is expressly denied. Defendant Gandis has an interest in Deco Tex, LLC, which, upon information and belief, does not buy or slit film, does not purchase film, and in no way competes with CCC.

19. Defendant denies the allegations of Paragraph 18. Defendant Gandis and Plaintiff agreed to reduce their monthly distributions from $9,000 to $6,802.84 beginning in September 2009 in order to better afford the purchase of certain equipment.

20. Defendant denies the allegations of Paragraph 19. The disparity in cash received by Plaintiff and Gandis did not impact their capital accounts because the amount disbursed to Plaintiff was a loan to Plaintiff.

21. Defendant admits so much of Paragraph 20 as alleges that Defendant Gandis ceased taking distributions in April 2011. The remaining allegations are denied.

22. Defendant denies the allegations of Paragraph 21. Defendants presented Plaintiff with a letter containing three options, on October 31, 2011. Plaintiff was offered three general approaches for discussion. The first option provided that Plaintiff become a salaried employee with bonus structure and have his capital paid out to him over the next few years. As Plaintiff had complained about an outstanding tax obligation related to the prior year income, Defendants offered to consent to an amendment to the membership agreement that would redefine Plaintiff's

"interest-in-the-partnership" as a fixed dollar amount, thereby possibly allowing Plaintiff certain tax benefits. Finally, the offer provided that Plaintiff simply remain as a member. Plaintiff was to respond by November 21, 2011. On December 1, Plaintiff made a counter-proposal. The counter-proposal stated that Plaintiff believed his interest in CCC to be worth $770,000, that he wished half of this amount to be paid up front and for the remainder to be guaranteed by Defendants and to accrue interest at 8%. Additionally, Plaintiff demanded an employment agreement of not less than five years with a guaranteed monthly salary of $12,000, along with bonuses, commission, and stock. Defendants declined to consider the proposal and again directed Plaintiff to the three options previously presented. Plaintiff insisted that he could not consider the offer to have his equity cashed out based on the year-end amount and without being presented a fixed offer value. As such, Defendants estimated the company's position at December 31st and presented an offer to buy Plaintiff's interest for $200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately $150,000, for a total offer value of approximately $350,000. Expressing disbelief that the Defendant's offer was genuine, Plaintiff asked whether Defendant Gandis would accept the same amount for his interest if he could secure the funds from his family. Defendant Gandis asked Defendant Comeau-Shirley if she would consent to a sale to the Wilson family. Defendant Comeau-Shirley noted that the only viable purchaser for the shares would be Plaintiff's family members as their investment decision would be based on the representations and commitments made by Plaintiff, including his plan for managing business roles currently provided by Defendants. A third-party investor would likely be hesitant to invest in a start-up company with such a personnel change. Noting that the building could present a business interruption concern, Defendant Gandis agreed that he would sell the building for less than his original 1999 acquisition price, devoid of any mark ups for improvements. Defendant Gandis expressed tentative agreement to sell to Wilson's family and outlined the general financing conditions, including that the purchase be in cash and include the purchase of the building and land, for an additional $150,000. Plaintiff stated that he would attempt to obtain the necessary funds from his family. Contrary to Plaintiff's claim that he was pressured to "forfeit" his interest, Plaintiff was presented with various options, which he rejected, and Plaintiff expressed his intent to purchase Defendants' interests and was given the opportunity to do so. However, Plaintiff never came forward with funds. as alleges that Defendant Gandis ceased taking distributions in April 2011. Defendant states that prior to this time, beginning in August 2010, Plaintiff began taking monthly loans at an amount set by Plaintiff. These loans were non-recourse but fully secured by Plaintiff's interest in CCC. Plaintiff soon decided to borrow more and increased the monthly amount to $12,000. By the fall of 2011, due to concerns over profitability and cash flow, the Company became concerned with Plaintiff's loan balance and advised Plaintiff that no further loans would be given after 2011 until cash flow had returned to a positive position. At this point, Plaintiff asked what options were available to provide a guaranteed cash flow and discussions ensued.

23. Defendant denies the allegations of Paragraph 22. Plaintiff was notified in writing on November 2, 2011, that the Company was not in a position to make distributions and Defendant Gandis was not in a position to make additional loans to CCC to enable it to make loans to Plaintiff at the level of the prior several months until sales volumes return. Nonetheless, Defendant Gandis, though under no obligation to do so, offered to make one additional $12,000

loan to the Company so that it could loan funds to Plaintiff to enable him to put aside funds for expenses in early 2012.

24. Defendant admits so much of Paragraph 23 as alleges that Plaintiff and Defendant Gandis met and discussed a buyout of Plaintiff's membership interest. This buyout was one of the three options referenced above. There was also a discussion of Plaintiff's acquisition of Defendants' interests. Though Plaintiff later made a counter-offer to Defendants which included a five-year employment agreement, Defendant denies that either Defendant indicated any agreement to Plaintiff's proposal.

25 Defendant denies the allegations of Paragraph 24. Defendant Gandis informed Plaintiff in early November that the Company would make Plaintiff one additional loan so as to allow him to set aside funds for future expenses.

26. Defendant denies the allegations of Paragraph 25. Defendants offered Plaintiff multiple options, including an offer to buy Plaintiff's interest for $200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately $150,000, for a value of the offer being $350,000.

27. To the extent that Plaintiff intends to leave the reader of his Second Amended Complaint with the impression that the allegations contained therein are sequential Defendant denies this allegation. Assuming, for this answer, Defendant does not intent to confuse the reader, Defendant admits only so much of Paragraph 26 as alleges that Plaintiff requested a copy of the CCC balance sheet. Defendant denies the remaining allegations. Defendant specifically denies that she could have produced a balance sheet because there was none in existence at that time. A *pro-forma* balance sheet as of December 31, 2011 provided to Plaintiff contained no deceptive or fraudulent entries and, indeed, highlighted many of the assumptions being made.

28. Defendant admits so much of Paragraph 27 as alleges that the balance sheet provided to Plaintiff included an entry for "preference to minority." Defendant denies the remaining allegations. Further answering Paragraph 27, Defendant states that the amount listed under this entry was to denote the fact that professional accounting, financial, and implementation services had been rendered by Defendant Comeau-Shirley beyond the limited services that were initially exchanged for a 10% membership interest in CCC. As the Company was unable to pay for her services, Defendant Comeau-Shirley had deferred billing for these services anticipating a promised increase share of participation in the Company. At the time the balance sheet was provided to Plaintiff, the parties were in discussions as to whether the obligation might be exchanged for increased equity in the Company however the preference was included to account for Defendant's willingness to take a reduced amount in exchange for quick payment from the Company.

29. Defendant admits as much of Paragraph 28 as alleges that Plaintiff rejected Defendants' offer of continued at-will employment. Defendant denies the remaining allegations. The basis for Defendants' offer as well as the entries on the balance sheet were thoroughly

explained to Plaintiff, in writing, and all questions posed by Plaintiff as to the balance sheets were answered.

30. Defendant denies the allegations of Paragraph 29.

31. Defendant admits so much of Paragraph 30 as alleges that Defendants rejected Plaintiff's offer. Defendant denies the remaining allegations. In the written communication, Defendants advised that they would all continue as members of CCC. The communication did not repeat the fact that Plaintiff would not receive future loans, as Plaintiff had been advised of this fact over two months prior, in a letter of November 2, 2011.

32. Defendant admits so much of Paragraph 31 as alleges that, upon inquiry from Plaintiff, Defendants allowed that they would be willing to sell their interests in CCC to Plaintiff and his brother-in-law. Defendant denies the remaining allegations.

33. Defendant denies the allegations of Paragraph 32. Plaintiff did not seek permission nor have permission to seek "qualified buyers" other than his brother-in-law, Steve Norvell, and did not inform Defendants that he intended to seek out buyers other than his brother-in-law. Defendants also deny that all prospective buyers solicited by Plaintiff signed Non-Disclosure agreements before reviewing information provided to them by Plaintiff.

34. Defendant admits so much of the allegations of Paragraph 33 as alleges that Defendants requested to know the identity of any proposed purchasers Plaintiff had approached. Defendant denies the remaining allegations. Defendant states that when the Company became aware that Plaintiff was meeting with potential buyers other than his brother-in-law, including Film-Tech, LLC, a highly-capitalized competitor of CCC, the Company immediately became alarmed. Defendants became aware that a meeting was scheduled during which Film-Tec representatives were to be given access to confidential CCC sales information, including sales forecasts. After consulting with the Company's counsel, Defendants provided Plaintiff with written notice that he did not have permission to speak to buyers other than his brother-in-law.

35. Defendant admits the allegations of Paragraph 34. Defendant states that the matter of Plaintiff's day-to-day access to QuickBooks was not a matter requiring a vote of the members, but was a company decision to make. Plaintiff retained his rights to request an accounting and had access to the areas of Quickbooks relating to Plaintiff's job tasks.

36. Defendant denies the allegations of Paragraph 35. On January 11th Defendant Gandis wrote Plaintiff reminding him that Defendant Gandis was the sole manager which Gandis believed himself to be. Defendant states that, in the wake of the Company's letter to Plaintiff restricting his authority to solicit buyers, Plaintiff threatened to dissolve the Company, claiming that because no Operating Agreement had been signed, CCC was an at-will corporation.

37. Defendant denies the allegations of Paragraph 36. On January 6th Plaintiff sent an email to Defendants stating, "Since John and I began discussions regarding CCC buying me out and extending an employment agreement, John has insisted that the goal was not to force me out

of the Company but to give me some security and incentive to help grow the business. He said he wanted to make a fair buyout offer and a fair and attractive, employment offer." Plaintiff provided a counter-offer requesting buyout of his interest for $250,000, if the Company allocated to him loss of $325,000 for 2011 and buyout price of $300,000 without the arbitrary tax loss allocation Each offer required the forgiveness of his loan, an upfront payment of $50,000 paid up front and quarterly payments thereafter (with interest accruing at 6% interest). The offer additionally included a three-year employment agreement with a guaranteed salary of $12,000/month for year one and not less than $10,000/month for the following years, along with a bonus package, the Lexus, and personal guarantees from Defendants on the buyout.

38. In response to Paragraph 37, the Company terminated Plaintiff's access to the CCC computer network on January 17, 2012. Defendant denies the remaining allegations. Plaintiff met with Defendant Gandis on the day in question. The meeting was cordial but, just minutes after Plaintiff left the meeting, John Zamer, counsel for Defendants, received a call from Clayton Jennings. Jennings informed Zamer that Plaintiff saw no possibility of continuing to work together with the Company. Based on the statements by Jennings, Zamer advised as a result of conversations with Zamer, the Company to terminate Plaintiff's access to the CCC computer network. As Plaintiff possessed both member and employee attributes, Zamer recommended that CCC seek the advice of a South Carolina employment law specialist. The Company hired William Floyd of Nexsen Pruet and as a result of conversations with him the Company prepared a letter for Plaintiff and arranged for a Sheriff to be in the parking lot the following morning.

39. In response to Paragraph 38, On January 18, 2012, Defendant Gandis advised Plaintiff that CCC had accepted his resignation and that Plaintiff should vacate the office immediately. Defendant denies the remaining allegations. The Company interpreted the statements by Plaintiff's attorney as effecting his resignation and therefore drafted a letter acknowledging Plaintiff's resignation and, given Plaintiff's prior actions, took steps to ensure the protection of all company secrets and assets. To this end, the Company hired a locksmith and enlisted the help of a sheriff's deputy, in the event that Plaintiff was uncooperative. When given the letter, Plaintiff informed Defendant Gandis "I was not ready yet."

40. In response to Paragraph 39, the Company had contacted the local sheriff's office to be on hand in the event that Plaintiff was uncooperative. If Plaintiff had packed his personal belongings and left the premises, he would not have been aware of the Sheriff's presence. Plaintiff was instructed not to remove Company property but, after discussion, it was agreed that Plaintiff could remove his personal items but was to leave Company assets. Plaintiff then proceeded to make three trips to his car, taking with him, among other things, a cell phone and two laptop computers, over Defendant Gandis's objections that these were Company assets. Plaintiff then remained in the office, making phone calls and packing documents into his briefcase. The remaining allegations of the Paragraph are denied.

41. Defendant admits the allegations of Paragraph 40 that relate to the locksmith but denies that Plaintiff was denied entry to the office.

42. Defendant admits so much of Paragraph 41 as alleges that the Company terminated Plaintiff's Company cell phone service. Defendant denies the remaining allegations. Further answering Paragraph 41, Defendant states that, despite the Company's request for Plaintiff to leave the premises, Plaintiff remained in his office making phone calls on his Company cell phone. Defendant Gandis therefore requested that cell service to the phone be disconnected.

43. Defendant admits so much of Paragraph 42 as alleges that Plaintiff's health insurance was terminated. Defendant denies the remaining allegations. Further answering Paragraph 42, Defendant states that CCC offers health insurance coverage to its employees, paying 75% of the employee's coverage and 50% of the coverage for the employee's family. As Plaintiff did not pay the premiums following his resignation, the coverage lapsed on February 1, 2012. With regard to distributions, Defendant states that there have been no distributions to any members in 2012.

44. Defendant denies the allegations of Paragraph 43. Plaintiff has repeatedly stated to Defendants that he intends to compete with CCC and, on information and belief, Plaintiff has taken a position as the Director of Film Sales at Neologic Distributions. Given this, the Company offered to disclose the requested financial information to Plaintiff if he would complete a confidentiality agreement, which was provided to him shortly after he resigned. Plaintiff has been provided with timely updates as to the status of financial information that impacts his personal tax situation as well as a great deal of additional information since this litigation began. The Company has provided various financial statements, a detailed listing of inventory assets, as well as numerous financial schedules. Defendant and CCC stand ready to assist Del Bradshaw with the Court ordered accounting.

45. Defendant denies the allegations of Paragraph 44. Further answering Paragraph 44, Defendant states that CCC returned seven boxes of what was believed to be personal property of the Plaintiff and has offered to return any other property that Plaintiff can document as personal assets. When CCC was formed, Plaintiff agreed to contribute all of the business assets of EFS, which included all office equipment and one fork-truck. Thereafter, Plaintiff moved these assets to the newly leased offices of CCC, which Defendants believe effected Plaintiff's fulfillment of this portion of his contribution pledge to the newly formed CCC's.

46. Paragraph 45 is denied.

47. Responding to Paragraph 46, Defendant is without knowledge or information as to when Plaintiff discovered that ZOi Films had been formed. ZOi Films is a wholly-owned subsidiary of CCC. As ZOi Films is a wholly-owned subsidiary of CCC, Defendant denies that ZOi Films engages in activities harmful to CCC but rather that ZOi serves to expand CCC's market opportunities. Defendant denies that CCC has suffered any damage related to ZOi.

48. Defendant denies the allegations of Paragraph 47, except to admit that Michael Shirley is listed as the registered agent for ZOi Films. ZOi Films was created after a number of clients declined to do business with CCC based on their past dealings with Plaintiff.

49. Defendant admits the allegations of Paragraph 48.

50. Responding to Paragraphs 49 through 51, Defendant has no knowledge of the allegations and denies the same and demands strict proof thereof.

51. Defendant denies the allegations of Paragraph 52. ZOi Films is a wholly-owned subsidiary of CCC and therefore does not compete with CCC.

52. Defendant denies the allegations of Paragraph 53.

53. Defendant denies the allegations of Paragraph 54.

54. Defendant admits so much of Paragraph 55 as alleges that some CCC resources and employees assist in the operation of CCC, its parent company. However, CCC, not Defendants, is operating ZOi Films, as it is a wholly-owned subsidiary of CCC. Defendant denies the remainder of the allegations.

55. Defendant denies the allegations of Paragraph 56.

56. Defendant denies the allegations of Paragraph 57.

57. Defendant denies the allegations of Paragraph 58. Plaintiff has been provided with proof that ZOi Films is a wholly-owned subsidiary of CCC.

58. Defendant denies the allegations of Paragraph 59. Specifically, Defendant denies that Plaintiff "fairly and adequately represents the members similarly situated." Plaintiff is engaged in business competitive to CCC. Plaintiff owes more than $100,000 to CCC and, though CCC has requested that Plaintiff repay the amount he owes, Plaintiff has refused to do so. Plaintiff claims that the cost of a car he has used for personal purposes should be borne by CCC. Additionally, Plaintiff owns only a 44% interest in CCC while Defendants collectively own a 56% interest in CCC. For these and other reasons, Plaintiff is singularly unsuited to act as a representative of CCC and Defendants are better suited as representatives.

59. Defendant denies the allegations of Paragraph 60. Defendant is acting in the interests of CCC. In particular, Defendant Comeau-Shirley has not been paid for her professional services, either in fee or ownership interests as Plaintiff agreed, notwithstanding Plaintiff is currently engaging in competitive activities, while at the same time owing CCC more than $100,000.

60. Defendant admits so much of Paragraph 61 as alleges that Defendants, through CCC, have provided financial information to Plaintiff. Defendant denies the remaining allegations. Defendants have provided financial information in PDF form, but not in original electronic form as requested by Plaintiff. Defendant understands that attorney John Zamer is coordinating the release of further financial information.

61. Defendant denies Paragraph 62 as written. Defendant admits that financial information was extracted from the financial database through a report writing programs and selected a report style that protects the confidential detail, which has no impact on either net income or equity. Defendant further admits that the financial statements were formatted in a layout typical for a privately held company. The statements were marked DRAFT in large font.

62. Defendant denies the allegations of Paragraph 63. The subpoena referenced in Paragraph 63 was addressed to CCC, not to Defendant. Consequently, counsel for CCC was addressing this request and, on information and belief, is coordinating the response with Plaintiff's counsel.

63. Responding to Paragraph 64, Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

64. Defendant denies the allegations of Paragraph 65.

65. Defendant denies the allegations of Paragraph 66.

66. Paragraph 67 constitutes a statement of opinion and conclusion of law by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations.

67. Defendant denies Paragraph 68 and will show that Plaintiff unjustifiably complained about many things. Defendant denies Plaintiff's claims and denies that Plaintiff has CCC's best interest in mind by the filing of this lawsuit. Plaintiff acts for his own purposes only and is unfit to represent CCC derivatively because he has harmed the business of CCC, is liable to CCC for his misdeeds, and owes CCC over $150,000 which he has refused to pay.

68. In response to Paragraph 69, Defendant denies that Plaintiff is entitled to any relief at this point other than the accounting which the Court has ordered, and which Defendant has repeatedly sought.

69. In response to Paragraph 70, Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

70. Defendant denies Paragraph 71.

71. Defendant denies the allegations of Paragraph 72.

72. Paragraph 73 is directed to the Defendant Gandis and Defendant Comeau-Shirley craves reference to his response. Based upon information and belief, Defendant admits so much of Paragraph 72 as alleges that Defendant Gandis receives income from his stake in DecoTex. However, Defendant denies the remaining allegations and denies that DecoTex generates revenue through the sale of film.

73. Defendant denies the allegations of Paragraph 74 and further pleads that Defendant does not believe such fiduciary duties can be delegated and also she did not agree to or accept any delegation of fiduciary duties at any time.

74. Defendant denies the allegations of Paragraph 75.

75. Defendant denies the allegations of Paragraph 76.

76. Defendant denies the allegations of Paragraph 77.

77. Defendant denies the allegations of Paragraph 78.

78. Upon information and belief, Defendant denies Paragraph 79.

79. Defendant denies the allegations of Paragraph 80 and would further show that CCC's financial viability is impacted by actions taken by Plaintiff and therefore there are no assurances either way.

80. Defendant denies Paragraph 81and that Plaintiff has suffered any monetary damages and denies that CCC has suffered any monetary damages on account of any conduct by Defendant.

81. Defendant denies the allegations contained in Paragraph 82.

82. Defendant denies the allegations contained in Paragraph 83.

83. Responding to Paragraph 84, Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

84. Defendant denies the allegations of paragraph 85.

85. Defendant denies the allegations of Paragraph 86.

86. Defendant denies Paragraph 87 to the extent it alleges any wrong-doing by Defendant.

87. Paragraphs 88 and 89 constitute conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

88. Defendant denies that Plaintiff is a proper derivative representative and denies the allegations of Paragraph 90.

89. Defendant denies the allegations of Paragraph 91 except as they relate to an accounting and Defendant will show that the Court has ordered that there be an accounting, which is an Order for relief that Defendants have urged throughout this litigation.

90. Paragraph 92 constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

FOR A SECOND DEFENSE
(Rule 12(b)(6), SCRCP)

91. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

92. Defendant states that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendant.

FOR A THIRD DEFENSE
(Unclean Hands)

93. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

94. On information and belief, Plaintiff continued to transact business as EFS months and years after the formation of CCC, thereby denying business and profits to CCC and taking such profits for himself.

95. On information and belief, Plaintiff has acted against the interests of CCC by disclosing sensitive and confidential Company information to competitors of CCC.

96. On information and belief, Plaintiff has utilized confidential and proprietary information from CCC to compete with CCC.

97. On information and belief, Plaintiff deleted numerous files and documents from the Company laptop before returning it to CCC, thereby depriving CCC of important useful information and hindering its sales.

98. On information and belief, Plaintiff owes over $100,000.00 to CCC and, despite receiving a demand for payment from the Company, has refused to repay the amount owed.

99. Plaintiff has used the threat of dissolution in attempting to negotiate favorable terms of a purchase of his interest.

100. Given the above, based on the doctrine of unclean hands, Plaintiff is not entitled to equitable relief of any kind.

FOR A FOURTH DEFENSE
(Statute of Limitations)

101. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

102. On information and belief, some or all of Plaintiff's claims must be reduced or barred by the applicable statute of limitations or statute of repose.

FOR A FIFTH DEFENSE
(Failure to Mitigate)

103. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

104. Defendant alleges that Plaintiff has failed to mitigate his damages as required by law.

FOR A SIXTH DEFENSE
(Laches, Waiver, Estoppel)

105. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

106. On information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, or estoppel.

FOR A SEVENTH DEFENSE
(Set Off)

107. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

108. Over the course of his time with CCC, Plaintiff obtained numerous loans from the Company. These loans were non-recourse, but secured by Plaintiff's membership interest in CCC. The loans included interest at 10% and were due upon demand. Beginning in October 2011, the loans were recourse loans.

109. Additionally, Plaintiff charged personal expenses to his Company credit card and account.

110. Plaintiff is currently indebted to CCC in excess of $110,000.00.

111. In the event that it is determined that Plaintiff is entitled to an award of monetary damages against Defendants, which is denied and admitted solely for the purpose of this defense, Defendants contend that they are entitled to set-off against such award.

COUNTERCLAIMS

By way of counterclaim, Defendant, complaining of Plaintiff, respectfully shows as follows:

112. Defendant's counterclaims stem from the same incidents and facts which form the basis for Plaintiff's Complaint. Therefore, jurisdiction is proper.

113. Defendant adopts the Counterclaims concurrently being sought by CCC.

COUNTERCLAIM
(Breach of Fiduciary Duty)

114. Defendant incorporates by reference their responses to the foregoing paragraphs as if fully set forth herein.

115. As a member of CCC, Plaintiff had a fiduciary relationship with CCC and Defendants.

116. When CCC accepted Plaintiff's resignation on January 17, 2012, Plaintiff was instructed that, while he would be allowed to take personal items, he was not to remove Company property.

117. Nonetheless, Plaintiff left the offices with a cell phone and two laptop computers, both belonging to CCC.

118. After multiple requests from CCC and Defendants, Plaintiff later returned these items, but only after copying numerous Company records.

119. On information and belief, Plaintiff has since utilized confidential and proprietary information obtained from CCC to compete with CCC.

120. Plaintiff's actions constituted a breach of his fiduciary duty to CCC and Defendants.

121. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to her share of lost profits.

COUNTERCLAIM
(Breach of Fiduciary Duty)

122. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

123. Upon receiving the laptops and cell phone, CCC discovered that the phone's SIM card had been removed.

124. CCC provided these items to a forensic technology firm for analysis. Based on this analysis, it was determined that Plaintiff had copied thousands of files from the computers and then "swept" the computer, attempting to perform a permanent delete. It is impossible to quantify the number of files deleted as the forensic team was only able to recover certain files not deleted by the "sweep" computer program Plaintiff ran.

125. On information and belief, the permanently deleted files included numerous files and information useful to the Company in its operations and included names of newly-identified suppliers, names of clients that were currently negotiating new deals and opportunities, and pricing information.

126. These actions constituted a breach of Plaintiff's fiduciary duty to CCC and Defendants.

127. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to her share of lost profits.

WHEREFORE, having fully answered the Verified Second Amended Complaint of Plaintiff, this Defendant prays that Plaintiff's Verified Second Amended Complaint be dismissed with prejudice, together with the costs and disbursements of this action, Defendant seeks an award of damages on her counterclaims, including actual and punitive damages, in an amount to be determined by the jury and for such other and further relief as this honorable Court deems proper.

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November 15, 2013

VERIFICATION

I, Andrea Comeau-Shirley, being duly sworn, testify that I have read the Answer of Defendant Andrea Comeau-Shirley to Verified Second Amended Complaint and Restated Defenses and Counterclaims and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information and belief I believe to be true.

ANDREA COMEAU-SHIRLEY

SWORN TO BEFORE ME this 15 day of November, 2013.

Notary Public for Georgia

My Commission Expires: August 17, 2015

Notary Public, Paulding County, Georgia
My Commission Expires August 17, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

-vs-

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC and Carolina Custom Converting, LLC,

Defendants.

CERTIFICATE OF SERVICE

C.A. No. 2012-CP-23-2887

John Gandis and Andrea Comeau-Shirley,

Third-Party Plaintiffs,

-vs-

Carolina Custom Converting , LLC,

Third-Party Defendant.

The undersigned certifies that on the 15th day of November, 2013, she caused to be served the **Answer of Defendant Andrea Comeau-Shirley to Verified Second Amended Complaint and Restated Defenses and Counterclaims** upon the attorneys for Plaintiff and Co-Defendants, by depositing in the United States mail, with due and proper postage affixed thereto, copies of the same addressed to:

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Law Office of W. Andrew Arnold, P.C.
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John Gandis

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Attorney for Defendant
Andrea Comeau-Shirley

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC,

Defendants,

John Gandis and Andrea Comeau-Shirley,

Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC,

Third-Party Defendant.

C.A. NO: 2012-CP-23-02887

ANSWER OF DEFENDANT JOHN GANDIS TO VERIFIED SECOND AMENDED COMPLAINT AND RESTATED DEFENSES AND COUNTERCLAIMS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2013 NOV 18 PM 4 03

Defendant John Gandis (hereinafter "Gandis," "Defendant Gandis" or "Defendant") answering the allegations of Plaintiff's Verified Second Amended Complaint would show unto the Court as follows:

Each and every allegation not specifically admitted to herein is denied. Each defense incorporates the allegations and defenses of every other defense to the extent such incorporation is not inconsistent with the defense.

1. On information and belief, Defendant admits that Plaintiff is a citizen and resident of Greenville County, South Carolina. The remaining allegations of Paragraph 1 are denied, and it is denied that Plaintiff is a proper person to bring a derivative action on behalf of CCC because his interests are not aligned with and are in fact antagonistic to those of CCC.

2. Defendant admits the allegations of Paragraph 2.

3. Defendant admits the allegations of Paragraph 3.

4. Paragraph 4 is admitted to the extent it alleges that CCC is a South Carolina limited liability company. The balance of Paragraph 4 is denied.

5. Defendant admits the allegations of Paragraph 5. Further answering Paragraph 5, Defendant states that Carolina Custom Converting, LLC (hereinafter referred to as "CCC" or "the Company") was formed on November 2, 2007 pursuant to Articles of Organization filed with the Office of the South Carolina Secretary of State, as recognized by the South Carolina Secretary of State in the attached Certificate of Existence (attached hereto as "Exhibit A").

6. Defendant admits the allegations of Paragraph 6 with respect to ZOi's formation as a Georgia entity. However, Defendant notes that ZOi Films is a wholly-owned subsidiary of CCC.

7. Defendant admits so much of Paragraph 7 as alleges that Plaintiff and Defendant Gandis agreed to be members of an LLC. Defendant denies the remainder of the allegations. Defendant states that Plaintiff and Defendant Gandis agreed to form a new entity which was to be owned 51% by Defendant Gandis and 49% by Plaintiff. The parties engaged attorney Stephen Potts who filed the Articles of Organization with the Office of the South Carolina

Secretary of State, naming Defendant Gandis as the manager and designating CCC as a term company.

8. Defendant admits so much of Paragraph 8 as alleges that Plaintiff and Defendants never signed an Operating Agreement and that Plaintiff agreed, at the inception of CCC, to wind down his individual business – Eastern Film Solutions (hereinafter referred to as "EFS") – which also related to the slitting and selling of film, to contribute all of the assets of EFS to CCC, and to participate in the slitting of and sale of film solely for the benefit and profit of CCC. Defendant denies the remainder of the allegations. Defendant further states that attorney Potts prepared drafts of an Operating Agreement, which still exist, but the Agreement was never signed. Plaintiff was informed at the inception of CCC and agreed that there would be no compensation and that all financial rewards would be in the form of distributions and that the amount and frequency of the distributions was not assured and would depend entirely on the availability of funds and the success of the Company, and other business factors, as is the case with most all start-up companies. On a number of occasions, Plaintiff, in conversation with Defendant Comeau-Shirley, referred to his distributions as "salary," but each time was corrected by Defendant Comeau-Shirley. Defendant Comeau-Shirley began work for the Company in 2008 after she was recommended by Defendant Gandis's father. At an initial meeting with Plaintiff and Defendant Gandis, at which the parties discussed the venture, Defendant Comeau-Shirley asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up company or if he would prefer to be a salaried employee. Plaintiff assured Defendant Comeau-Shirley that he understood and was prepared for the uncertainties and risk. Later, on reviewing the books, she noticed a significant disparity in distributions as Plaintiff had received all distributions while

Defendant Gandis had provided all or almost all funds to the business, which had provided funds for the distributions, but received no distributions himself. Consequently, on multiple occasions, Defendant Comeau-Shirley again asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up Company or if he would prefer to be a salaried employee or to restructure his membership participation. Each time, Plaintiff again stated that he accepted the uncertainty and risks.

9. Defendant denies the allegations of Paragraph 9. The Articles of Organization, as filed, list CCC as a term corporation, and Defendant is informed and believes that CCC was and is a term company.

10. Defendant denies the allegations of Paragraph 10 but admits that it was agreed that Defendant Gandis would handle the day-to-day operations of CCC. Further answering Paragraph 10, Defendant states that Plaintiff and Defendant Gandis agreed that CCC would be a manager-managed company. While Plaintiff asserts that there was no express agreement related to Defendant Gandis' status as the managing member, at their initial meeting Plaintiff represented to Defendant Comeau-Shirley that Defendant Gandis possessed the final authority in all matters. Defendant Comeau-Shirley did not put forth the option of exchanging services for a membership interest until both members had expressed their understanding that Defendant Gandis could act alone. CCC, through its course of dealings, had Plaintiff manage the negotiations for and decisions to purchase film and handle the terms and conditions of sales to customers and other customer relations and as a result Plaintiff also was a manager of CCC.

11. Defendant admits so much of Paragraph 11 as alleges that Plaintiff and Defendant agreed to admit Defendant Comeau-Shirley as a member with a 10% percent interest and to

reduce each of their respective shares accordingly. However, Defendant reiterates that the initial division of shares between Plaintiff and Defendant Gandis was 49% for Plaintiff and 51% for Defendant Gandis, and the resulting membership interest was Defendant Gandis 46%, Plaintiff 44%, and Defendant Comeau-Shirley 10%.

12. Defendant admits that he acted as a manager of CCC, as did Plaintiff. Each had such fiduciary duties as the law imposes. The decision to admit Defendant Shirley as a member of CCC and to have her involved with certain accounting functions for CCC was a joint decision by Plaintiff and Defendant.

13. Defendant admits so much of Paragraph 13 as alleges that Plaintiff performed some amount of services for CCC and did not receive compensation. Defendant denies the remainder of the allegations and specifically denies that Plaintiff performed any services beyond the scope of his original commitment. Plaintiff received distributions, but these distributions were due to his interest as a member and not as compensation for services rendered. Despite a lack of measurable success at the time, Plaintiff began receiving distributions from CCC in July 2008 of $8,000/month. These distributions were largely funded by loans from Defendant Gandis, who did not take distributions at the time. When Defendant Comeau-Shirley began working with CCC in late 2008, she noticed this situation and informed Defendant Gandis and Plaintiff that Defendant Gandis should take his proportionate share of distribution given his interest, despite the fact that Defendant Gandis would essentially be paying himself. Defendant Gandis requested that his current distribution not exceed the amount received by Plaintiff as this simplified the accounting. The parties raised their distributions to $9,000/month in January 2009 but then, at Defendant Comeau-Shirley's urging, both reduced the distributions to

$6,802.84/month in September 2009 in order to better afford the purchase of certain equipment. Though Defendant Gandis and Plaintiff each contributed $3,000 for the first purchase of film, to date, Plaintiff has made no further additional contributions to CCC, though he continued to take monthly distributions. Defendant Gandis, on the other hand, provided CCC with numerous loans totaling $229,332 in 2008, $849,908.10 in 2009, and $584,629.84 in 2010. From time to time, Defendant Gandis was repaid portions of these loans.

14. Defendant denies the allegations of Paragraph 14. It should be noted that, throughout the Complaint, Plaintiff frequently refers to actions of CCC, through its management, as actions taken by the Defendants individually. This is denied. In nearly every instance, what Plaintiff refers to was a business action taken by the Company and Defendants' actions were within the proper scope of their authority and on behalf of the Company, including Defendant Gandis' actions as manager of CCC. For purposes of this Answer, unless Defendant specifically admits to some action taken in his individual capacity, all actions were taken by CCC.

15. Defendant denies the allegations of Paragraph 15. Further answering the allegations, Defendant states that in late 2009, after Plaintiff blamed break-downs with his car as an excuse for his failure to appear for meetings with a number of prospective clients, Defendant Gandis proposed that CCC co-sign on a reliable car. Defendant Gandis believed that Plaintiff was not in a position to obtain such financing on his own due to Plaintiff's bankruptcy. Plaintiff then purchased the car with CCC as a co-signor. Defendant emphasizes that the vehicle was not purchased as a sales vehicle as, just prior to the purchase, CCC had hired an additional salesman, James J. Bucks, who assumed responsibility for those sales accounts requiring travel. Mr. Buck's travel expenses were embedded within his commission structure thereby eliminating

most automobile expenses. As a result of this agreement, CCC had no business purpose for a sales vehicle. Because the vehicle was not purchased as a sales vehicle, CCC did not list it as such for tax purposes. On information and belief, Plaintiff personally paid all automotive expenses associated, though he at times attempted to charge expenses to the Company credit card, but relented when confronted by Defendant Comeau-Shirley and reimbursed the Company. Plaintiff was repeatedly reminded that only business expenses should be paid for on the Company card.

16. Defendant denies the allegations of Paragraph 16.

17. Defendant denies the allegations of Paragraph 17. Plaintiff promised, at the inception of CCC, that he would contribute the ongoing business of EFS to CCC by transferring the EFS client base to CCC and extinguishing all pre-contribution liabilities, and thereafter put his efforts entirely toward the new venture.

18. Defendant denies the allegations of Paragraph 18. As previously stated, both Defendant Gandis and Plaintiff agreed to reduce their monthly distributions from $9,000 to $6,802.84 beginning in September 2009 in order to better afford the purchase of certain equipment.

19. Defendant denies the allegations of Paragraph 19. Both Defendant Gandis and Plaintiff continued to receive monthly distributions until April 2011. At this time, due to the long-standing disparity between Defendant Gandis shouldering all financial risk by continually making loans to CCC, without participation by Plaintiff, as well as the fact that, in 2010, the Company had distributed more than twice the cash flow that had been created by the Company, CCC informed Plaintiff that the Company would cease making monthly distributions until the

Company could generate positive cash flow without working capital loans. Plaintiff complained that he must receive monthly checks from CCC to meet his personal expenses, so the Company agreed to allow Plaintiff to have monthly loans made to him by CCC after Plaintiff agreed that the loans would be structured in a manner that was not equivalent to advances upon his future draws. To effect this agreement, the loans were to be secured by his entire membership interest. Plaintiff agreed that should a demand be made against the loans, at his option, he could either repay the loans or relinquish his equity interest in full satisfaction of the amount. The members agreed to monitor the loan balance to avoid the risk that there would be an unexpected call upon the loan. The members also understood that the most efficient means for repayment of Plaintiff's loans would be through subsequent distributions. This approach anticipated that, when the Company declared a distribution, Plaintiff's share would be applied to reduce his loan balance with any excess to be paid to Plaintiff. This was explained to Plaintiff, who stated his understanding. Such a distribution occurred in November 2011, at which point a distribution of $45,000 was applied to Plaintiff's outstanding loan balance of $131,859.46, thereby reducing the balance to $86,859.46.

20. Defendant admits so much of Paragraph 20 as alleges that Defendant Gandis ceased taking distributions in April 2011. Defendant states that prior to this time, beginning in August 2010, Plaintiff began taking monthly loans at an amount set by Plaintiff. These loans were non-recourse but fully secured by Plaintiff's interest in CCC. Plaintiff soon decided to borrow more and increased the monthly amount to $12,000. By the fall of 2011, due to concerns over profitability and cash flow, the Company became concerned with Plaintiff's loan balance and advised Plaintiff that no further loans would be given after 2011 until cash flow had returned

to a positive position. At this point, Plaintiff asked what options were available to provide a guaranteed cash flow and discussions ensued.

21. Defendant denies the allegations of Paragraph 21. Defendant presented Plaintiff with a letter containing three options, on October 31, 2011. Plaintiff was offered three general approaches for discussion. The first option provided that Plaintiff become a salaried employee with bonus structure and have his capital paid out to him over the next few years. As Plaintiff had complained about an outstanding tax obligation related to the prior year income, Defendants offered to consent to an amendment to the membership agreement that would redefine Plaintiff's "interest-in-the-partnership" as a fixed dollar amount, thereby possibly allowing Plaintiff certain tax benefits. Finally, the offer provided that Plaintiff simply remain as a member. Plaintiff was to respond by November 21, 2011. On December 1, Plaintiff made a counter-proposal. The counter-proposal stated that Plaintiff believed his interest in CCC to be worth $770,000, that he wished half of this amount to be paid up front and for the remainder to be guaranteed by Defendants and to accrue interest at 8%. Additionally, Plaintiff demanded an employment agreement of not less than five years with a guaranteed monthly salary of $12,000, along with bonuses, commission, and stock. Defendants declined to consider the proposal and again directed Plaintiff to the three options previously presented. Plaintiff insisted that he could not consider the offer to have his equity cashed out based on the year-end amount and without being presented a fixed offer value. As such, Defendants estimated the company's position at December 31st and presented an offer to buy Plaintiff's interest for $200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately $150,000, for a total offer value of approximately $350,000. Expressing disbelief that the Defendant's offer was genuine, Plaintiff

asked whether Defendant Gandis would accept the same amount for his interest if he could secure the funds from his family. Defendant Gandis asked Defendant Comeau-Shirley if she would consent to a sale to the Wilson family. Defendant Comeau-Shirley noted that the only viable purchaser for the shares would be Plaintiff's family members as their investment decision would be based on the representations and commitments made by Plaintiff, including his plan for managing business roles currently provided by Defendants. A third-party investor would likely be hesitant to invest in a start-up company with such a personnel change. Noting that the building could present a business interruption concern, Defendant Gandis agreed that he would sell the building for less than his original 1999 acquisition price, devoid of any mark ups for improvements. Defendant Gandis expressed tentative agreement to sell to Wilson's family and outlined the general financing conditions, including that the purchase be in cash and include the purchase of the building and land, for an additional $150,000. Plaintiff stated that he would attempt to obtain the necessary funds from his family. Contrary to Plaintiff's claim that he was pressured to "forfeit" his interest, Plaintiff was presented with various options, which he rejected, and Plaintiff expressed his intent to purchase Defendants' interests and was given the opportunity to do so. However, Plaintiff never came forward with funds.

22. Defendant denies the allegations of Paragraph 22. Plaintiff was notified in writing on November 2, 2011 that the Company was not in a position to make distributions and Defendant Gandis was not in a position to make additional loans to CCC to enable it to make loans to Plaintiff at the level of the prior several months until sales volumes return. Nonetheless, Defendant Gandis, though under no obligation to do so, offered to make one additional $12,000

loan to the Company so that it could loan funds to Plaintiff to enable him to put aside funds for expenses in early 2012.

23. Defendant admits so much of Paragraph 23 as alleges that Plaintiff and Defendant Gandis met and discussed a buyout of Plaintiff's membership interest. There was also a discussion of Plaintiff's acquisition of Defendants' interests. This buyout was one of the three options referenced above. Though Plaintiff later made a counter-offer to Defendants which included a five-year employment agreement, Defendant denies that either Defendant indicated any agreement to Plaintiff's proposal.

24. Defendant denies the allegations of Paragraph 24. As stated above, Defendant Gandis informed Plaintiff in early November that the Company would make Plaintiff one additional loan so as to allow him to set aside funds for future expenses.

25. Defendant denies the allegations of Paragraph 25. As stated above, Defendants offered Plaintiff three options, including an offer to buy Plaintiff's interest for $200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately $150,000, for a value of the offer being $350,000.

26. Defendant admits so much of Paragraph 26 as alleges that Plaintiff requested a copy of the CCC balance sheet. Defendant denies the remaining allegations. Defendant specifically denies that the pro-forma balance sheet as of December 31, 2011 provided to Plaintiff contained any deceptive or fraudulent entries.

27. Defendant admits so much of Paragraph 27 as alleges that the balance sheet provided to Plaintiff included an entry for "preference to minority." Defendant denies the remaining allegations. Further answering Paragraph 27, Defendant states that the amount listed

under this entry was to denote the fact that professional accounting, financial, and implementation services had been rendered by Defendant Comeau-Shirley's accounting practices beyond the limited services that were exchanged for a 10% membership interest in CCC. As the Company was unable to pay for her services, Defendant Comeau-Shirley had deferred billing for these services and, at the time the balance sheet was provided to Plaintiff, the parties were in discussions as to whether the obligation might be exchanged for increased equity in the Company.

28. Plaintiff rejected all offers made by CCC.

29. Defendant denies the allegations of Paragraph 29.

30. Defendant admits so much of Paragraph 30 as alleges that Defendants rejected Plaintiff's offer in writing. Defendant denies the remaining allegations. In the written communication, Defendants advised that they would all continue as members of CCC. The communication did not repeat the fact that Plaintiff would not receive future loans, as Plaintiff had been advised of this fact over two months prior, in a letter of November 2, 2011.

31. Defendant admits so much of Paragraph 31 as alleges that, upon inquiry from Plaintiff, Defendants allowed that they would be willing to sell their interests in CCC to Plaintiff and his brother-in-law. Defendant denies the remaining allegations.

32. Defendant denies the allegations of Paragraph 32. Plaintiff did not seek permission nor have permission to seek "qualified buyers" other than his brother-in-law, Steve Norvell, and did not inform Defendants that he intended to seek out buyers other than his brother-in-law. Defendants also deny that all prospective buyers solicited by Plaintiff signed Non-Disclosure agreements before reviewing information provided to them by Plaintiff.

33. Defendant admits so much of the allegations of Paragraph 33 as alleges that Defendants requested to know the identity of any proposed purchasers Plaintiff had approached. Defendant denies the remaining allegations. Defendant states that when the Company became aware that Plaintiff was meeting with potential buyers other than his brother-in-law, including Film-Tech, LLC, a highly-capitalized competitor of CCC, the Company immediately became alarmed. Defendants became aware that a meeting was scheduled during which Film-Tec representatives were to be given access to confidential CCC sales information, including sales forecasts. After consulting with the Company's counsel, Defendants provided Plaintiff with written notice that he did not have permission to speak to buyers other than his brother-in-law.

34. Defendant admits the allegations of Paragraph 34. Defendant states that the matter of Plaintiff's day-to-day access to QuickBooks was not a matter requiring a vote of the members, but was a company decision to make. Plaintiff retained his rights to request an accounting.

35. Defendant denies the allegations of Paragraph 35. On January 11th Defendant Gandis wrote Plaintiff reminding him that Defendant Gandis was the sole manager which Gandis believed himself to be. Defendant states that, in the wake of the Company's letter to Plaintiff restricting his authority to solicit buyers, Plaintiff threatened to dissolve the Company, claiming that because no Operating Agreement had been signed, CCC was an at-will corporation.

36. Defendant denies the allegations of Paragraph 36. On January 6th Plaintiff sent an email to Defendants stating, "Since John and I began discussions regarding CCC buying me out and extending an employment agreement, John has insisted that the goal was not to force me out of the Company but to give me some security and incentive to help grow the business. He

said he wanted to make a fair buyout offer and a fair and attractive, employment offer." Plaintiff provided a counter-offer requesting buyout of his interest for $250,000, if the Company allocated to him loss of $325,000 for 2011 and buyout price of $300,000 without the arbitrary tax loss allocation Each offer required the forgiveness of his loan, an upfront payment of $50,000 paid up front and quarterly payments thereafter (with interest accruing at 6% interest). The offer additionally included a three-year employment agreement with a guaranteed salary of $12,000/month for year one and not less than $10,000/month for the following years, along with a bonus package, the Lexus, and personal guarantees from Defendants on the buyout.

37. The Company terminated Plaintiff's access to the CCC computer network on January 17, 2012. Defendant denies the remaining allegations. Plaintiff met with Defendant Gandis on the day in question. The meeting was cordial but, just minutes after Plaintiff left the meeting, John Zamer, counsel for Defendants, received a call from Clayton Jennings. Jennings informed Zamer that Plaintiff saw no possibility of continuing to work together with the Company. Based on the statements by Jennings, Zamer advised the Company to terminate Plaintiff's access to the CCC computer network. As Plaintiff possessed both member and employee attributes, Zamer recommended that CCC seek the advice of a South Carolina employment law specialist. The Company hired William Floyd of Nexsen Pruet who advised that the Company prepare a letter for Plaintiff and arrange for a Sheriff to be in the parking lot the following morning.

38. On January 18, 2012, Defendant Gandis advised Plaintiff that CCC had accepted his resignation and that Plaintiff should vacate the office immediately. Defendant denies the remaining allegations. The Company interpreted the statements by Plaintiff's attorney as

effecting his resignation and therefore drafted a letter acknowledging Plaintiff's resignation and, given Plaintiff's prior actions, took steps to ensure the protection of all company secrets and assets. To this end, the Company hired a locksmith and enlisted the help of a sheriff's deputy, in the event that Plaintiff was uncooperative. When given the letter, Plaintiff informed Defendant Gandis "I was not ready yet."

39. The Company had contacted the local sheriff's office to be on hand in the event that Plaintiff was uncooperative. If Plaintiff had packed his personal belongings and left the premises, he would not have been aware of the Sheriff's presence. Plaintiff was instructed not to remove Company property but, after discussion, it was agreed that Plaintiff could remove his personal items but was to leave Company assets. Plaintiff then proceeded to make three trips to his car, taking with him, among other things, a cell phone and two laptop computers, over Defendant Gandis's objections that these were Company assets. Plaintiff then remained in the office, making phone calls and packing documents into his briefcase.

40. Defendant admits the allegations of Paragraph 40.

41. Defendant admits so much of Paragraph 41 as alleges that the Company terminated Plaintiff's cell phone service. Defendant denies the remaining allegations. Further answering Paragraph 41, Defendant states that, despite the Company's request for Plaintiff to leave the premises, Plaintiff remained in his office making phone calls on his Company cell phone. Defendant Gandis therefore requested that cell service to the phone be disconnected.

42. Plaintiff's health insurance was terminated. Defendant denies the remaining allegations. Further answering Paragraph 42, Defendant states that CCC offers health insurance coverage to its employees, paying 75% of the employee's coverage and 50% of the coverage for

the employee's family. As Plaintiff did not pay the premiums following his resignation, the coverage lapsed on February 1, 2012. With regard to distributions, Defendant states that there have been no distributions to any members in 2012.

43. Defendant denies the allegations of Paragraph 43. Plaintiff has repeatedly stated to Defendants that he intends to compete with CCC and, on information and belief, Plaintiff has taken a position as the Director of Film Sales at Neologic Distributions. Given this, the Company offered to disclose the requested financial information to Plaintiff if he would complete a confidentiality agreement, which was provided to him shortly after he resigned. Plaintiff has been provided with timely updates as to the status of financial information that impacts his personal tax situation as well as a great deal of additional information since this litigation began. The Company has provided various financial statements, a detailed listing of inventory assets, as well as numerous financial schedules. Defendant and CCC stand ready to assist Del Bradshaw with the Court ordered accounting.

44. Defendant denies the allegations of Paragraph 44. Further answering Paragraph 44, Defendant states that CCC returned seven boxes of what was believed to be personal property of the Plaintiff and has offered to return any other property that Plaintiff can document as personal assets. When CCC was formed, Plaintiff agreed to contribute all of the business assets of EFS, which included all office equipment and one fork-truck. Thereafter, Plaintiff moved these assets to the newly leased offices of CCC, which Defendants believe effected Plaintiff's fulfillment of this portion of his contribution pledge to the newly formed CCC's.

45. CCC paid attorney's fees for attorneys Zamer and Floyd. Defendant denies the remaining allegations of Paragraph 45. Further answering Paragraph 45, Defendant states that

all matters considered by attorneys Zamer and Floyd related to Company business and were properly paid by the corporation.

46. Responding to Paragraph 46, Defendant is without knowledge or information as to when Plaintiff discovered that ZOi Films had been formed. ZOi Films is a wholly-owned subsidiary of CCC. As ZOi Films is a wholly-owned subsidiary of CCC, Defendant denies that ZOi Films engages in activities harmful to CCC but rather that ZOi serves to expand CCC's market opportunities. Defendant denies that CCC has suffered any damage related to ZOi.

47. Defendant denies the allegations of Paragraph 47, except to admit that Michael Shirley is listed as the registered agent for ZOi Films. ZOi Films was created after a number of clients declined to do business with CCC based on their past dealings with Plaintiff.

48. Defendant admits the allegations of Paragraph 48.

49. Responding to Paragraph 49, Defendant admits that Defendant Gandis engaged John Gurley to secure the internet domain zoifilms.com.

50. Defendant admits the allegations of Paragraph 50.

51. Responding to Paragraph 51, Defendant Gandis admits that CCC hired a web design company to create the ZOi Films website. Defendant lacks sufficient knowledge or information to either admit or deny the remainder of the allegation and believe the photographs are in the public domain, though some may also be shown on the CCC website.

52. Defendant denies the allegations of Paragraph 52. ZOi Films is a wholly-owned subsidiary of CCC and therefore does not compete with CCC.

53. Defendant denies the allegations of Paragraph 53.

54. Defendant denies the allegations of Paragraph 54.

55. Defendant admits so much of Paragraph 55 as alleges that some CCC resources and employees assist in the operation of CCC, its parent company. However, CCC, not Defendants, is operating ZOi Films, as it is a wholly-owned subsidiary of CCC. Defendant denies the remainder of the allegations.

56. Defendant denies the allegations of Paragraph 56.

57. DecoTex is not a defendant in this lawsuit and Defendant denies the allegations of Paragraph 57.

58. Defendant denies the allegations of Paragraph 58. Plaintiff has been provided with proof that ZOi Films is a wholly-owned subsidiary of CCC.

59. Defendant denies the allegations of Paragraph 59. Specifically, Defendant denies that Plaintiff "fairly and adequately represents the members similarly situated." Plaintiff is engaged in business competitive to CCC. Plaintiff owes more than $100,000 to CCC and, though CCC has requested that Plaintiff repay the amount he owes, Plaintiff has refused to do so. Plaintiff claims that the cost of a car he has used for personal purposes should be borne by CCC. Additionally, Plaintiff owns only a 44% interest in CCC while Defendants collectively own a 56% interest in CCC. For these and other reasons, Plaintiff is singularly unsuited to act as a representative of CCC and Defendants are better suited as representatives.

60. Defendant denies the allegations of Paragraph 60. Defendant is acting in the interests of CCC. In particular, Defendant Gandis has made numerous loans to finance the operations of CCC and, for a period of time, provided the Company with rent-free space in

which to operate. Plaintiff, meanwhile, is currently engaging in competitive activities, while at the same time owing CCC more than $100,000.

61. Defendant admits so much of Paragraph 61 as alleges that Defendants, through CCC, have provided financial information to Plaintiff. Defendant denies the remaining allegations.

62. Information was downloaded into Excel. Defendant denies any suggestion of any wrongful alteration of financial data. The financial information was extracted from the financial database through a report writing programs and selected a report style that protects the confidential detail, which has no impact on either net income or equity.

63. Defendant denies the allegations of Paragraph 63. The subpoena referenced in Paragraph 63 was addressed to CCC, not to Defendant. Consequently, counsel for CCC is addressing this request and, on information and belief, is coordinating the response with Plaintiff's counsel.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
Dissolution under S.C. Code § 33-44-801
(AS TO ALL DEFENDANTS)

64. Responding to Paragraph 64, Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

65. Defendant further answers the allegations as follows:

a. As stated above, Defendant admits requesting that the local sheriff deputy was requested to be on hand on January 18, 2012, so as to prevent the theft of Company property.

b. As stated above, the Company repeatedly offered to provide Plaintiff access to Company financial information if he would agree to sign a confidentiality agreement. This is, in part, due to Plaintiff's stated intention to compete with CCC even prior his new position as Director of Film Sales at Neologic Distributions.

c. Defendant denies this allegation.

d. Defendant denies this allegation.

e. As stated above, once Plaintiff resigned as an employee of CCC, he was no longer eligible for health insurance through the Company, unless he personally paid the premiums.

f. As stated above, at all times since the inception of CCC, all members could receive distributions but these ultimately were dependent on the success of the Company. At no point did the parties agree to pay Plaintiff a fixed monthly amount or to make distributions on a monthly basis.

g. As stated above, the purchase of Plaintiff's automobile was not a Company expense and therefore was not reported as such on CCC tax filings.

h. As stated above, Defendant admits to that Plaintiff's cell phone service was terminated when he continued to utilize his phone after CCC accepted his resignation.

i. As stated above, Defendant admits that CCC used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising

CCC on Company business, including, but not limited to, Plaintiff's resignation.

j. Defendant denies this allegation.

k. Defendant denies this allegation.

66. Defendant denies the allegations of Paragraph 66.

67. Paragraph 67 constitutes a statement of opinion and conclusion of law by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations.

68. Defendant will show that Plaintiff unjustifiably complained about many things. Defendant denies Plaintiff's claims and denies that Plaintiff has CCC's best interest in mind by the filing of this lawsuit. Plaintiff acts for his own purposes only and is unfit to represent CCC derivatively because he has harmed the business of CCC, is liable to CCC for his misdeeds, and owes CCC over $150,000 which he has refused to pay.

69. Defendant denies that Plaintiff is entitled to any relief at this point other than the accounting which the Court has ordered, and which Defendant has repeatedly sought.

FOR A SECOND DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

70. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

71. Defendant states that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for dissolution lies against CCC rather than the named Defendants.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendants Gandis)

72. Responding to Paragraph 70, Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

73. Defendant denies the allegations of Paragraph 71. Further answering Paragraph 71, Defendant states:

a. As stated above, CCC offered to provide Plaintiff access to Company financial information if he would agree to sign a confidentiality agreement. This was, in part, due to Plaintiff's stated intention to compete with CCC and his new position as Director of Film Sales at Neologic Distributions.

b. CCC properly used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising CCC on Company business, including, but not limited to, Plaintiff's resignation.

c. Defendant denies that Plaintiff was terminated.

d. As stated above, Defendant admits that a local sheriff deputy was requested to be on hand on January 18, 2012, so as to prevent the theft of Company property.

e. Defendant denies that the Articles of Organization, as filed by the office of attorney Stephen Potts, were contrary to the agreement of the members. Additionally, Defendant denies that Plaintiff and Defendant Gandis are equal members.

f. Defendant denies this allegation and refer to Plaintiff's January 6 correspondence in which he articulates Defendant Gandis' goal was not to force him from company nor to provide an unfair buyout offer.

g. Defendant denies this allegation. Plaintiff was aware that Defendant Comeau-Shirley would require compensation for the work she performed beginning in 2008 and before she was a member of CCC.

h. Defendant denies this allegation.

i. Defendant denies this allegation.

74. Defendant denies the allegations of Paragraph 72.

75. Defendant denies the allegations of Paragraph 73.

76. Defendant denies the allegations of Paragraph 74.

77. Defendant denies the allegations of Paragraph 75.

78. Defendant denies the allegations of Paragraph 76.

79. Defendant denies the allegations of Paragraph 77.

80. Upon information, Defendant denies the allegations of Paragraph 78.

81. Defendant denies any improper payment of attorneys fees.

82. Defendant denies the allegations of Paragraph 80.

83. Defendant denies the allegations of Paragraph 81.

84. Defendant denies the allegations contained in Paragraph 82.

85. Defendant denies the allegations contained in Paragraph 83.

FOR A FIRST DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
Conversion
(AGAINST DEFENDANTS GANDIS, COMEAU-SHIRLEY AND ZOi Films)

86. Responding to Paragraph 84, Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

87. Defendants deny the allegations of Paragraph 85.

88. Defendant denies the allegations of Paragraph 86.

89. Defendant denies Paragraph 87 to the extent it alleges any wrong-doing by Defendant. Defendant denies having misused assets in furtherance of his own personal business efforts. Defendant denies any wrongdoing in connection with any use of CCC assets in furtherance of the business of ZOi Films as ZOi Films is a wholly-owned subsidiary of CCC. Defendant denies the remaining allegations of Paragraph 87.

90. Paragraph 88 constitutes conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

91. Paragraph 89 constitutes conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

92. Defendant denies that Plaintiff is a proper derivative representative and denies the allegations of Paragraph 90.

93. Defendant denies the allegations of Paragraph 91.

94. Paragraph 92 constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

FOR A SECOND DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

95. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

96. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendants.

FOR A THIRD DEFENSE TO THE THIRD CAUSE OF ACTION
(Unclean Hands)

97. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

98. On information and belief, Plaintiff continued to transact business as EFS months and years after the formation of CCC, thereby denying business and profits to CCC and taking such profits for himself.

99. On information and belief, Plaintiff has acted against the interests of CCC by disclosing sensitive and confidential Company information to competitors of CCC.

100. On information and belief, Plaintiff has utilized confidential and proprietary information from CCC to compete with CCC.

101. On information and belief, Plaintiff deleted numerous files and documents from the Company laptop before returning it to CCC, thereby depriving CCC of important useful information and hindering its sales.

102. On information and belief, Plaintiff owes over $100,000.00 to CCC and, despite receiving a demand for payment from the Company, has refused to repay the amount owed.

103. Plaintiff has used the threat of dissolution in attempting to negotiate favorable terms of a purchase of his interest.

104. Given the above, based on the doctrine of unclean hands, Plaintiff is not entitled to equitable relief of any kind.

FOR A FIRST DEFENSE TO ALL OF PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANT
(Statute of Limitations)

105. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

106. On information and belief, some or all of Plaintiff's claims must be reduced or barred by the applicable statute of limitations or statute of repose.

FOR A SECOND DEFENSE TO ALL OF PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANTS
(Failure to Mitigate)

107. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

108. Defendant alleges that Plaintiff has failed to mitigate his damages as required by law.

FOR A THIRD DEFENSE TO ALL OF PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANTS
(Laches, Waiver, Estoppel)

109. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

110. On information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, or estoppel.

FOR A FOURTH DEFENSE TO ALL OF PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANTS
(Set Off)

111. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

112. Over the course of his time with CCC, Plaintiff obtained numerous loans from the Company. These loans were non-recourse, but secured by Plaintiff's membership interest in CCC. The loans included interest at 10% and were due upon demand. Beginning in October 2011, the loans were recourse loans.

113. Additionally, Plaintiff charged personal expenses to his Company credit card and account.

114. Plaintiff is currently indebted to CCC in excess of $110,000.00.

115. In the event that it is determined that Plaintiff is entitled to an award of monetary damages against Defendant, which is denied and admitted solely for the purpose of this defense, Defendant contends that he is entitled to set-off against such award.

COUNTERCLAIMS

By way of counterclaim, Defendant, complaining of Plaintiff, respectfully show as follows:

116. Defendant's counterclaims stem from the same incidents and facts which form the basis for Plaintiff's Complaint. Therefore, jurisdiction is proper. Defendant adopts the Counterclaims concurrently being sought by CCC.

COUNTERCLAIM
(Breach of Fiduciary Duty)

117. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

118. As a member with manager responsibilities of CCC, Plaintiff had a fiduciary relationship with CCC and Defendants.

119. When CCC accepted Plaintiff's resignation on January 17, 2012, Plaintiff was instructed that, while he would be allowed to take personal items, he was not to remove Company property.

120. Nonetheless, Plaintiff left the offices with a cell phone and two laptop computers, both belonging to CCC.

121. After multiple requests from CCC and Defendants, Plaintiff later returned these items, but only after copying numerous Company records and erasing the hard drives.

122. On information and belief, Plaintiff has since utilized confidential and proprietary information obtained from CCC to compete with CCC.

123. Plaintiff's actions constituted a breach of his fiduciary duty to CCC and Defendant.

124. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to lost profits.

COUNTERCLAIM
(Breach of Fiduciary Duty)

125. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

126. Upon receiving the laptops and cell phone, CCC discovered that the phone's SIM card had been removed.

127. CCC provided these items to a forensic technology firm for analysis. Based on this analysis, it was determined that Plaintiff had copied thousands of files from the computers and then "swept" the computer, attempting to perform a permanent delete. It is impossible to quantify the number of files deleted as the forensic team was only able to recover certain files not deleted by the "sweep" computer program Plaintiff ran.

128. On information and belief, the permanently deleted files included numerous files and information useful to the Company in its operations and included names of newly-identified suppliers, names of clients that were currently negotiating new deals and opportunities, and pricing information.

129. These actions constituted a breach of Plaintiff's fiduciary duty to CCC and Defendant.

130. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to lost profits.

WHEREFORE, having fully answered the Verified Second Amended Complaint, Defendant prays that Plaintiff's Verified Second Amended Complaint be dismissed with prejudice, together with the costs and disbursements of this action, Defendant seeks an award of damages on his counterclaims, including actual and punitive damages, in an amount to be determined by the jury and for such other and further relief as this honorable Court deems proper.

ELMORE GOLDSMITH, PA

By: _____

MASON A. GOLDSMITH, SC Bar No. 2182
55 Beattie Place, Suite 1050 (29601)
Post Office Box 1887
Greenville, SC 29602
Telephone: 864-255-9500
Attorneys for Defendant John Gandis

November 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC,

Defendants,

John Gandis and Andrea Comeau-Shirley,

Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC,

Third-Party Defendant.

C.A. NO: 2012-CP-23-02887

VERIFICATION OF DEFENDANT JOHN GANDIS

I, John Gandis, being duly sworn, testify that I have read the ANSWER OF DEFENDANT JOHN GANDIS TO VERIFIED SECOND AMENDED COMPLAINT and RESTATED DEFENSES AND COUNTERCLAIMS and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information belief I believe to be true.

JOHN GANDIS

SWORN to before me this
15th day of November, 20**.

(SEAL)
Notary Public for South Carolina
My commission expires: My Commission Expires March 16, 2018

EXHIBIT A

***

CERTIFICATE OF EXISTENCE

CAROLINA CUSTOM CONVERTING, LLC

Dated November 5, 2007

The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

CAROLINA CUSTOM CONVERTING, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on November 2nd, 2007, with a duration that is until December 31st, 2057, has as of this date filed all reports due this office, including its most recent annual report as required by section 33-44-211, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 5th day of November, 2007.

Mark Hammond

Mark Hammond, Secretary of State

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Customer Converting, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third Party Plaintiffs, Carolina Custom Converting, LLC, Third Party Defendant.	)	C.A. NO.: 2012-CP-23-02887 CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL A. HICKENSIMER
2013 NOV 18 PM 4 03

I, Robin G. Smith, an employee of Elmore Goldsmith, PA, pursuant to Rule 5(b)(1) SCRCP and counsel's regular business practices, do hereby certify that I have this date, mailed a copy of ANSWER OF DEFENDANT JOHN GANDIS TO VERIFIED SECOND AMENDED COMPLAINT and RESTATED DEFENSES AND COUNTERCLAIMS to Plaintiff's Attorney W. Andrew Arnold, by United States Postal Service, First Class, postage pre-paid and affixed thereto and addressed as follows:

W. Andrew Arnold, Esquire
Law Office of W. Andrew Arnold, PA
712 East Washington Street
Greenville, SC 29601

with copies electronically transmitted to the attorneys listed on the attached Exhibit A.

Robin G. Smith

ROBIN G. SMITH
Legal Assistant to Mason A. Goldsmith
Elmore Goldsmith, PA

Dated: November 15, 2013

EXHIBIT A

CERTIFICATE OF SERVICE AS TO
DEFENDANT JOHN GANDIS' ANSWER TO VERIFIED SECOND AMENDED COMPLAINT
and RESTATED DEFENSES AND COUNTERCLAIMS

W. Andrew "Andy" Arnold, Esquire
Law Office of W. Andrew Arnold, PA
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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson,

Counterclaim Defendant.

Carolina Custom Converting, LLC,

Third-Party Plaintiff,

vs.

Steven Norvell, NeoLogic Distribution, Inc., and Fresh Water Systems Inc.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2012-CP-23-02887

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 MAY 16 PM 12 03

REPLY TO COUNTERCLAIMS AND ANSWER TO THIRD-PARTY COMPLAINT OF STEVEN NORVELL, NEOLOGIC DISTRIBUTION, INC., AND FRESH WATER SYSTEMS, INC.

Third-Party Defendants Steven Norvell ("Norvell"), NeoLogic Distribution, Inc. ("NeoLogic"), and Fresh Water Systems, Inc. ("Fresh Water") respectfully submit the following reply and answer to Carolina Custom Converting, LLC's (CCC) Answer to the Second Amended Complaint and Counterclaims.

PRELIMINARY STATEMENT

CCC's answer to Plaintiff's Second Amended Complaint alleges new causes of action against the above-captioned "Counterclaim Defendants." CCC's claims against the "Counterclaim Defendants" are more properly characterized as Counterclaims against Dave Wilson and a Third-Party Complaint versus Norvell, NeoLogic and Fresh Water. Norvell, NeoLogic and Fresh Water are therefore responding to CCC's Answer to the Second Amended Complaint and Counterclaims as Third-Party Defendants to CCC's Counterclaims and Third-Party Complaint.

FOR A FIRST DEFENSE

1. Each and every allegation hereafter not admitted, qualified, modified or explained is denied and strict proof is demanded thereof.

2. CCC's Preliminary Statement to its Answer and Counterclaims contains legal conclusions to which no responsive pleading is required; to the extent a response is required, Third-Party Defendants deny the allegations and demand strict proof thereof.

3. Third-Party Defendants are informed and believe that Paragraphs 1 through 14 of CCC's Answer to the Second Amended Complaint and Counterclaims do not require responses from them; to the extent a response is required, Third-Party Defendants deny the allegations contained therein and demand strict proof thereof.

4. Third-Party Defendants admit, upon information and belief, the allegations contained in Paragraphs 15, 16, 17, 18, 19, 20 and 21 of the Counterclaim and Third-Party Complaint.

5. With reference to the allegations contained in Paragraph 22 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack knowledge or information sufficient to form a belief as to the details of the official formation, registration or business of CCC and therefore deny same and demand strict proof thereof.

6. With reference to the allegations contained in Paragraph 23 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack knowledge or information sufficient to form a belief as to facts alleged therein and therefore deny same and demand strict proof thereof.

7. Third-Party Defendants admit the allegations contained in Paragraph 24 of the Counterclaim and Third-Party Complaint.

8. With reference to the allegations contained in Paragraphs 25 and 26 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack knowledge or information sufficient to form a belief as to the facts alleged therein and therefore deny same and demand strict proof thereof.

9. Third-Party Defendants deny the allegations contained in Paragraphs 27, 28, 29, 30 and 31 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

10. With reference to the allegations contained in Paragraph 32 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell had access to a bank account through which he funded limited film transactions for Wilson and EFS while EFS was winding down. These transactions were done with CCC's knowledge and consent.

11. With reference to the allegations contained in Paragraph 33 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell and Wilson transacted limited business as "Commerce Films" while EFS was winding down.

12. Third-Party Defendants deny the allegations contained in Paragraph 34 and 35 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

13. With reference to the allegations contained in Paragraph 36 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit only that Norvell financed a limited number of film purchases by EFS in 2008 and 2009 and that CCC had actual knowledge of these transactions and generated revenue from some of the transactions. Third-Party Defendants deny the remaining allegations contained in Paragraph 36 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

14. With reference to the allegations contained in Paragraph 37 of The Counterclaim and Third Party Complaint, Third-Party Defendants admit that Norvell is the brother-in-law of Wilson. Third-Party Defendants deny the remaining allegations contained in Paragraph 37 of the Counterclaim and Third Party Complaint and demand strict proof thereof.

15. Third-Party Defendants deny the allegations contained in Paragraph 38, 39 and 40 and demand strict proof thereof.

16. With reference the allegations contained in Paragraphs 41, 42, 43, 44, 45, 46 and 47 of the Counterclaim and Third Party Complaint, Third-Party Defendants lack sufficient knowledge or information sufficient to form belief as to the allegations contained therein and therefore deny same and demand strict proof thereof.

17. Third-Party Defendants admit the allegations contained in Paragraph 48 of the Counterclaim and Third-Party Complaint.

18. Third-Party Defendants lack knowledge and information sufficient to form belief as to the allegations contained in Paragraph 49 of the Counterclaim and Third-Party Complaint and therefor deny same and demand strict proof thereof.

19. Third-Party Defendants admit the allegations contained in Paragraph 50 of the Counterclaim and Third-Party Complaint.

20. Third-Party Defendants lack knowledge and information sufficient to form belief as to the allegations contained in Paragraphs 51, 52, 53, and 54 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

21. Third-Party Defendants deny the allegations contained in Paragraph 55 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

22. With reference to the allegations contained in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and 66 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack sufficient knowledge or information sufficient to form belief as to the allegations contained therein and therefore deny same and demand strict proof thereof.

23. Third-Party Defendants deny the allegations contained in Paragraph 67 and 68 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

24. With reference to the allegations contained in Paragraph 69 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Fresh Water loans certain employees to NeoLogic, and that the arrangement is documented in the records of the companies and proper consideration is paid by NeoLogic for any services provided to it by Fresh Water employees.

25. Third-Party Defendants deny the allegations contained in Paragraphs 70 and 71 of the Counterclaim and Third-Party Complaint and therefore deny same and demand strict proof thereof.

26. Third-Party Defendants admit the allegations contained in Paragraph 72 of the Counterclaim and Third-Party Complaint.

27. With reference to the allegations contained in Paragraph 73 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell has loaned Wilson funds that have been used to pay Wilson's attorney's fees and costs in the present litigation.

28. Third-Party Defendants lack knowledge or information sufficient to form belief as to the allegations contained Paragraphs 74 and 75 of the Counterclaim and Third-Party Complaint and therefore deny same and demand strict proof thereof.

29. With reference to the allegations contained in Paragraph 76 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

30. The allegations contained in Paragraphs 77 through 81 are not directed towards the Third Party Defendants and therefore Third Party Defendants neither admit nor denies same; to the extent a response is required, Third Party Defendants deny the allegations.

31. With reference to the allegations contained in Paragraph 82 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

32. With reference to the allegations contained in Paragraph 83 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell is the brother-in-law of

Wilson. Third-Party Defendants deny the remaining allegations contained in Paragraph 83 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

33. Third-Party Defendants deny the allegations contained in Paragraphs 84, 85, 86, 87 and 88 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

34. With reference to allegations contained in Paragraph 89 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of its previous responses, not inconsistent herewith, as if fully repeated herein.

35. Third-Party Defendants lack knowledge or information sufficient to form belief as to the facts alleged in Paragraphs 90, 91, 92 and 93 of the Counterclaim and Third-Party Complaint and therefore deny same and demand strict proof thereof.

36. With reference to allegations contained in Paragraph 94 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that NeoLogic was formed less than two (2) months after Wilson left CCC, but further allege that NeoLogic was formed for purposes of wholesaling water and health related products, not film, and was formed months before any conversations took place between Norvell and Wilson about Wilson coming to work for NeoLogic.

37. Third-Party Defendants admit the allegations contained in Paragraph 95 of the Counterclaim and Third-Party Complaint.

38. With reference to the allegations contained in Paragraph 96 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell has loaned funds to Wilson that have been used to pay Wilson's attorney's fees and costs in the present litigation.

39. Third-Party Defendants deny the allegations contained in Paragraph 97 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

40. The allegations contained in Paragraph 98 through 104 of the Counterclaim and Third-Party Complaint are not directed towards Third-Party Defendants and therefore Third-Party Defendants neither admit nor deny the allegations; to the extent a response is required, Third-Party Defendants deny the allegations.

41. With reference to the allegations contained in Paragraph 105 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

42. Third-Party Defendants deny the allegations contained in Paragraphs 106, 107, 108, 109, 110 and 111 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

43. The allegations contained in Paragraphs 112 through 127 of the Counterclaim and Third-Party Complaint are not directed to Third-Party Defendants and therefore Third-Party Defendants neither admit nor deny same; to the extent a response is required, Third-Party Defendants deny the allegations.

44. With reference to the allegations contained in Paragraph 128 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

45. With reference to the allegations contained in Paragraph 129, Third-Party Defendants admit that CCC owned and owns various assets and information used to operate its business. Third-Party Defendants deny that these assets and information constitute confidential information or trade secrets as defined by South Carolina law and demand strict proof thereof.

46. Third-Party Defendants deny the allegations contained in Paragraph 130, 131, 132 and 133 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

47. The allegations contained in Paragraph 134 through 140 are not directed at Third-Party Defendants, therefore Third-Party Defendants neither admit nor deny same; to the extent a response is required, Third-Party Defendants deny the allegations.

FOR A SECOND DEFENSE
(Waiver, Estoppel and Laches)

48. Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

49. By the acts and/or admissions of the Plaintiff, the Plaintiff's claims against Third-Party Defendants are barred by the Doctrines of Waiver, Estoppel and Laches.

FOR A THIRD DEFENSE
(Statutes of Limitation)

50. Third-Party Defendants reincorporate all of its previous responses, not inconsistent herewith, as if fully repeated herein.

51. The Plaintiff's claims are barred in whole or in part by the statutes of limitation.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM
(S.C. Code Ann §§ 39-8-10, et seq)

52. Third-Party Defendants reincorporate all of its previous response, not inconsistent herewith, as if fully repeated herein.

53. The information CCC is claiming to be trade secrets was available to the public and anyone interested in inquiring of customers and vendors as to the information.

54. The information CCC is claiming to be trade secrets was not subject to any effort on the part of CCC, much less the reasonable efforts, to maintain the secrecy of the alleged trade secrets.

55. The Plaintiff's claims against Neologic and Fresh Water for misappropriation of trade secrets under S.C. Code Ann. §§ 39-8-10, et seq. are being made in bad faith and warrant the award of attorney's fees and costs to Neologic and Fresh Water in accordance with S.C. Code Ann. §39-8-80.

WHEREFORE, Defendants Dave Wilson, Steven Norvell, NeoLogic Distribution, Inc., and Fresh Water Systems, Inc., having fully answered the Counterclaim and Third-Party Complaint, pray for the following relief:

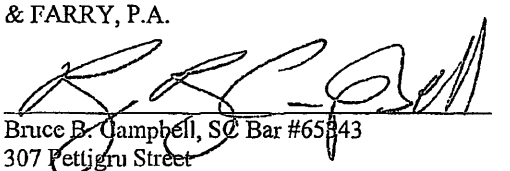
1. Dismissal of all claims against the Third-Party Defendants;

2. Judgment against CCC for the payment of Neologic's and Fresh Water's attorney's fees and costs in accordance with S.C. Code Ann. §39-8-80; and

3. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

HORTON, DRAWDY, WARD, MULLINAX & FARRY, P.A.



Bruce B. Campbell, SC Bar #65843
307 Pettigru Street
Greenville, SC 29601
(864) 233-4351
Attorney for Defendants

May 16, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson,

Counterclaim Defendant.

Carolina Custom Converting, LLC,

Third-Party Plaintiff,

vs.

Steven Norvell, NeoLogic Distribution, Inc., and Fresh Water Systems Inc.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2012-CP-23-02887

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 MAY 16 PM 12 06

CERTIFICATE OF SERVICE

I, Erica M. Courson, legal assistant to Bruce B. Campbell, do hereby certify that on May 16, 2014, I served upon the below-named individuals Reply to Counterclaims and Answer to Third-Party Complaint by depositing a copy of the same in the United States Mail, proper

postage affixed thereto, in envelopes addressed as shown below and also I electronically served the document on the below-named individuals by emailing a copy of the document to the email address listed below:

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ERICA M. COURSON
Legal Assistant to Bruce B. Campbell

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, Carolina Custom Converting, LLC, Counterclaim Plaintiff, vs. Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc., Counterclaim Defendants.	Civil Action No. 2012-CP-23-02887 **ANSWER/REPLY TO COUNTERCLAIM OF NEOLOGIC AND FRESH WATER**

Carolina Custom Converting, LLC ("CCC") responds to the allegations and counterclaim of Neologic Distribution, Inc. ("Neologic") and Fresh Water Systems Inc. ("Fresh Water") as follows:

(General Denial & Affirmative Response)

1 CCC denies the allegations of Paragraph 53 of Counterclaim Defendants' Answer and Counterclaim; further answering, CCC asserts and alleges that while Defendant David Wilson ("Wilson") worked for CCC he operated as the Vice President of Sales. Because of that position, Wilson had access to intimate knowledge of CCC's customers, distributors, potential

customers, and potential distributors; Wilson also had access to the corporate knowledge of the products that each customer and potential customer desired, and the products that each distributor and potential distributor could provide; Wilson further had access to sensitive pricing information, and access to the Company's organizational methods for storing and cataloguing all of the above information (hereinafter collectively referred to as "trade secret and confidential information"). Wilson's, Neologic's, and Fresh Water's apparent belief that the absence of a standalone non-compete agreement, and/or a non-disclosure/secrecy agreement with CCC is fatal to CCC's claims is belied by the plain language of the Trade Secret Act:

> Every employee who . . . should reasonably have known from the circumstances of the existence of any employer's trade secret has a duty to refrain from using or disclosing the trade secret without the employer's permission independently of and in addition to any written contract of employment, secrecy agreement, noncompete agreement, nondisclosure agreement, or other agreement between the employer and the employee.

S.C. Code Ann. § 39-8-30(B). When Wilson left CCC, he took all of the trade secret and confidential information with him and provided the same to Neologic and Fresh Water. As the Vice President of Sales it is beyond question that Wilson knew he had a duty not to misappropriate and disclose this information.

2. CCC denies the allegations of Paragraph 54 of the Counterclaim Defendants' Answer and Counterclaim; further answering, CCC asserts that it did make efforts to protect its trade secret and confidential information. By way of example, the confidential and trade secret information was not shared with non-essential employees, nor was it available for review by any visitor at CCC's headquarters.

3. CCC denies the allegations of Paragraph 55 of the Counterclaim Defendants' Answer and Counterclaim; further answering, CCC asserts and alleges that Wilson took its trade secret and confidential information and delivered the same to Neologic and Fresh Water and that

the latter have used said information to the detriment of CCC, and that the latter have damaged CCC as a direct result of their illegal use of CCC's trade secret and confidential information. Accordingly, CCC's claims against Neologic and Fresh Water are being asserted in good faith and with the express purpose of recovering the damages inflicted upon CCC through the illegal use of its trade secret and confidential information.

(Good Faith)

4. CCC has brought this action in good faith; accordingly, Neologic and Freshwater's assertion of bad faith fails.

WHEREFORE, CCC prays that, having answered the Counterclaim of Neologic and Fresh Water, that the counterclaim against CCC be dismissed, and that CCC have judgment against the Counterclaim-Defendants in the manner requested in its Answer and Counterclaim filed on November 19, 2013.

Respectfully submitted,

Thomas L. Stephenson (S.C. Bar No. 5332)
Burl F. Williams (S.C. Bar No. 77901)
NEXSEN PRUET, LLC
55 East Camperdown Way, Suite 400 (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
864.370.2211

Attorneys for Carolina Custom Converting LLC

June 11, 2014

Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, vs. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, Carolina Custom Converting, LLC, Counterclaim Plaintiff, vs. Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc., Counterclaim Defendants.	Civil Action No. 2012-CP-23-02887 **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing CAROLINA CUSTOM CONVERTING, LLC'S ANSWER/REPLY TO NEOLGIC AND FRESH WATER COUNTERCLAIM has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 11th day of June, 2014.

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Attorney for Plaintiff

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NPGVI 1 956200 1

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Attorney for Andrea Comeau-Shirley

Brigid M. Jones
NEXSEN PRUET, LLC

Copy & Index

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE CASE NO. 2012-CP-23-02887

David Wilson, individually, and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc.,

Counterclaim Defendants.

DEPOSITION OF NEOLOGIC, INC.,
GIVEN BY STEVEN NORVELL,
JULIEANNE KIGHT AND DAVID WILSON

DATE TAKEN: August 15, 2013

TIME BEGAN: 9:41 a.m.

TIME ENDED: 11:49 a.m.

LOCATION: Nexsen Pruet, LLC
55 East Camperdown Way
Suite 400
Greenville, South Carolina

REPORTED BY: Traci L. Barr, RPR

APPEARANCES:

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.....On behalf of Carolina Custom Converting, LLC

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307 Pettigru Street
Greenville, SC 29601

.....On behalf of Neologic, Inc.

W. ANDREW ARNOLD, ESQUIRE
Law Office of W. Andrew Arnold
712 E. Washington Street
Greenville, SC 29601

.....On behalf of David Wilson

ALSO ATTENDING: John Gandis

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are hereby waived by the witness and the parties.

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before the witnesses -- I started with Exhibit 3, but I'm going to start with Exhibit 4. Who's talking?

MR. CAMPBELL: Depends on the question.

(The following testimony was given by JulieAnne Kight:)

EXAMINATION RESUMED

BY MR. WILLIAMS:

Q. Exhibit 4 is -- well, tell me what Exhibit 4 is.

A. Exhibit 4 is the due from account detail for Dave and Julie Wilson. It's comprised of legal fees and accounting fees paid on their behalf.

Q. Where did this entry come from, Exhibit 3, the printout?

A. QuickBooks.

Q. Look in the memo line.

MR. CAMPBELL: Of Exhibit 4?

MR. WILLIAMS: Of Exhibit 4. Actually, I take that back.

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BY MR. WILLIAMS:

Q. Neologic has made a credit memo and referred to these legal fees as overhead. Tell me about that.

A. When it was brought to my attention that we would be paying these legal fees, I coded in the memo as overhead, so if I'm doing any analysis I know what type of expense it is versus cost of goods, direct expense to products being sold.

Q. So you consider this an overhead expense?

A. Yes.

Q. We're done with attorney's fees. We're not going to get confused again.

Topic number 4 is relationship between Fresh Water Systems, Inc. and Neologic, Inc., including, but not limited to, shared resources.

So can you tell me the corporate officers of Neologic, Inc.?

A. Emily Norvell.

Q. What is her corporate position?

A. She's the president, treasurer and secretary, according to the Articles of Incorporation.

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

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Counterclaim Plaintiff,

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LOCATION: Nexsen Pruet, LLC
55 East Camperdown Way
Suite 400
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APPEARANCES:

BURL F. WILLIAMS, ESQUIRE
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.....On behalf of Carolina Custom Converting, LLC

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.....On behalf of Neologic, Inc.

W. ANDREW ARNOLD, ESQUIRE
Law Office of W. Andrew Arnold
712 E. Washington Street
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So can you tell me the corporate officers of Neologic, Inc.?

A. Emily Norvell.

Q. What is her corporate position?

A. She's the president, treasurer and secretary, according to the Articles of Incorporation.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC,
Plaintiff,
vs.
JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOi FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC,
Defendants. CASE NO. 2012-CP-23-2887

CAROLINA CUSTOM CONVERTING, LLC,
Counterclaim, Plaintiff,
vs.
DAVE WILSON, STEVEN NORVELL, NEOLOGIC DISTRIBUTION, INC., AND FRESH WATER SYSTEMS, INC.,
Counterclaim Defendants.

DEPOSITION OF: WILLIAM R. SHAW

DATE: September 22, 2014

TIME: 9:55 A.M.

LOCATION: Law Offices of
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400
Greenville, SC

TAKEN BY: Counsel for the Defendant CCC

REPORTED BY: LORI S. MORTGE,
Certified Court Reporter, CCR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

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APPEARANCES OF COUNSEL:

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APPEARANCES OF COUNSEL (CONCLUDING):

ATTORNEYS FOR THE COUNTERCLAIM PLAINTIFFS
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INC., AND FRESH WATER SYSTEMS, INC.:

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bcampbell@hortonlawfirm.net

ALSO PRESENT:

John Gandis
Dave Wilson

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial.

* * * * * * * * * * *

WILLIAM R. SHAW

being first duly sworn, testified as follows:

EXAMINATION

BY MR. STEPHENSON:

Q. Mr. Shaw, my name is Tom Stephenson, I represent Triple-C in this case. Do you understand that?

A. Yes, sir.

Q. Have you ever had your deposition taken before?

A. No, sir.

Q. You understand this is just like testifying in court, that is, you have to tell the truth and if you don't it's considered to be perjury?

A. Yes, sir.

Q. You understand that if I ask you a question and you have a question about the question, which is likely, you need to direct that to me and not your attorney.

A. Okay.

Q. Is there any reason your memory would be affected today? In your own words, are you able to testify normally?

A. I have just completed eight months of cancer treatment at MD Anderson, the combination of the hormone therapy and the oral hormone therapy for the eight months has somewhat had a little bit effect on my short-term memory --

Q. All right.

A. -- as a side effect, but I don't see that impacting anything significantly today.

MR. STEPHENSON: Off the record.

(Off-the-record conference.)

BY MR. STEPHENSON:

Q. Mr. Shaw, if you would, give me your employment history starting with who you work for now, going backwards in time and just sort of approximate dates.

A. Currently with Neologic Distribution from January of '13. Prior employment history with

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Q. Does that seem to be what happened?
A. Yes.
Q. Your recollection?
A. I seem to recall.
Q. You never even talked to him before?
A. I mean, I did talk with Andy one time. However, I went by his office but I don't recall the particulars of it.
Q. Would that be before or after you left Triple-C?
A. Way after I left Triple-C.
Q. Would that be after you delivered the documents?
A. I don't recall. I honestly don't.
Q. All right. So you're out of Triple-C and you go by the office. Do you recall what y'all talked about?
A. No, I really don't, Counselor. I think a lot was just how did I come about possession of those documents
Q. Okay. It was about the documents, the conversation you had with Andy?
A. As I recall, yes.
Q. Have you ever given a statement to anybody in connection to this case?

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A. No.
Q. Now, you said earlier that you, quote, publicized, end quote -- and I'm trying to quote you, not trying to put words in your mouth, the fact that you had these documents and I thought you said you told John. Do you remember telling John that you had those documents?
A. I don't recall ever telling John that.
Q. Okay.
A. It wouldn't be something I would have said the morning that I was blind sided and let go.
Q. Yeah. You said you publicized it. What did you mean by that?
A. I mean, you know, just in talking with Dave I said, you know, I've got purchase orders and things like that I've still got in the office that; you know, didn't ever have a chance to take back to CCC and file.
Q. Well, tell me about that. You leave and you have a conversation with Dave about the fact that you got these documents. When did those conversations occur?
A. November.
Q. Right after you left?
A. Mm-hmm.

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Q. You have to say yes or no.
A. Yes, after I left.
Q. And how did you have a conversation with Dave after you left? Did you call him or he called you?
A. I called him.
Q. Tell me about the conversation you had with Dave after you left.
A. That was several years ago I really don't recall very many specifics to it other -- you know, I understood through John and Andrea that Dave was -- had initiated a lawsuit and -- other than just what he had been up to I really don't recall.
Q. All right. Does this fairly summarize what happened? You got let go, you give Dave a call, y'all talk, you let Dave know that you had a bunch of documents and then you got a subpoena from Andy Arnold? Or do you remember?
MR. STEPHENSON: I believe you.
MR. ARNOLD: No, no. I just think the dates are getting mixed up here, to be honest with you, for the record.
MR. STEPHENSON: All right. Well, let's -- off the record.
(Off-the-record conference.)

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BY MR. STEPHENSON:
Q. We have determined that Andy Arnold issued a subpoena in October of 2012, served you and you delivered documents in response to that subpoena. And I'm going to tell you that knowing Andy he would have followed the rules, that is, served you and copied the other people and you got the subpoena. Do you recall when you got that subpoena, while you were still employed at Triple-C or not? If you don't know you don't know.
A. I don't recall
Q. Let me ask you this.
A. I don't recall.
Q. If it turns out it was before you were let go, do you have any idea why Andy Arnold would send you a subpoena before you were let go?
A. No.
Q. To your knowledge, had you had any conversations with Dave Wilson before you were let go other than the one con -- two conversations you told me about, the one the day after he was let go and another one where he called you and said, hey, if you need a CSR, John, you can call Steve Norvell?
A. I had zero contact with Dave Wilson until after I was let go.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE DAVID WILSON, PLAINTIFF, vs. JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND ZOI FILMS, LLC, DEFENDANTS.	COURT OF COMMON PLEAS 2012-CP-23-02887 TRANSCRIPT OF RECORD ORIGINAL

December 6, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

W. ANDREW ARNOLD, ESQ.
Attorney for the Plaintiff

MASON A. GOLDSMITH, ESQ.
LARRY LEE PLUMBLEE, ESQ.
Attorneys for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

disassociated from the entity. And we would --

THE COURT: Wait a minute now. Who do you want to be disassociated?

MR. ARNOLD: Mr. Gandis and Ms. Shirley.

THE COURT: Okay.

MR. ARNOLD: And so we've asked to disassociate them for their wrongful acts.

THE COURT: Okay.

MR. ARNOLD: We don't want to gut the entity. We think the business has value. Remember, we were here not long ago because they didn't want to give us the customer list because that customer list has such value. Well, we agree it has value. And we want -- well, actually, we've made an offer to purchase this business for almost half a million dollars, their interest. That hasn't been -- they haven't accepted or rejected that yet. But we think this business has value. We don't want to dissolve the entity unless it's absolutely necessary. We want a disassociation.

And so we've pled a cause of action for disassociation. Our prayer for relief, clearly, states that we're asking for an order disassociating the Defendants from CCC, or in the alternative dissolving CCC. What they want you to do is say, well, before we litigate the issues, I just -- we're going to do away with your

RECEIVED
JUN 22 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILE COUNTY
Circuit Court

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2015-000476

Case No. 2012-CP-23-02887

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third-Party Defendant and Counterclaim Plaintiff,

v.

David Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc. and Fresh Water Systems, Inc. are the Respondents,

and

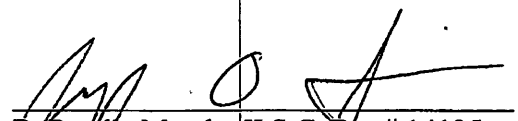
John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 1, 2016

ROE CASSIDY COATES & PRICE, P.A.



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22661

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

RECEIVED
JUN 20 2016
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and

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SUPPLEMENTAL RECORD ON APPEAL

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Attorneys for Appellants, John Gandis and Andrea Comeau-Shirley

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MR. STEPHENSON: If you look at Tab Q, you'll see it's a email from Andy Arnold to Lee and Andy Goldsmith, "We're headed toward a hearing to divide the company up. We've given them our financials."

Out of the blue, Andy Arnold says "My client will agree to buy John's and Andrea's interest for 55% or $442,000..." and he talks about how he came up with it.

Our side got it. They said, "Okay, let's do it." They agreed. There was some — some contingencies. They were complied with.

A few weeks later, we show up at a mediation before mediator Frank Gibbs (phonetic); all of a sudden the buyout is off the table.

Well, now we know why. The whole thing was a ruse by Wilson and Andy to gain some advantage in this case.

Again, these are emails we just got.

Andy wants to talk about bad faith in this case, well, again, this is an email from Dave Wilson to his co-conspirator Norvell, "Andy thinks we should make an offer to buy John's and Andrea's interest based on the values they've given us and their obviously manipulated finance — financials. They won't take it."

So this was not in good faith. And, Your Honor, I want to point out Tab P in the book. Now, I was not involved, but this is December the 6th, 2012. And this is part of the transcript of the hearing.

If you'll look at Page 7, Andy represents to this Court that he made an offer to buy our side out. Implicit in any representation to the Court is that it was in good faith.

Interestingly, he says, "They haven't accepted or rejected our offer yet..." We accepted it. "But we think that this business has value. We don't want to dissolve the entity unless it's absolutely necessary."

That's what he says at the time in contrast to what he says now. Since that time, Mr. Wilson has testified this was a serious offer. My partner, co-conspirator, brother-in-law Norvell, was going to put up the money.

Well, that's not true. If you look at Tab S, Your Honor, you'll see part of Steve Norvell's deposition. Tell me when you get there.

(Brief Pause)

THE COURT: Okay. Yes, sir.

MR. STEPHENSON: Page 118.

THE COURT: All right.

(Brief Pause)

MR. STEPHENSON: I took his deposition. "Steve, did there come a time that you looked at acquiring Triple C? " "Did I look into it? I briefly considered it."

"Did you actually consider it enough to come up with a price? "

"Not that I'm aware of." "Did you even look at any number?" "Not that I'm aware of."

Down on Page 119, "I would never consider buying Triple C." In other words, he had some brief conversation with Wilson. They come up with this fake offer. There was no money to buy it, to gain some advantage in this case. The whole thing was not true, a ruse.

THE COURT: What is a Chinese equipment (phonetic)?

MR. STEPHENSON: I don't know, you'll have to ask him. But the import is, there was no offer. This was made up to try to get the advantage.

Now, I talked about this destruction of evidence. And Andy has talked all around that. Let me tell you what really happened, Your Honor.

It's January of 2012, okay, after this hearing -- before this hearing, two months before this hearing, everybody has lawyered up, okay?

Lawsuits had not been filed yet. He's still there. He's got Craig Jennings (phonetic) as his lawyer. They've got a fellow in Atlanta name John Zamer (phonetic), a family friend.

We get word that he is going to compete and -- going to quit and compete with us.

He says he's going to call -- make us go into liquidation. They are in a huge fight. They say he was fired; we say he was quit. Not important.

Cops were called, okay? Cops were called. And, if you look at Exhibit H, you'll see the affidavit of our forensic guy that he wiped two computers. He intentionally wiped two computers.

Andy wants to say "Oh, he just took the information off." He wiped two computers and he now says he still has it.

We don't know. He wiped a blackberry.

Now, why did he do that? We know part of it. He didn't want us to get his emails.

Later he tells people to destroy emails. We say that he trashed the company. We say he's stolen trade secrets. We say he's violated this Court's order.

Andy wants the QuickBooks, okay? We gave him the electronic QuickBooks. There's an order from this Court that says because the electronic QuickBooks has customer names on it and vendor names on it, that, if he uses those customers or vendors after it's provided, it's going to be presumed that he used it improperly.

In other words, if he's already doing it, fine. We believe we're going to be able to prove that he used vendors and customers after we provided the QuickBooks. So there's no — there's no surprise that we don't want to give them to him again.

We'll give them financials, but were not going to give him the names of our customers and vendors.

Which brings me around to the remedy. Well, we now know why they want this remedy. They're wanting to kill their competitor and then pick it up cheap.

There are all sorts of remedies in these cases. As Your Honor may know, I was in the case, the seminal case, Crackidy (phonetic). And you had fraudulent conduct in there if there ever was.

Well, the Court didn't order that the company be dissolved. It ordered that the majority buy the minority out. Big brother had to buy little brother out.

Ballard vs. Robinson, the most recent case, the majority had to buy the minority out. And we cite a number of cases involving the LLC statute, which is similar.

There was a case called *Henley vs. Leath* (phonetic) where they – where the Court, Judge Anderson, Judge Joe Anderson, talks at length about

CERTIFICATE OF COUNSEL

The undersigned certifies that the Supplemental Record on Appeal contains material proposed to be included by any of the parties and not any other material.

June 17, 2016

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Appellate Case No.: 2015-000476

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

PROOF OF DELIVERY

I certify that I have served the Supplemental Record on Appeal by depositing a copy of the same in the United States Mail, postage prepaid, on June 17, 2016, addressed to the attorneys of record as follows:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill
Circuit Court Judge

RECEIVED
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SC Court of Appeals

App. Case No. 2015-000476

Lower Case No. 2012-CP-23-02887

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC,..... Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC,..... Defendants,

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ... Third-Party Plaintiffs,

vs.

CAROLINA CUSTOM CONVERTING, LLC,
..... Third-Party Defendant and Counterclaim Plaintiff,

vs.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the ..... Respondents,

and

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND CAROLINA CUSTOM CONVERTING, LLC,..... Appellants.

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OPENING STATEMENT:

This appeal presents the reason why the General Assembly enacted the South Carolina Trade Secret Act a mere five years after enacting the Uniform Trade Secret Act. The General Assembly added a provision that placed an affirmative obligation upon a South Carolina employee not to misappropriate his employer's trade secrets even if he did not sign a confidentiality or non-compete agreement. This is just such a case.

Counterclaim Defendant David Wilson ("Wilson") admitted that he stole Carolina Custom Converting, LLC's ("CCC") supplier list, pricing list, customer list, prospective customer list, electronic vendor reference program, and inventory reference program ("confidential information"). Contemporaneous e-mails showed that Wilson stole this information with the specific intent to take it to a competitor and use the confidential information to compete. The evidence showed that the initial competitor did not hire Wilson. Instead, he used his family connections to start a brand new company that did the same thing as CCC, and with the use of CCC's confidential information.

As the fourth day of the *bench* trial neared an end, counsel for CCC proposed a customary post-trial briefing schedule, which would set forth the law with citations to the voluminous record. The circuit court declined the invitation. Hours after closing argument on the fifth day of trial, the circuit court ruled that CCC did not prove its trade secret claim. In a subsequent written order, the circuit court based its reasoning on a manifest misunderstanding and misapplication of the South Carolina Trade Secret Act.

The legal errors committed by the circuit court are significant and require reversal.

STATEMENT OF ISSUE ON APPEAL:

I. Whether the Circuit Court Erred By Failing to Apply the Correct Legal Standard of the South Carolina Trade Secret Act and Thereby Erred in Concluding that the Company Did Not Prove a Trade Secret Existed.

II. Whether the Circuit Court Erred By Failing to Apply the Correct Legal Standard of the South Carolina Trade Secret Act and Thereby Erred in Concluding that the Company Did Not Sufficiently Safeguard its Confidential Information.

III. Whether the Circuit Court Erred By Failing to Apply the Correct Legal Standard of the South Carolina Trade Secret Act and Thereby Erred in Concluding the Company Was Not Entitled to Damages Under its Trade Secret Misappropriation Claim.

IV. Whether the Circuit Court Erred by Applying the Wrong Legal Standard When it Judged the Breach of Fiduciary Duty and Usurpation of Corporate Opportunity Claim, and Therefore Committed Legal Error in its Application of Fiduciary Duty Law and its Application of the Statute of Limitations.

I. STATEMENT OF THE CASE

This is an appeal from a complex business litigation matter in the Greenville County Court of Common Pleas. On April 27, 2012, Wilson filed a complaint against John Gandis ("Gandis") and Andrea Comeau-Shirley ("Comeau-Shirley"). On July 3, 2012, Gandis and Comeau-Shirley answered the complaint and filed counterclaims. On October 10, 2012, Wilson filed an amended complaint against Gandis and Comeau-Shirley. On October 26, 2012, Gandis and Comeau-Shirley filed an answer to the amended complaint and again filed counterclaims against Wilson. On April 16, 2013, this case was designated complex and assigned to the Honorable D. Garrison Hill. On September 20, 2013, Wilson filed a second amended complaint against Gandis, Comeau-Shirley, and CCC. On November 15, 2013, CCC answered the second amended complaint and filed counterclaims. Also on November, 15, 2013, Comeau-Shirley answered the second amended complaint and filed counterclaims. Also on November 15, 2013, Gandis answered the second amended complaint and filed counterclaims.

Relevant to this appeal, Wilson's final and second amended complaint alleged claims for (1) dissolution against all defendants, and (2) breach of fiduciary duty against Gandis and Comeau-Shirley. All defendants' asserted counterclaims for breach of fiduciary duty against Wilson. CCC also asserted a counterclaim for violation of the South Carolina Trade Secret Act against Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc.

This case was tried non-jury before the Honorable D. Garrison Hill, with the trial including four full days of testimony and one morning of closing argument. On the afternoon following oral argument, the circuit court issued a letter outlining its ruling. The letter ruling found for Wilson on the dissolution claim and against the counter-claim

defendants on their claims. The circuit court's letter ruling further instructed Wilson to submit a proposed order.

Wilson submitted a proposed order, and on January 9, 2015, the circuit court entered its order in this case. On January 20, 2015, Defendants' timely filed a Rule 59, SCRCP, motion to alter or amend. On January 28, 2015, the circuit court denied Defendants' Rule 59 motion. On February 2, 2015, CCC received written notice of the denial of the Rule 59 motion. On February 26, 2015, CCC filed its notice of appeal.

II. STATEMENT OF FACTS AND EVIDENCE

The pleadings, documentary evidence, and testimony established the following undisputed facts as follows:

A. Description of CCC

CCC distributes plastic films throughout the United States, Mexico, and Canada. The plastic films that CCC distributes are used in a variety of applications, including the food industry for packaging and product labeling purposes. (R. p. 21, lines 21-23). CCC also distributes metallized plastic films, and these films are used in the flexible duct industry (i.e., the heating and air industry). (*See* R. p. 875, lines 3-6). CCC also distributes specialized films into niche markets, such as white board manufacturers. (R. p. 870, lines 2-17). CCC's base of operations and headquarters is in Anderson, South Carolina.

CCC primarily operates as an intermediary in the market place, connecting film suppliers with film customers. (*See* R. p. 876, lines 4-12). It has a stable of customers with long-term supply relationships. In this category of customers, CCC has gone through a thorough qualifying process whereby it first understands the customer's technical needs, and then works to select a specific film suitable to meet those needs. (R. p. 871, lines 20-25). The qualifying process, which is done at the customer's plant, is undertaken

to test the film (or multiple films) in a number of different capacities to ensure suitability for the customer's end product. (*See* R. p. 911, lines 3-10). A qualifying process can take a number of months or even longer. (*E.g.*, R. p. 301, lines 7-20). Once a film is qualified, CCC can serve as that customer's film supplier.

CCC supports other customers on an as needed basis. For these customers, a request for supply is generated in the regular course of business, and CCC competes to meet that customer's requirements as soon as possible. (R. p. 879, lines 11-17). CCC developed an electronic vendor reference guide, and an inventory reference program to make this process significantly more efficient. (R. p. 877 line 23-p. 881, line 4). CCC seeks to fill these requests for supply from its own film stocks, and other times it must enter the open market to purchase these films. In both instances, CCC makes use of the electronic vendor reference program and the inventory reference program, in addition to its employee's experience. (*Id.*) Finally, when a customer needs a film tailored to a specific width, CCC has the machine assets to convert the film down to the required width and length—that is, it has machines that can trim a 60 inch wide roll of film down to 35 inches. (*See* R. p. 24, lines 2-4).

B. Formation of CCC

Wilson and Gandis first met in the early 2000s while Wilson was working as a consultant for Gandis at VyTech Industries (VyTech). (R. p. 20, line 24-p 21, line 7). VyTech was headquartered in Anderson, South Carolina and was in the business of manufacturing and selling vinyl films.) (R. p. 17, lines 17-19, R. p. 18, lines 11-13). When Wilson met Gandis, VyTech was seeking to develop new sources for film used by VyTech in the manufacturing process. (R. p. 20, line 25-p. 21, line 7).

Wilson graduated from Furman University in 1999, and has worked as a salesman for the better part of his adult life. He first became acquainted with the plastic film industry when he took a job during college working as a machine operator at company in the Greenville, South Carolina area. (R. p. 360, lines 2-24). After a few years with that company, Wilson joined another film company where he worked for about three years. (R. p. 361, lines 7-22). That company found itself "on some rocky times," (R. p. 361, lines 22-23), and Wilson left to start and manage his own business, Palmetto Custom Films, which was started with outside investors. (R. p. 362, line 2-p. 363, line 10). After a few years, Wilson was forced out of Palmetto Custom Films due to strained financial relations with his investors regarding the company's debt load. (R. p. 363, line 15-p. 364, line 5). After leaving Palmetto Custom Films, in 2005 Wilson started Eastern Films Solutions, LLC ("EFS"). EFS was a one man operation, where Wilson worked as a film sales broker. (R. p. 364, lines 10-19).

Gandis earned a mechanical engineering degree from North Carolina State University in 1992, and has worked as a product development engineer for a large portion of his adult career. (R. p. 17, lines 8-12; R. p. 18, lines 3-10). Following graduation, he began working for Milliken Company at its Thompson, Georgia plant.)(R. p. 17, lines 15-19). After two years with Milliken, Gandis left to join VyTech. (R. p. 17, lines 15-19). Gandis' first role at VyTech was to oversee the installation of a textile line. Gandis later become the plant manager of VyTech. (R. p. 18, lines 1-6). Gandis was later promoted to serve as VyTech's diretor of new product development. (R. p. 18, lines 8-10). Gandis remained employed by VyTech until the company went out of business in 2006. (R. p. 19, lines 14-20).

After VyTech, Gandis decided to focus on creating a new business with his father and running an existing business he owned that was doing sheet metal fabrication. (R. p. 19, line 21-p. 20, line 9). It was at this time that Wilson approached Gandis about restarting some projects that the two had worked on at VyTech. (R. p. 20, lines 10-13). Gandis' machine business was located in Anderson, and he and Wilson believed that a portion of this facility could serve as a hub of operation for a future business in the film industry. (R. p. 22, line 9-p. 23, line 9). At this point in time, CCC had not been established as an entity.

The first business plan Wilson and Gandis tried was the manufacturing of a breathable vapor barrier for metal buildings. (R. p. 22, lines 17-24). Before going out of business, VyTech had tried to develop the product but was unsuccessful. (R. p. 22, lines 17-24). Their idea was to create a machine that would roll the film through its tooling and perforate the film during that process. (R. p. 22, line 9-p. 23, line 9). To that end, Gandis built a machine at his warehouse that could be used for this purpose. (R. p. 23, lines 6-9). The venture never got off the ground. (R. p. 23, lines 10-12). Although the perforation services business failed, it provided a helpful asset: a machine that could be used for slitting film. (R. p. 23, lines 15-22).

During this time, Wilson operated EFS. As noted above, EFS was a one-man film sales company. In his work at EFS, Wilson contracted out the services of a film slitting company in order to meet customer demand. (R. p. 25, lines 3-15). For example, if an EFS customer needed a certain type of film that was 45 inches wide, and the roll was currently 60 inches wide, EFS would contract with a film slitter to slit 15 inches from the side of the roll.

Wilson and Gandis decided to use the machine created for perforation and see whether they could operate it in a manner that would allow it to slit film. (R. p. 23, line 13-p. 24, line 4). Film slitting was not a new idea in the market, but it was something they thought that they could turn into a profitable venture. In or around March of 2007, Gandis rebuilt the perforation machine into a slitting machine. Over the course of the year Gandis and Wilson endeavored to see whether they could make a go of this new business venture by slitting film for EFS. (R. p. 24, line 9-p. 25, line 21).

By November of 2007, the men apparently believed this venture had a future; thus, CCC was formed and registered with the Secretary of State as an LLC. At its formation, it had two members: Wilson and Gandis as 50-50 partners. (R. p. 54, lines 5-9). Carolina Custom Converting was formed to operate solely as a film slitting company—that is, *custom converting*. (R. p. 25, lines 16-21). Gandis was in charge of CCC operations and worked from its Anderson headquarters. As the months passed, however, Gandis came to the conclusion that slitting film was taking a large portion of his time but was not really creating a lasting company. (R. p. 37, lines 1-2 and 19-20). Soon thereafter, though, Wilson and Gandis began discussing the idea of folding EFS into CCC—that is, creating a full service film company. (R. p. 37, lines 3-5). Wilson and Gandis ultimately did combine the operations of these two companies starting in July of 2008. (R. pp. 1285-1286; R. pp. 1529).[1]

[1] Comeau-Shirley later joined CCC as a 10% member; she had a tax accounting and consulting background and agreed to receive a 10% ownership stake in return for providing consulting services. (R. p. 619, lines 4-14; R. p. 621, lines 13-22; R. p. 633, lines 13-22).

C. CCC Becomes Operational

The combined company emerged strong and made a profit for its owners quickly. CCC made a profit in each of its first three years: 2008-2010. (R. p. 586, lines 3-5). In 2010, however, it posted a banner profit of over $1 million. It did so as a result of a world-wide film shortage. CCC was able to capitalize on the film shortage because it was able to purchase large amounts of film inventory. (R. p. 651, lines 11-25). With inventory on-hand, CCC was able to service a large number of customers that it did not previously service in 2008-09. (See R. p. 653, line 23-p. 654, line 1). During its successful start-up years, CCC grew to a company of roughly 24 employees. (R. p. 39, lines 20-24). In 2009, CCC opened an office in Greenville, South Carolina. By the second half of 2011, Wilson was primarily supporting CCC's sales force from Greenville, and was not interacting with the customers on a regular basis. (R. p. 415, lines 1-12).[2]

D. Wilson Prepares to Leave CCC and Take its Trade Secrets with Him

In January of 2012, Wilson began finalizing plans to leave CCC and join a film sales company in Tennessee named FilmTech, Inc. (R. p. 496, line 12-p. 499, line 18; Exs. 72-76, R. pp. 1687, 1688, 1692, 1697). On January 9, 2012, Wilson entered CCC's secure server, (R. p. 883, lines 5-9), and downloaded all of CCC's customer and contact information. (R. p 868, line 10-p. 869, line 3; R. p. 1313). The next day, he ate dinner with FilmTech's owner, a gentleman named Mark McGarel.[3] (R. p. 1687).

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[2] In 2011, CCC's profitability ended and it posted a substantial loss that year. (R. p. 586, lines 3-5). Specifically, CCC posted a loss of $456,000 in 2011. (R. p. 245, lines 8-15). The financial health of the company led to strife regarding the internal affairs of CCC and ultimately Wilson seeking employment elsewhere.

[3] Initially Wilson approached McGarel to determine whether FilmTech would be interested in acquiring CCC. To that end, Wilson had McGarel sign a non-disclosure

On January 16, 2012, at 12:11 pm, Wilson sent an e-mail to McGarel regarding his plans:

> Hi Mark,
>
> I look forward to the opportunity to join your organization. . . . Here are the points of discussion for our agreement.
>
> . . . .
>
> 4. Full time employee with draw or salary of $8k per month for a period of time until my commission reaches a level that supports my needs. ***My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on our qualifying over the past 3 to 6 months.***

(R. p. 1692; R. p. 496, line 19-p. 497, line 22) (emphasis added).

Later that day, at 5:34 pm, Wilson sent a follow-up email to McGarel. (R. pp. 1697-1705. In that e-mail, Wilson went line-by-line through CCC's current markets and customers. He also attached CCC's 2012 budget forecast, which included CCC's projected customer sales and the prospects that CCC was working to secure. (*Id.*; R. p. 498, line 17-p. 499, line 14). Wilson testified that it was his plan to take all of the confidential information and use it at FilmTech. (*Id.*).

A week later, Wilson received a return e-mail from McGarel. (R. pp. 1709-1729). By that time, McGarel had been able to analyze the 2012 budget forecast Wilson sent him. McGarel noted the costs of the products he was currently purchasing versus the costs that CCC was paying for the film. (*Id.*; R. p. 502, lines 13-17). For some of these films, CCC's acquisition prices were more competitive. (R. p. 503, lines 1-17). Ultimately, McGarel passed on Wilson's proposal to join FilmTech. During their

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agreement. The conversation, however, quickly turned to Wilson joining FilmTech. (R. p. 496, lines 15-18).

discussions McGarel had inquired about potential legal ramifications. (R. p. 1699). Presumably, those concerns or a lack of synergies won out.

As discussed below, instead of joining FilmTech, Wilson took everything he had planned to bring to FilmTech, and instead took it to NeoLogic Distribution Inc. and Fresh Water Systems, Inc. There is no question that Wilson took all of CCC's confidential information with him. (R. p. 506, lines 1-18).

E. Wilson Leaves and Destroys Evidence

During the first part of January, when Wilson was attempting to move over to FilmTech, he concurrently sought to negotiate the purchase of his equity interest by CCC, or purchase the other members' interest. At this time all parties had retained legal counsel. (*See* R. p. 499, line 18-p. 500, line 2). At some point during the negotiations, Wilson's counsel led Gandis' counsel to believe that Wilson was leaving CCC. (R. p. 163, lines 2-17; R. p. 435, line 14-p. 436, line 13). As a result, Gandis had CCC's information technology consultant disconnect the Greenville office from CCC's server. (*See Id.*) Gandis took this action to prevent Wilson from being able to download CCC's confidential information from the server and take it with him. On the afternoon of the next day (January 17), Gandis travelled to the Greenville office to remove Wilson from that office and prevent him from taking any of CCC's property. (R. p. 164, line 18-p. 165, line 8). Gandis brought along a member of law enforcement to help him with this goal. (*Id.*). Wilson did leave the Greenville office that day, but he took CCC property and computers with him (*Id.*). Wilson testified that he took two computers and a Blackberry phone. (R. p. 500, lines 10-16).

On January 19, CCC's labor lawyer sent a letter (via facsimile) to Wilson's counsel. (R. pp. 1706-1708). The letter notified Wilson, via counsel, that he had taken company property, which included "proprietary information, trade secrets, and other intellectual property," and instructed him "not to destroy, copy, sell or use any of this property, including the computer data." (*Id.* at 1706). After receiving this warning, Wilson then erased all of the data on both computers and the Blackberry." (R. p. 500, line 25-p. 501, line 2; see also R. p. 899, line 23-p. 901, line 2). Wilson admitted that he erased this information after receiving notice not to do so. (R. p. 501, lines 3-6). As an explanation for his actions, Wilson claimed that he transferred CCC's data from these devices prior to erasing them. (R. p. 500, line 24-p. 501, line 24).

F. Wilson Joins FreshWater Systems, Inc. and Neologic Distribution, Inc.

Gone from CCC, and ignoring the warning of CCC's labor lawyer's letter, Wilson began to siphon off CCC's customers. (R. p. 503, line 20-p. 504, line 25). He first began doing so with the financial backing of Fresh Water Systems, Inc. ("FWS") (*Id.*; R. p. 1757, fourth sentence ("What's your proposal on the profit allocation to FWS?"). FWS is a business owned by Wilson's brother-in-law, Mr. Norvell. (R. p. 728, line 18-p. 729, line 2). Soon thereafter, he began siphoning off customers through a company named Neologic Distribution, Inc. ("Neologic"). (R. p. 729, lines 19-23; R. pp. 1761). Neologic was a "sister" company to FWS.[4] (*Id.*) When Wilson began working for Neologic it

[4] These two companies were essentially the same entity. The Neologic balance sheet showed that all monies used by it flowed from FWS, and that FWS employees worked for Neologic. (R. p. 736, line 3-p. 737, line 3; R. p. 1330-1332). Although later disputed at trial, during a Rule 30(b)(6), SCRCP, discovery deposition of Neologic, that company (Neologic) testified that it paid for Wilson's attorney fees and treated the payment as an "overhead expense."(R. p. 2384, lines 9-16, p. 2385, lines 3-14; R. p. 733, line 1-p. 735, line 25).

created a film division. (R. p. 729, lines 12-23). Prior to Wilson joining Neologic, it was not in the film business. (*Id.*).

In its first year of existence, Neologic conducted over $135,000 worth of business with CCC customers. (R. p. 1329). In 2013, Neologic conducted over $580,000 worth of business with CCC customers. (*Id.*). By the time of trial, Neologic had conducted over $980,000 worth of business with CCC customers. (*Id.*).

G. Trial Court's Ruling

The circuit court concluded that CCC did not prove its trade secret claims. (R. pp. 1784-1786). The court concluded that because the confidential information was accessible by the public, and Wilson had experience working in the industry, then the confidential information did not qualify as a trade secret. (*Id.*). The circuit court further concluded that CCC did not sufficiently safeguard its confidential information. (*Id.*). Finally, the circuit court concluded that CCC was not entitled to damages. (*Id.* at 1786). The circuit court further found that the "evidence merely demonstrated that Wilson was able to conduct business with some of CCC's former customers after his ouster[5] from CCC." (*Id.*). Importantly, in denying FWS and Neologic's counterclaim that the trade secret claim was brought in bad faith, the circuit court correctly acknowledged that "[e]vidence shown at trial demonstrated that Neologic/[FWS] used CCC's confidential information and that CCC was justified in bringing the trade secrets claim." (*Id.* at 1788).

III. STANDARD OF REVIEW

A claim for misappropriation of a trade secret is an action at law. When an action

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5 The circuit court's choice of the word "ouster" indicates the erroneous lens through which it must have viewed this claim. Whether Wilson was ousted from CCC, or not, had no bearing on the question whether he and Neologic/FWS misappropriated CCC's trade secrets.

at law is tried to a judge, this court is tasked with correcting all errors of law. *Milliken & Co. v. Morin*, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012). "In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Bell v. Progressive Direct Inc. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014). (citation omitted). However, an appellate court may make its own determinations concerning questions of law and need not defer to the trial court's rulings. *Id.* at 576, 757 S.E.2d at 404-05.

IV. TRADE SECRET VIOLATIONS

A. Legal Standard

South Carolina adopted the Uniform Trade Secret Protection Act in 1992. Within five years, apparently concluding that the Uniform Act was insufficient, the General Assembly enacted the South Carolina Trade Secret Act. *Employees Beware: Employer Rights Under the South Carolina Trade Secret Act*, Kirk T. Bradley, Note, 49 S.C. L. Rev. 597, 597-98 (Spring 1998) (hereinafter "Employees Beware"). The article posits that the South Carolina Act "arguably establishes the most comprehensive compilation of trade secret laws in the United States." *Id.* One of the grounds for this statement is the presence of S.C. Code Ann. § 39-8-30(B) (1997), which is not found in the Uniform Act, and provides as follows:

> ***Every employee*** who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret ***has a duty to refrain from using or disclosing the trade secret*** without the employer's permission ***independently of*** and in addition to ***any written contract of employment, secrecy agreement, noncompete agreement, nondisclosure agreement, or other agreement between the employer and the employee.***

§ 39-8-30(B) (emphasis added). Accordingly, the General Assembly has created an obligation upon all employees in South Carolina, notwithstanding the absence of a

written agreement, to refrain from using their employer's trade secrets.

> Under South Carolina law, a trade secret means the following:
>
> (a) information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:
>
> > (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and
> >
> > (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
>
> (b) ***A trade secret may consist of a simple fact***, item, or procedure, or a series or sequence of items or procedures which, ***although individually could be perceived as relatively minor or simple, collectively*** can make a substantial difference in the efficiency of a process or the production of a product, or ***may be the basis of a*** marketing or ***commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.***

§ 39-8-20(5) (1997) (emphasis added).

Under South Carolina law, misappropriation means:

> (a) acquisition of a trade secret of another by a person by improper means;
>
> (b) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means;

§ 39-8-20(2)(a-b) (1997). South Carolina law provides that "[i]mproper means" includes "theft." § 39-8-20(1) (1997).

Finally, under South Carolina law, "[a] complainant is entitled to recover actual damages for misappropriation of trade secrets." S.C. Code Ann. § 39-8-40(A) (1997). The damages available to a plaintiff "include both the actual loss caused by misappropriation or the unjust enrichment caused by misappropriation." S.C. Code Ann. § 39-8-40(B) (1997). Accordingly, once a plaintiff proves that his trade secret has been

misappropriated by a defendant, a plaintiff is entitled to damages. If the facts of a case show that a full award would be "inequitable," then a court has the authority to "reduce[] monetary recovery." S.C. Code Ann. § 39-8-40(A) (1997).

B. The Circuit Court Erred by Concluding No Trade Secrets Existed

1. The Confidential Information is a Trade Secret

Wilson took all of CCC's customer lists, supplier lists, pricing information, prospective customer lists, its electronic vendor reference program, and its inventory reference program. (R. p. 506, lines 1-18). CCC spent significant corporate resources and time building this body of information. (R. p. 870, lines 10-18; R. p. 871, line 20-p. 872, lines 1-17; R. p. 873, line 24-p. 874, lines 1-5; R. p. 875, lines 3-14; R. p. 876, lines 1-17; R. p. 877, line 8-p. 881, lines 4, and 12-24).[6]

The confidential information was comprised of "simple fact[s] . . . [that] although individually could be perceived as . . . minor or simple, collectively . . . [were] the basis for [CCC's] commercial strategy." § 39-8-20(5)(b). The plain language of the South Carolina Trade Secret Act makes clear that this information is a trade secret. *See also Williams v. Riedman*, 339 S.C. 251, 284, 529 S.E.2d 28, 45 (Ct. App. 2000) (Goolsby, J. concurring) (concurring in the opinion and clarifying that "I do not construe it to hold that a customer list cannot be a trade secret"). Further, Courts have concluded that this type of information is a trade secret. *See, e.g., Craig Outdoor Advertising, Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1018-19 (8th Cir. 2008) (noting that public information gained "only after, extensive, time-consuming research [is] information entitled to

[6] CCC also presented testimony that Wilson and Neologic/FWS were improperly conducting business based on information gained through the discovery process. (R. p. 876, line 18-p. 877, line 7; R. p. 882, line 4-p. 883, line 4; R. pp. 1394-1400).

protection"); *N. Atlantic Instruments, Inc. v. Haber*, 188 F.3d 38, 46 (2d Cir. 1999) (collecting cases and noting same); *see also* S.C. JUR. INTELLECTUAL PROPERTY § 77 & n.1 (noting that "customer lists and other sales and marketing information can be trade secrets"). The circuit court committed legal error by failing to apply the plain language of the South Carolina Trade Secret Act.

The circuit court also failed to acknowledge that the efforts involved in locating the correct film for a customer required significant intellectual input by CCC. (R. p. 870, lines 5-17). It likewise erred in failing to acknowledge the complexity of the supplier market, and the resources CCC utilized in navigating that market in order to locate the correct film for a customer. (R. p. 872, lines 7-10).

The circuit court also failed to acknowledge the electronic vendor reference program and inventory reference program that CCC created and Wilson took. (R. p. 877, line 8-p. 881, line 4; R. pp. 1534-1587). During the discovery process, Neologic/FWS produced a printed out copy of the electronic vendor reference program. (*Id.*). The program operates using the Excel program. (R. p. 877, lines 24-25). Gandis testified that it was developed over time with the input of a number of CCC employees and Comeau-Shirley. (R. p. 878, lines 6-10).

Gandis testified about the operation of the program. CCC compiled into the program all of the different manufacturers of film, specific films types, and manufacturer codes. (R. p. 878, lines 1-20). Gandis testified that some of the codes are not publicly available. (*Id.*). He testified that when a customer calls with a description of what they need, he can put those specifications into the program and it will generate a result that provides you with every manufacturer that makes that film. (R. p. 879, lines 4-8).

Gandis also testified about the inventory reference program. That program was developed to provide a searchable system that immediately showed what inventory CCC had in its inventory at any given time. (R. p. 879, lines 18-p. 880, line 7). Gandis testified the development of this program increased CCC's efficiencies and gave it a competitive advantage. (R. p. 879, lines 9-17; *see also* R. p. 1661, first two sentences of "Company strengths," (Wilson noting the competitive advantage of CCC in its ability "turn an order faster than our competition")).

Both of these programs are a trade secret. They are a "program . . . [that] derives independent economic value . . . from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use." § 39-8-20(5)(a)(i). They are also a "procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process" § 39-8-20(5)(b).

2. The Circuit Court Committed Legal Error by Relying Upon Improper Legal Authority

The circuit court erred in concluding that CCC's confidential information did not constitute a trade secret. Against the backdrop of the confidential information detailed in Part III.B.1., *supra*, and at issue in this case, the circuit court committed legal error by relying upon *Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (2007) for the proposition that CCC's confidential information did not constitute a trade secret. *Atwood* did not hold that the confidential information at issue in this case is not a trade secret.

Atwood addressed a rental home business located in Edisto Beach. One of Atwood's employees left to join a competing company, and Atwood brought a claim for

misappropriation of its trade secrets against the former employee and her current employer. *Id.* at 70-71, 646 S.E.2d at 883. The trade secrets alleged in *Atwood* constituted the "homeowners list" and the "renters list." *Id.* at 71, 646 S.E.2d at 883. In a split decision[7], the *Atwood* court concluded that these lists did not constitute trade secrets.

The *Atwood* court based this finding on the "undisputed fact that a list of all the homeowners in Edisto Beach and their contact information is a matter of public record available at Town Hall." *Id.* at 72, 646 S.E.2d at 884. The Court also based this finding on the fact that the former employee was "contacted directly by Atwood renters after Atwood sent out an announcement of her departure." *Id.* at 72, 646 S.E.2d at 884.

The facts of *Atwood* are significantly different from this case. CCC's business involves working with customers to qualify a film before entering into long-term supply relationships. (R. p. 886, lines 11-15). The qualifying process can take months. Wilson's own witness confirmed this fact. (R. p. 301, lines 7-20). During the qualifying process, many times a CCC employee was required to travel to the customer's plant for trial runs. (*Eg.*, R. p. 911, lines 3-10).

Qualifying the right film also requires CCC to first find the right film at the right price—both for CCC and the customer. (E.g., R. p. 874, line 12-p. 875, line 14; R. p. 876, lines 1-17). That process involves expending employee time and resources to locate the correct film, and the most suitable supplier of that film. Indeed, locating the most suitable supplier of film is often the most valuable information, for it provides the competitive pricing advantage. (*E.g.*, R. p. 871, line 7-p. 873, line 8). *See Elm City Cheese Co. v. Federico*, 752 A.2d 1037, 1040-41, 1053 (Conn. 1999) (noting that cheese company's

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[7] Two Supreme Court justices concluded that the "renters list" qualified as a trade secret. *Atwood*, 374 S.C. at 74, 646 S.E.2d at 884.

commercial strategy of locating "return milk" for use in its processes was a trade secret as it allowed the cheese company to purchase its raw goods at a much lower cost); *see also Sigma Chemical Co. v. Harris*, 794 F.2d 371, 373 (8th Cir. 1986) (noting that "which suppliers supplied chemicals at the requisite quality and price was not in public domain" and protected as a trade secret). The circuit court failed to appreciate the significant amount of time and energy that CCC devoted to creating its confidential information. This confidential information was not merely sitting at a "Town Hall" for anyone to simply review.

Unlike *Atwood*, documentary evidence showed that Wilson contacted the customers himself after he left. (E.g., R. pp. 1757-1759 (noting that "[w]hen I told them I had left CCC weeks ago"); R. p. 1336 (stating "Hi Trip, Good catching up with you today. As discussed, my new company is Neologic Distribution."; R. p. 1337 (stating "I hope you are well. As you may have heard, I left [CCC] in January. I am still very much in the film business . . . .").

Atwood also did not involve competitive pricing. The price that a rental company charges is expressly advertised. CCC does not advertise the price that its customers pay for their film because its competitor could then underbid the company. The testimony at trial showed that Wilson and Neologic/FWS were underbidding CCC's customers based upon their possession of CCC's confidential information. (R. p. 870, line 18-p. 871, line 2; R. p. 873, lines 2-20; R. p. 874, lines 6-11; R. pp. 1342-1343 (stating "these prices are very attractive"; R. p. 1384 (showing $400 profit on roughly $80,000 sale).

The circuit court also improperly relied upon *Carolina Chemical Equipment Co. v. Muckenfuss*, 322 S.C. 289, 471 S.E.2d 721 (Ct. App. 1996), for the proposition that

Wilson's previous work in the industry precluded the confidential information from becoming a trade secret. In *Muckenfuss*, the company did not claim that the employee "took actual customer lists, pricing lists, or formula cards with him." *Id.* at 297, 471 S.E.2d at 725. Rather, the company alleged the misappropriation occurred from the employee's use of "knowledge he acquired during the 17 years he was employed" by the company. *Id.* at 297, 471 S.E.2d at 725. In this case, CCC expressly claimed, and Wilson was forced to admit, that he did take all of the confidential information. (R. p. 506, lines 1-18). And, CCC based its claim for relief upon the fact that Wilson took this confidential information with him to Neologic/FWS where he ***started a film company***.

CCC devoted employee resources, time, and money into developing its confidential information. Wilson left CCC, then took and used all of this confidential information at Neologic/FWS—the circuit court made that specific finding. (R. p. 1788). The circuit court's conclusion, however, that this confidential information was not a trade secret constituted an error of law. This court should reverse that legal conclusion, and remand for a new trial.

C. The Circuit Court Erred by Applying an Incorrect Legal Standard When it Concluded that CCC Did Not Sufficiently Safeguard its Confidential Information

The undisputed testimony at trial established the following:

- Only three people had access to all of the confidential information: Wilson, Gandis, and Comeau-Shirley (R. p. 883, lines 5-16);
- The confidential information was located on a password protected server (*Id.*);
- When CCC was led to believe that Wilson was going to leave, his access to the server was disabled (R. p. 163, lines 2-17; R. p. 435, line 22-p. 436, line 13);
- When Gandis met Wilson to get him to leave the Greenville

> office, he brought along a member of law enforcement in order to prevent Wilson from taking CCC property with him (R. p. 164, lines 5-14).

South Carolina law provides that the owner of a trade secret must employ "efforts that are reasonable under the circumstances to maintain its secrecy." S.C. Code Ann. § 39-8-20(5)(b) (1997). At the time Wilson left CCC, it had 24 employees, (R. p. 39, lines 22-24), yet only the three owners had access to all of the confidential information. (R. p. 883, lines 5-16). When the threat of a misappropriation occurred, CCC acted to maintain the secrecy of its confidential information. (*See also* R. pp. 1673-1675 (learning that Wilson was sharing confidential information with potential suitors and asking him to protect the secrecy of the information)).

The circuit court did not apply the reasonable under the circumstances legal standard. Instead, the circuit court applied a different legal standard. The circuit court incorrectly stated that a "party claiming a trade secret violation must exercise 'eternal vigilance,' which calls for constant warnings to all persons to whom the trade secret has become known and obtaining from each an agreement, preferably in writing, acknowledging its secrecy and promising to respect it.'" (R. p. 1785). South Carolina law, however, does not include these requirements. S.C. Code Ann. § 39-8-30(B) (1997).

The incorrect legal standard cited by the circuit court came from an unpublished decision by the United States Court of Appeals for the Fourth Circuit. *Hill Holliday Connors Cosmopulos, Inc. v. Greenfield*, 433 Fed. Appx. 207 (4th Cir. 2011). That unpublished decision based its reasoning upon the South Carolina Supreme Court's ***1972*** decision in *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972). Following the enactment of the South Carolina Trade Secret Act ***in 1997***—which "arguably establishe[d] the most comprehensive compilation of trade secret laws in the

United States"[8]—*Lowndes* is no longer controlling law.

The circuit court's reliance on the unpublished Fourth Circuit decision constituted legal error. This court should reverse that decision, and remand for a new trial.

D. The Circuit Court Erred by Concluding that CCC Was Not Entitled to Damages

The circuit court's conclusion that CCC was not entitled to damages resulted from a legally incorrect application of the South Carolina Trade Secret Act. Section 39-8-20 provides that "misappropriation means . . . acquisition of a trade secret of another by a person by improper means"; or "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means." S.C. Code Ann. § 39-8-20(2)(a)-(b) (1997). In turn, § 39-8-40(A) provides that a "complainant is entitled to recover actual damages for misappropriation of trade secrets." S.C. Code Ann. § 39-8-40(A) (1997). Because CCC's trade secrets were misappropriated, it was entitled to damages as a matter of law.

Wilson admitted that he took all of CCC's confidential information. (R. p. 506, lines 1-18). Wilson admitted that at the time he left CCC he was primarily running the sales force, and not interacting with customers. (R. p. 415, lines 1-12). E-mails were stipulated into evidence, and presented at trial, showing that Wilson and Neologic/FWS were using CCC's confidential information. (*E.g.*, R. pp. 1534-1587; R. p. 1313; R. p. 1338; R. p. 1339; R. pp.1342-1343 ; R. p. 1368; R. pp. 1369-1383; R. pp. 1385-1386; R. pp. 1387-1389; R. pp. 1390-1393; R. pp. 1394-1400; R. pp. 1401-1427). Neologic/FWS produced financial information showing that they were conducting business with CCC's customers. (R. p. 1329). Trial testimony showed that 23 of 27 Neologic customers were

[8] *Employees Beware*, 49 S.C. L. Rev. at 597-98.

CCC customers.[9] (R. p. 883, lines 17-24). But even setting aside Wilson's pre-CCC customers, the trial testimony showed that 11 of Neologic/FWS's customers were customers that CCC gained on its own. (R. p. 883, line 23-p. 885, line 25). As a matter of law, CCC was entitled to an award of damages.[10] S.C. Code Ann. § 39-8-40(A).

The circuit court's conclusion that the "evidence merely demonstrated that Wilson was able to conduct business with some of CCC's former customers after his ouster[11] from CCC" is legal error. It is based upon a legally erroneous application of the South Carolina Trade Secret Act.[12]

In *Williams v. Riedman*, 339 S.C: 251, 529 S.E.2d 28 (Ct. App. 200), this Court addressed whether the facts of that case provided for a trade secret claim. This court concluded that it did not, and did so based upon the following factors:

- No evidence that employee took any tangible customer information. *Id.* at 281, 529 S.E.2d at 43.
- No evidence that employee actively solicited the customers. *Id.* at 281, 529 S.E.2d at 43.
- Employee denied she had a plan to solicit the customers after termination. *Id.* at 280, 529 S.E.2d at 43.

---

9 The circuit court apparently overlooked the fact that the agreement to create the combined company called for Wilson to provide all of his customers to CCC. pp. 1285-1286; R. p. 1529).

10 With all due respect to the circuit court, the absence of routine post-trial briefing apparently limited the circuit court's ability to properly judge this case. (R. p. 866, line 2-p. 867, line 18). It is important to point out that when counsel for CCC proposed a post-trial briefing schedule to set forth the law and its application to the evidence, counsel for the respondents objected. (*Id.*).

11 *See* n.5, *supra.*

12 In the alternative, and against the backdrop of the confidential information misappropriated in this case, the circuit court's legal conclusion is not reasonably supported by the evidence. *Bell*, 407 S.C. at 576, 757 S.E.2d at 404.

- Every client employee had at the new company was a client from the company that she sold to her former employer.[13] *Id.* at 281, 529 S.E.2d at 44.

Each one of these factors points in in the opposite direction in this case.

The circuit court committed legal error by failing to properly interpret and apply the South Carolina Trade Secret Act.

V. BREACH OF FIDUCIARY DUTY

The Circuit Court committed legal error by applying the wrong legal standard when it judged the breach of fiduciary duty and usurpation of corporate opportunity claim. Therefore, the circuit court committed legal error in its application of fiduciary duty law and its application of the statute of limitations. The arguments and law presented by Appellants' Gandis and Comeau-Shirley in their appellate brief are hereby adopted by CCC and incorporated herein.

VI. CONCLUSION

The circuit court did not follow the South Carolina Trade Secrets Act when it judged this case. The text of the order and the legal authority cited in the order makes this legal conclusion inescapable. CCC respectfully requests that this Court issue an opinion reversing that portion of the order addressing the trade secret claims, and remand this claim for a new trial.

[SIGNATURE PAGE FOLLOWS]

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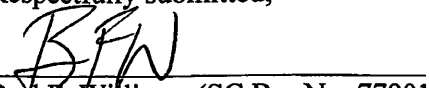
[13] The analogue here would be customers that Wilson had previously sold film to at EFS.

Respectfully submitted,



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July 7, 2016

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Appellate Case No.: 2015-000476

Lower Case No.: 2012-CP-23-02887

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,
Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC,
Defendants,

John Gandis and Andrea Comeau-Shirley, Third Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,
Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the
Respondents/Appellants,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the
Appellants/Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the **FINAL BRIEF OF APPELLANT CAROLINA CUSTOM CONVERTING, LLC,** complies with Rule 211(b), SCACR.

Respectfully submitted,

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John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc., Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents/Appellants,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants/Respondents.

PROOF OF SERVICE

I certify that I have served the **FINAL BRIEF OF APPELLANT CAROLINA CUSTOM CONVERTING, LLC,** by depositing a copy of same in the United States Mail, postage prepaid, on July 7, 2016, addressed to its attorneys of record:

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THE STATE OF SOUTH CAROLINA
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John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

FINAL BRIEF OF RESPONDENT DAVID WILSON IN REPLY TO BRIEF OF APPELLANT CAROLINA CUSTOM CONVERTING, LLC

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I. STATEMENT OF THE CASE

Respondent David Wilson ("Wilson") agrees generally with Appellant CCC's outline of the procedural history of the case in its Statement of Claim, although there are a few omissions from the procedural history that would be helpful for the Court to know in understanding the progress of this case. First, on April 27, 2012 Wilson filed a complaint against John Gandis ("Gandis") and Andrea Comeau-Shirley ("Comeau-Shirley") alleging oppression and seeking dissolution and/or a buyout of his membership interest in Carolina Custom Converting, LLC ("CCC"). Gandis and Comeau-Shirley answered and counterclaimed on July 3, 2012. On October 10, 2012, Wilson filed a motion to compel the production of electronically stored financial information in its Quickbooks' files. Per order of the court dated November 26, 2012, CCC produced uncondensed electronic QuickBooks' files for 2011 and 2012.

On May 20, 2013, Wilson filed a motion seeking to compel the production of discovery and hard drives of Comeau-Shirely based upon the affidavit of expert witness, Catherine Stoddard, who found alterations and manipulations of Quickbooks' electronic data produced pursuant to the court's November 26, 2012 order. On October 28, 2013, the court ordered Comeau-Shirley to produce her hard drives for imaging and searching after determining she failed to produce emails and she altered electronically stored information in Quickbooks, including back dating transactions, deleting hundreds of thousands of dollars in inventory, and inserting accounts payable to her accounting firm. More than a thousand of previously unproduced emails were harvested from Comeau-Shirley's hard drive over a period of six months as the parties conducted searches pursuant to the protocol set out in the court's order. These emails were critical, and make up most of the documentary evidence introduced by Plaintiff at trial.

In addition, after a status conference on August 26, 2013, the court determined that an accounting of the financial books were in order. On October 22, 2013, the court ordered a full accounting of the financial records of Carolina Custom Converting, LLC and ZOi Films, LLC. The order appointed Del Bradshaw, Certified Public Accountant (CPA), to carry out the execution of the exhaustive review of books. The process took over nine months and cost approximately $150,000 because the financial records needed to be normalized and in some instances reconstructed. This report was admitted into evidence in this case, and Del Bradshaw testified about his findings.

It was not until June 2013 and after a trial date had been set that CCC filed claims alleging misappropriation of trade secrets, these claims would not be served on all parties until months later. There were no motions for injunctions and protective orders, and CCC conducted no forensic examination of Wilson's computer or any Neologic computer. The filing of the trade secret claims (and many others) would delay trial another twelve months.

In September/October 2014, the parties presented evidence during a bench trial on the merits. After a four day trial on the merits and a three hour oral argument on the 5th day of the proceeding, the Court ruled quickly after having sat eyewitness to the testimony of CCC's three members (as well as Plaintiff's other witnesses and the damning testimony of court appointed accounting expert, Del Bradshaw). With instructions from the trial judge, Wilson drafted a proposed order as well as requested rulings on matters not addressed in the directions of Judge Garrison Hill. This proposed order was submitted on October 20, 2014, and the opposing parties were provided an opportunity to comment. The court took the matter under advisement and issued its own final order on January 9th, 2015, rejecting Wilson's request for prejudgment interest and attorneys fees. Wilson initially appealed several aspects of the order but decided to

abandon those grounds, and simply seek a ruling affirming the trial court's decision to finally end this litigation. CCC appealed the trial court's decision regarding CCC's trade secrets claim. This Initial Brief by Respondent David Wilson is filed in support of this Court affirming the trial court's decision.

II. STATEMENT OF FACTS

Carolina Custom Converting, LLC ("CCC") was organized as a manager-managed limited liability company, and John Gandis ("Gandis") was the managing member. (R. p. 38 lines 8-19; pages 976-979). Gandis held forty-five percent ownership interest. Respondent David Wilson ("Wilson") was also a forty-five percent owner of CCC; Andrea Comeau Shirley ("Shirley") held a ten percent distributional interest. After a year long attempt to force Wilson to sell his ownership interest, Gandis called law enforcement to accompany him to CCC's Greenville office to remove Wilson from his own business; once Wilson had left the premises, Gandis had the locks changed.[1] Wilson has never been permitted to return to his former office or to participate in the business of CCC again. Four years after his ouster and hundreds of thousands of dollars later, Wilson has still not been paid for any of his membership interest.

A. Dave Wilson's 20 Years of Experience in the Plastic Film Industry

After serving active duty in the Navy during Desert Storm and while attending Furman University, Wilson became employed by working nights for Interfilm as polyester film machine operator as well as working in the warehouse with the film inventory. (R. p. 360 lines 19-p. 361

[1] The detailed factual description of the "squeeze out" is described in detail in Respondent Wilson's brief related to the appeal of Appellants Gandis and Shirley. These facts are helpful in understanding context especially in light of the court's ruling "Mr. Gandis and Ms. Comeau-Shirley's testimony lacked credibility in most important respects." (R. pages 1794-1795) Because there is so much disputed testimony, credibility was a critical determinant in the outcome of this trial. Examination of the emails between Gandis and Shirley makes this determination a foregone conclusion.

line 6). Much of this film is used as packaging: food packaging, air packaging, and flex packaging. After a year or two with Interfilm, Wilson was then recruited by another film company, where he became employed as a film metalizer, which involved taking clear films and applying aluminum to the surface to give a better barrier. (R. p. 361, lines 7-17). After a stint at another film company, Wilson started his own film business, Palmetto Custom Films, Inc. (PCFI) in 2003 with two partners. (R. p. 362, lines 1-11). Wilson later formed his own film brokerage, Eastern Films Solutions (EFS), in 2005. (R. p. 364, lines 11-21).

By the time he formed EFS, Wilson had approximately 15 years of experience in the film business and his focus had been (and continued to be) polyester film (R. p. 365, lines 20-21; p. 366, lines 1-12). During his years in the film business, Wilson had made significant number of vendor and customer contacts as well as partnered with other film businesses and brokers for various transactions. (R. p. 365, lines 1-18; p. 366 lines 3-8). Before and while operating EFS, Wilson was a member of the various trade associations related to the film and packaging businesses, and further developed contacts and customers through these memberships as well. (R. p. 365, lines 18-25). It was through EFS that Wilson met Gandis in 2007, when EFS sold some product to VyTech, a business owned by Gandis' father before it went bankrupt. (R. p. 367, line 15-p. 368, line 11).

When Gandis and Wilson decided to form CCC, EFS customers were gradually serviced through CCC; Wilson had all the product knowledge, all the vendor/supplier contacts (and there are very few domestic manufacturers of polyester film), and all the customer contacts. Significantly, Dave Wilson had developed a relationship with Minova through EFS, and made the decision to turn this account over to CCC at its formation. This resulted in $775,000 in revenue for CCC from that one account alone in 2008, which helped fund its start-up operations.

(R. p. 63, lines 4-16). Gandis had zero accounts and no real industry contacts other than Wilson. (R. p. 53, lines 6-12). However, Gandis offered that he had access to capital as well as a building which could be used to operate CCC. (R. p. 376, line 22-p. 377, line 8).

B. Wilson Looks for Buyer for CCC to Remedy Squeeze Out Attempt

Beginning in early 2011, Gandis and Shirley began an effort to force Wilson out of CCC, and after threatening to stop paying him his "guaranteed" monthly draw, buy-out negotiations began. (R. pages 1770-1789). So, in December 2011 and January 2012, Wilson began looking for a buyer for CCC with the knowledge and permission of the other two members.[2] (R. p. 430, line 3-p. 431, line 19). Gandis indicated he and Shirley were open to selling their interests. (*Id.*) Wilson approached various possible purchasers, including his brother-in-law Steve Norvel (Wilson's brother-in-law who owns Neologic) as well as Filmtech, which was owned by Mark McGarel. (R. p. 430, line 19-p. 431, line 11). Filmtech was both a competitor and a supplier and a potential customer. (*Id.*)

Wilson sent McGarel CCC's financials and received a non-disclosure from him. (R. p. 431, line 23-p. 432, line 6). Customer names were removed from the financial disclosures, and thereby providing only revenue figures necessary to compute a potential purchase price. (*Id.*) Wilson obtained a non-disclosure agreement from all the persons with whom he discussed a possible sale of CCC. (R. p. 432, lines 4-6). McGarel decided he was not interested in buying

[2] Despite claims to the contrary made in Appellant's CCC brief on page 9, Wilson did not enter CCC's secure server and download all of CCC's customer contact information on January 9, 2012, but was still employed and actively working on the business that remains to this day forty-five percent his company. Appellant CCC makes the opposite claim with a citation to the record that indicates merely that Wilson modified a couple of files on January 9th, 2012. The fact that Wilson merely accessed information related to his activities on behalf of CCC does not support the much more damning statement made in Appellant's brief on page 9 which is simply not supported by any facts in the record.

CCC, and Wilson and McGarel explored the idea of Wilson coming to work for McGarel. (R. p. 432, line 7-p. 434, line 12). Wilson did not have a non-compete, and had already been advised he had received his last paycheck for a while. (*Id*). However, nothing ever came of these discussions with McGarel.[3]

It is important to note that months earlier in 2011, Gandis and Shirley had IT contractors access Wilson's computer and program it to forward all of his emails, personal and business, to Gandis so he could monitor Wilson's emails. (R. p. 119, line 6-p. 120, line 10; pages 1018-1022; p. 700, line 15-p. 701, line 1). Gandis read emails between Wilson and his accountant, Wilson and his lawyer, and Wilson and his wife, and would forward to Comeau-Shirley so they could strategize how to use the information in its attempt to force Wilson out of the business. (R. p. 121, line 21-p. 122, line 6; *see e.g.,* pages 1045-1046). Gandis also read the emails from Wilson and Mark McGarel, and received them in real time just as McGarel would have received these emails (and the CCC financials as attachments). (R. p. 163, lines 14-17; p. 555, lines 15-17). However, there were no actions taken to protect what CCC now claims was a disclosure of trade secrets. During litigation, the trade secret claim was not raised for years until Appellant CCC (under the control of Gandis and Comeau-Shirely) filed Amended Third-Party claim a month before the original trial date to gain leverage; there was never a motion for injunctive relief sought related to any information now the subject to claims of "theft" of trade secrets. [4]

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[3] Plaintiff's Exhibit 116 is an email in which CCC sent an email to McGarel containing the very information it alleges was disclosed by Wilson. It seems as if the email might have been sent inadvertently, but it appears the disclosure was of no consequence since McGarel's business sales higher grade film to a different set of customers than CCC. It took no steps to obtain the return of this information.

[4] The spying and testimony related to it are additional evidence that certainly would be relevant to credibility; emails contradicting Gandis' and Shirley's stories about the scheme to spy on Wilson, looking for incriminating information to take away his interest, and obtaining

C. Gandis Locks Wilson Out of CCC

So, on January 17, 2012, Gandis showed up unannounced with law enforcement and made the claim that Wilson had resigned. This was the plan hatched in an email exchange between Gandis and Comeau-Shirley. (R. p. 1110-1112). Since Wilson had never resigned, Wilson denied his resignation and at first refused to leave. (R. p. 321, line 12-p. 323, line 4.) Gandis persisted. Wilson became concerned about (1) leaving his personal information on his computer in Gandis and Shirley's possession and (2) he needed "information about CCC to prove what had happened, to prove what I had done for the company...." (R. p. 321, line 12-p. 323, line 4; p. 441, lines 3-17). So, Wilson took his laptop with him when he vacated, copied the electronic information to another computer, erased the computers, added CCC files and emails back to the CCC laptop, and returned the computer. (R. p. 442, line 1-p. 444, line 8). In fact, the search paid for by Appellant of the computer revealed that there were 40,000 emails on the computer when it was returned despite claims it was wiped clean. (R. p. 443, line 9-p. 444, line 2). Wilson testified the information he had copied was stored on the same hard drive on which it was originally copied, and had never been used to compete. (R. p. 444, lines 4-8). Appellant did not seek access to the hard drive or retain an expert to determine whether any of the information was actually opened and used. (Some of the information was eventually presented as evidence to prove Wilson's case.) Wilson testified that he did not use any of CCC information in his possession "to call on, solicit or obtain business...." (R. p. 445, lines 6-9).[5] The identity of those

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information to be used to squeeze Wilson out of the business he co-founded. (*See e.g.*, R. pages 1045-1046; page 700, line 15-p. 701, line 12).

[5] Gandis claimed Wilson had resigned, when in fact emails between he and Shirley plotted out the manner of termination and the words Gandis should use when terminating Wilson. (R. pages 1110-1111; p. 167, line 20-p. 169, line 15). Shaw corroborated Wilson's testimony that he did not resign. (R. p. 321, line 12-p. 323, line 4). Shaw's testimony is consistent with the plans

customers he did call upon while at Neologic corroborates this testimony; Appellants presented no evidence to the contrary.

D. Making a Living: Customers

In the remaining 11 months of 2012 following his ouster, Wilson needed to provide for his family. (R. p. 505, lines 13-16). Through Neologic, Wilson sold only a $132,000 worth of film to customers who had done business with CCC compared to the $5.2 million in reported sales CCC did in Wilson's last year with the company (2011). (R. p. 445, lines 10-15). However, the $132,000 in sales were all to customers that Wilson either sold to previously through PCFI or EFS and/or customers and contacts with whom he had some pre-existing relationship. (R. p. 1334; p. 444, line 17-p. 445, line 15). The $132,000 in revenue in 2012 came from 7 accounts, most of them small accounts:[6]

1. American Sales Group was a customer of Wilson's while at PCFI. (R. p. 445, lines 16-25).

2. Flexease was an Interfilm account, EFS account, and a PCFI account going back 20 years. (R. p. 446, lines 2-6).

3. Griff Paper and Film, which was a distributor and not a customer of CCC. (R. p. 446, lines 7-12).

4. Horizon Energy was an PCFI customer and an EFS customer. (R. p. 446, lines 6-20).

5. Imperial Manufacturing Group, Inc., a duct manufacturer in Canada, that Wilson had called on while at EFS. And EFS had sold film to a company called Bowflex which was eventually bought by Imperial Manufacturing. (R. p. 446, line 21-p. 447, line 6).

6. Industrias Vermont is a flex duct account in Mexico sold to initially through EFS. (R. p 447, lines 7-12).

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devised in the email exchange between Gandis and Shirley. Once again, more evidence that impeaches the credibility of Gandis and Shirley.

[6] Imperial Manufacturing Group, Inc. is an exception.

7. Valencia Speciality Films is Bruce Hotmer's company. (Hotmer was a witness presented by Plaintiff, and his relationship with Hotmer dates back more than a decade.) (R. p. 447, lines 13-17; p. 340, line 1-p. 342, line 25).

It is undisputed that every singled account that Wilson sold to in 2012 were customers of his prior to the formation of CCC. (R. p. 447, lines 15-18). And he sold to these accounts in 2013 and some in 2014. (R. p. 1334).

With three exceptions from 2012-2014, every account sold at anytime by Neologic had been some combination of former EFS, PCFI or InterFilm customer (R. p. 451, lines 11-15). No trade secrets were needed to make sales to these accounts. One of the three such accounts was Plastic Packing Technologies, but Neologic did not solicit or sell any film to Plastic Packing until 2014, which was two years after Wilson was locked out of his office.[7] (R. p. 449, lines 13-20). Another of the three accounts was Filtrosmallas. Wilson had no prior relationship with Filtrosmallas prior to joining Neologic, but Flilstrosmallas had quit doing business with CCC due to quality issues before Neologic made its first contact. (R. p. 448, lines 7-16). Finally, Supply One became a customer of Neologic, and Wilson had no prior relationship. (R. p. 449, line 21-p. 450, line 13). However, Supply One initiated the contact with Wilson in 2013 (R. p. 451, lines 4-8). There was not one shred of evidence that Wilson used CCC's alleged trade secrets to solicit these accounts; the weight of the evidence established just the opposite.[8]

E. <u>Gandis and Shirley Secretly Create a Competing Business: ZOi Films LLC</u>

[7] Any of CCC's pricing information would have become obsolete by the next year, 2013. (R. p. 447, lines 19-23).

[8] It should also be noted that CCC claimed that Wilson interfered with its relationship with JBF RAC, a supplier of CCC. However, emails that came to light late in discovery demonstrate that Gandis had accused JBF of trying to steal 3M, a CCC customer for which JBF was to provide product. (R. p. 1226; p. 914, line 16-p. 917, line 23). Just another instance where Gandis' credibility took a hit.

As Respondent CCC admits, CCC was a manager-managed LLC and Gandis was the manager. Shirley was his sole advisor after Wilson was locked out. Quite simply, Gandis and Shirley began plotting on March 15, 2012 to create a competing entity so they did not have "to haggle with Dave W about how much of the new stuff was his." (R. pages 1130-1133; p. 713, lines 20-25). Just months later, ZOi Films, LLC was created by Gandis and Shirley to handle the most profitable business and let CCC die on the vine; ZOi used the server with all the alleged trade secrets, sold to CCC customers, had access to pricing, customers, products, and anything else it alleges that Wilson took. (R. p. 184, line 12-p. 186, line 22; pages 1130-1143).

Gandis and Shirley created an entity and submitted corporate resolutions with the bank indicating that it was owned by two LLCs owned by Gandis and Shirley while under oath maintaining that they had intended to create a wholly-owned subsidiary of CCC. (R. p. 190, line 11-p. 191, line 25; pages 1198-1200). More significantly, tax documents signed under the penalty of perjury confirmed that ZOi had not been organized as a wholly-owned subsidiary of CCC. (R. pages 1201-1205) but still, the documentary evidence did not stand in the way of Gandis and Comeau-Shirely maintaining their cover story. So, "trade secrets" claimed to have been taken by Wilson to Neologic were given to ZOi by Gandis and Shirley beginning in July 2012 (all the while Gandis and Shirley maintained under oath this was not their intention).

Former customer service manager, Bill Shaw testified that he was told by Gandis and Comeau-Shirley that ZOi Films was "a new company that John [Gandis] and Andrea [Comeau-Shirley] were starting up." (R. p. 325, lines 18-23). Shaw further testified that while he was being paid by CCC, he was in reality working on ZOi Film deals, before Gandis and Shirley became secretive about ZOi's business. (R. p. 325, line 5-p. 327, line 18). ZOi Film business was being conducted at CCC and using its Quickbooks system to enter sales transactions and

purchase orders to make it appear that ZOi was buying film from CCC. (R. p. 326, lines 1-8). Accordingly, CCC's pricing and customer information used by Shaw in performing his customer service duties on behalf of CCC were being used by Shaw in performing purchasing and sales for ZOi Films.

F. Testifying Witness Bill Shaw

Bill Shaw was hired by CCC to create and establish a customer service department as well as assisting with purchasing film. (R. p. 318, lines 1-9). He also created purchase orders and sent those to customers. (*Id.*). When he was hired by CCC, Shaw was not asked to sign a non-disclosure agreement nor a non-compete. (R. p. 318, lines 21-25). His description of the typical film purchasing process shows the lack of reliance on any trade secrets to do his job:

> When Dave was still there and he and I were in the Greenville office, you know, the decisions were made if we had a customer -- specific customer need, we'd go out. We'd look at three or four different vendors, find the film that we needed. If it was available, then, you know, the decision to purchase it was made.

(R. p. 320, lines 8-15).

Despite Appellant's (apparent) claims that every sale was subject to a qualification process, it was the exception that a qualification process took place.[9] In connection with these transactions, purchase orders were generated. (R. p. 320, line 24-p. 321, line 1). After Wilson was ousted, Shaw handled all the purchasing decisions, reported to Gandis and worked from his home office three days a week. (R. p. 323, lines 18-p. 324, lines 1-8). Critically, at his home Shaw generated copies of purchase orders and sales orders; the information was stored electronically, but each transaction generate paper containing customer information, product

[9] On the one hand Appellant claims that the process of making a sell involves a long qualification process; on the other, Gandis in support of his attempt to claim the spreadsheet was a trade secret testified that the spreadsheet allowed CCC to make a sale in "two minutes." (R. p. 879, lines 4-17).

information, and pricing information. (R. p. 324, line 18-p. 325, line 1). Gandis nor any other person with CCC ever inquired about the retention or storage or protection of this information which was not returned to CCC upon Shaw's termination. (R. p. 325, lines 2-4).

As mentioned above, Shaw also was involved in making purchases for ZOi Films, a separate film company selling plastic film established by Gandis and Shirley to siphon off profits from CCC without Wilson even knowing. (R. p. 325, lines 7-22). Shaw performed the purchasing function for this competing entity, ZOi, before Gandis and Shirley began acting more secretive. (R. p. 325, line 24-p. 327, line 14). In the fall of 2012, Shaw received a subpoena from Wilson's counsel seeking production of documents, electronic information and emails in his possession. (R. p. 327, lines 23-25). Within an hour of receiving the subpoena, Shaw received a call to bring his laptop to CCC so the "IT guys" could upgrade software. (R. p. 328, line 13). When he showed up, Gandis fired Shaw and kept his laptop. (R. p. 328, line 14-p. 329, line 3). However, no mention was made of all of the CCC business information in his home office, and so, Shaw had (and later produced to Wilson's counsel without objection) a box full of information about all of CCC's customers, purchases, and prices. (R. p. 329, lines 12-21). There was no misappropriation of use, but neither was there any attempt by CCC to protect these "trade secrets."

Importantly, Shaw testified as to what is now being called "electronic vendor reference program" and "inventory reference program." However these terms were never used at trial and are simply made up terms to describe a simple Excel spreadsheet created by Bill Shaw to help him keep information he received from manufacturers organized, which he described as "a very generic vendor cross-reference for my own purpose there at CCC." (R. p. 331, lines 3-21; Def. p. 1534). This information did not have customer information and there was no evidence this

information was used in connection with any CCC customers. (R. p. 1534). When Shaw was terminated, no attempt was made to obtain this document or any other document. (R. p. 329, lines 12-21). Shaw came to work for Neologic without objection after he was terminated from CCC. (R. p. 329, line 22-p. 330, line 7). This is the single piece of information from his time at CCC that was used while at Neologic. (R. p. 331, line 22-p. 332, line 3).[10]

G. Testifying Witness Mike Myers

However, even though Wilson possessed a substantial amount knowledge and experience in the film industry, Mike Myers ("Myers"), independent film broker, testified there is more than enough information about plastic film users, sellers, and manufacturers which can be gathered from mere searches on the internet to obtain leads and generate revenue. (R. p. 282, line 2; p. 292, lines 12-24; p. 302, lines 3-15). Myers also testified that a simple internet search would reveal all the domestic manufacturers of polyester film; he also testified that as for potential customers, the internet is a good source of publicly known market information that Appellant CCC claims to be "trade secrets." (R. p. 302, line 23-p. 303, line 9).

Myers also testified that supplier and customer information could be obtained through trade associations and its databases, which were all available to the public. (R. p. 303, lines 9-20). Moreover, pricing was public knowledge. The largest manufacturers send out weekly emails with the pricing for their films for sale and because the customers routinely would provide you with pricing information in an effort to negotiate a lower price. (R. p. 303, line 21-p. 304, line 17). Customers do not sign non-disclosure agreements. Myers sold film for CCC, but was never

[10] On page 16-17 of Appellant CCC's initial brief, appellant makes reference to the spreadsheet as a "program." Of course, anyone who knows what an Excel spreadsheet is knows it is not a "program." This language was used to match the language of the Act but not once during trial did Gandis or any other witness refer to the spreadsheet created by Bill Shaw as a "program."

asked to sign a non-disclosure agreement protecting any the customer, vendor or pricing information.[11] (R. p. 304, lines 18-20).

H. Testifying Witness Bruce Hotmer

Bruce Hotmer ("Hotmer") owns Valencia Speciality Films and is a film broker, who began selling polyester film over 40 years ago. (R. p. 340, line 13-p. 341, line 25). Hotmer's background is both in the domestic market and the international market, having ran Jindal America, a subsidiary of a multinational company based in India that sold polyester film. (R. p. 341, lines 6-12).

Hotmer testified that the film market (including polyester film) functioned as a commodities market. (R. p. 349, lines 15-18). Purchasers of film do not sign non-disclosure agreements; customers are the primary source of information of the price they are paying for film. (R. p. 348, lines 5-17). Customers who are looking for a better price (and which one is not?) will simply inform competitors' sales persons of the current price they are paying for film from their current distributor. (R. p. 348, line 11-p. 349, line 12). In a commodities market, manufacturers prices are publicly reported.

Hotmer testified that in the market of polyester film much of the information about potential customers and distributors was available through a public source, The Thomas Registery, which includes contacts and phone numbers of film buyers and sellers. (R. p. 344, line 3-p. 345, line 1). Moreover, because polyester film is used in several market segments, all of which have trade associations with customer and distributor information, films sellers attend these trade shows, including customer information, contacts and obtain printed membership lists

[11] Myers also testified that based upon his experience with Gandis, "he's a crook." (R. p. 307, line 17; p. 304, line 22-p. 305, line 22).

distributed at the trade show. (R. p. 345, lines 10-25). And, it is common knowledge for those in the industry to know what type of film is used by the various market segments. Hotmer testified by way of example of food packaging uses primary half mill film, and it is a product that everyone in the market sells. (R. p. 345, line 18-p. 346, line 16).[12]

I. Sales: CCC and Neologic

As a basis of comparison, when Wilson and Gandis formed CCC, Wilson had pre-existing customer relationships that generated $1.6 million in revenue for CCC in its first year of selling film. (R. p. 376, lines 12-18). During its 3 years of existence, EFS had sold $5.8 million in film; by 2007, CCC did $7 million in sales, and $3.5 million with former EFS customers. (R. p. 383, line 16-p. 385, line 19). CCC gross receipts in 2011 was over $5 million. (R. pages 1207-1215). In 2012, CCC had a gross revenue of $3.5 million compared to Neologic's gross sales of $132,000 (and as stated above, all of these were customers of Wilson's prior to the formation of CCC). (R. pages 1206-1215). CCC refused to produce any revenue information for 2014. Over three years of operation, Neologic had total gross sales of $985,276.18. (R. p. 1206).

III. ARGUMENT

A. STANDARD OF REVIEW

Civil claims seeking money damages are legal in nature. *See Ross v. Bernhard*, 396 U.S. 531, 543 (1970); *see also Sapp v. Wheeler*, 402 S.C. 502, 507, 741 S.E.2d 565, 568 (Ct. App. 2013), *citing Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541-42 (Ct. App. 2008). Appellant CCC's claim for the misappropriation of trade secrets is an action at law.

[12] When reviewing information provided to Mark McGarel by Dave Wilson by email in Pl. Exhibit 76, Hotmer testified the email contained information that everyone in the film market would have access to. (R. p. 346, line 17-p. 34, line 3).

When considering the appeal of an action at law tried without a jury, an appellate court cannot "disturb the trial court's findings of fact unless no evidence reasonably supports [the trial judge's] findings." *Jordan v. Judy,* 413 S.C. 341, 348, 776 S.E.2d. 96, 100 (2015). "In an action at law, the appellate court will correct any error of law, but it must affirm the special referee's factual findings unless there is no evidence that reasonably supports those findings." *Linda Mc Co. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010). Thus, the trial court's findings in an action at law action are the same as a jury's findings: the credibility and the weight of the evidence are questions exclusively for the trial judge. *See Chapman v. Allstate Ins. Co.,* 263 S.C. 565, 567, 211 S.E.2d 876, 877 (1975). "[An appellate court] may not consider the case based on our view of the preponderance of the evidence, but must construe the evidence presented to the [trial court] so as to support [its] decision wherever reasonably possible." *Sheek v. Crimestoppers Alarm Sys.,* 297 S.C. 375, 377, 377 S.E.2d 132, 133 (Ct. App. 1989). "[The Court] must look at the evidence in the light most favorable to the respondents and eliminate from consideration all evidence to the contrary." *Id.*

B. CCC'S TRADE SECRETS CLAIM

1. The Circuit Court Applied the Correct Legal Standard In Concluding that Appellant CCC Failed To Establish that Information Claimed to be Trade Secrets was Not Generally Known to Others and Not Readily Ascertainable by Proper Means.

"Trade secret" means information that:

> (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and
>
> (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code Ann. §39-8-2

0(5). This is the definition applied by the trial court. (R. p.1785, p. 1788). The court simply made findings of fact that the information CCC claimed to be a trade secret was either generally known, ascertainable by proper means, or known by Dave Wilson before of the formation of CCC. (R. pages 1785-1786). Each of these categories is the standard for evaluating whether a trade secret exists and is directly based upon statutory language.[13] "The threshold issue in any trade secrets case is not whether there was a confidential relationship or a breach of contract or some other kind of misappropriation, but whether, there was a trade secret to be misappropriated." *Williams v. Riedman*, 339 S.C. 251, 284, 529 S.E.2d 28, 45 (Ct. App. 2000), *quoting Lowndes Prods., Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972).[14] "A trade secret must be secret." *Carolina Chem. Equip. Co. v. Muckenfuss*, 322 S.C. 289, 296, 471 S.E.2d 721, 724 (Ct. App. 1996). The trial court concluded that information claimed by CCC to be trade secrets was known and/or ascertainable, and therefore not secret. (R. pages 1784-1785).

The conclusion by the trial court is supported by sufficient facts in the record. First and foremost, the evidence showed that Dave Wilson had been in the industry for over 20 years (R. p. 360, lines 17-25), had been a principal in two separate film businesses previously (R. p. 361, line 21-p. 362, line 11; p. 364, line 20-p. 365, line 4), developed substantial contacts in the polyester film industry, joined trade associations, attended trade shows and expositions (R. p. 365, lines 8-23), had relationships with the polyester films manufacturers in the U.S. (R. p. 366, lines 1-15), and built a customer base that generated approximately $5.8 million in revenues for EFS before joining CCC. (R. p. 383, lines 16-19). In fact, every single customer to which

[13] In addition, the court made a finding of fact that CCC did not reasonably safeguard its information. This is discussed in more detail below.

[14] CCC takes the trial judge to task for citing a case (*Hill Holiday)* that based its reasoning on *Lowdnes Products,* which remains good law. The SCTSA only displaces common law that contradicts the Act.

Wilson sold film while at Neologic was a customer he had sold to prior to coming to CCC. (R. p. 447, lines 15-18; p. 445, lines 16-25; p. 446, lines 2-6; p. 446, lines 7-12; p. 446, lines 16-20; p. 446, line 21-p. 447, line 6; p. 447, lines 7-12; p. 447, lines 13-17). *See Williams v. Riedman*, 339 S.C. at 279, 529 S.E.2d at 42-43 ("According to Williams, the eleven clients she serviced at Web-Kor were from her original 148 accounts. She further testified that while employed with Riedman, she did not gain any additional or 'secret information' about these customers.")[15] Appellant CCC failed to produce any evidence that any customer information for a customer sold to by Neologic was not known by Wilson prior to forming CCC or not ascertainable by him through public sources.

Mike Myers and Bruce Hotmer, both film brokers who have been engaged in the film industry for decades, corroborated Wilson's testimony regarding the availability of information relating to vendors/suppliers and customers/potential customers, specifically stating that such information could be obtained through trade journals, at trade shows, or in other publicly available sources like the Thomas Register (R. p. 292, line 16-p. 293, line 3; p. 340, line 13-p. 343, line 7; p. 303, lines 9-20; p. 302, line 23-p. 303, line 9; p. 344, line 3-p. 345, line 1). Each testified that the sort of information being claimed by CCC as trade secrets was publicly available through trade associations and its databases (R. p. 303, lines 9-20; p. 302, line 23-p. 303, line 9; p. 344, lines 3-25; p. 345, line 1). Moreover, pricing was public knowledge because the largest manufacturers send out weekly emails with the pricing for their films for sale and because the customers routinely would provide dealers/sellers with pricing information in an effort to negotiate a lower price. (R. p. 303, line 21-p. 304, lines 17). *See Carolina Chem. Equip.*

[15] Any pricing known by Wilson (which was publicly available in any event from the manufacturers and customers) would have become obsolete by the next year, 2013. (R. p. 447, lines 19-23).

Co. v. Muckenfuss, 322 S.C. 289, 296, 471 S.E.2d 721, 724 (Ct. App. 1996) ("In determining whether something is a trade secret, one must consider the extent to which the information is known outside of his business and the ease or difficulty with which the information could be properly acquired or duplicated by others.").

At trial, CCC offered no evidence to establish the existence of trade secrets other than Gandis' own conclusory testimony. (See, e.g., R. p. 904, lines 11-15; p. 908, lines 7-14). As this Court has noted elsewhere, "[w]e acknowledge the superior position of the trial judge to assess witness credibility. We would not, even under de novo review, lightly disregard a trial judge's credibility determinations." *Cedar Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 259, 628 S.E.2d 284, 286 (Ct. App. 2006). As the trial court said in denying Defendants' Rule 59 motion, "Mr. Gandis' and Ms. Comeau-Shirley's testimony lack credibility in most important respects." CCC presented no credible evidence to establish that any information claimed to be trade secrets was in fact secret or to counter the testimony of Dave Wilson, Bill Shaw, Bruce Hotmer, and Mike Myers.

Additionally, CCC presented no testimony by its computer forensics examiner as to the specific information that was contained on Wilson's hard drive or as to whether any of it was used or opened after he was forced out of CCC. There was no testimony from any employees involved in purchasing, sales, inventory, or customer service regarding whether this information was secret or otherwise a trade secret. There was no testimony by any individuals familiar or engaged in the film business to establish any of the elements of trade secrets, particularly the element of secrecy. Accordingly, the trial court applied the correct legal standard contained in S.C. Code Ann. §39-8-20(5), and its factual finding that information was readily available from

public sources or that Wilson knew the information even before CCC was formed has more than ample support in the record. (R. p. 1778, pages 1784-1785).

2. The Circuit Court Applied the Correct Legal Standard In Concluding that Appellant CCC Failed To Establish that CCC Made Efforts That Were Reasonable Under the Circumstances to Maintain its Secrecy.

As stated above, the trial court clearly stated that for information to be a "trade secret," the information must be "the subject of efforts that are reasonable under the circumstances to maintain its secrecy." S.C. Code Ann. §39-8-20(5)(a)(ii). This is the statutory definition of "trade secrets," and it was the one cited to and applied by the court. Appellant CCC attempts to divert attention from the lack of evidence of trade secrets by declaring that the trial judge applied the wrong legal standard by its citation to *Hill Holiday Connors Cosmopulous, Inc. v. Greenfield*, 433 Fed. Appx. 207, 214 (4th Cir. 2011) (relying on *Lowndes Prods. v. Brower*, 259 S.C. 322, 331, 191 S.E.2d 761, 766 (S.C. 1972)). However, Appellant ignores the fact that the trial court first cited South Carolina Code §39-8-20(5) for the meaning of trade secret (R. p. 1785), and that *Hill Holiday*'s warning to be "vigilant" is certainly one supported by the reasonable efforts prong of the trade secrets definition.

Importantly, the warning of "eternal vigilance" stems from the South Carolina Supreme Court enunciation of the prevailing common law standard, which set a "proper and reasonable" standard for guarding trade secrets. *Lowndes Prods. v. Brower*, 259 S.C. 322, 331, 191 S.E.2d 761, 766 (S.C. 1972). In fact, the Supreme Court was applying the well-settled definition of trade secrets found in the *Restatement of Torts*, §757 (see particularly comment B) and comparing it (and other sources cited by *Lowndes*) to the S.C. Code Ann. §39-8-20(5). Consider a more extensive statement of the *Lowndes* holding:

> [I]f the person entitled to a trade secret wishes to have its exclusive use in his own business, he must not fail to take *all proper and reasonable steps* to keep it secret. He cannot lie back and do nothing to preserve its essential secret quality, particularly when the subject matter of the process becomes known to a number of individuals involved in its use or is observed in the course of manufacture within plain view of others. '[O]ne may not venture on liberties with his own secret, may not lightly or voluntarily hazard its leakage or escape, and at the same time hold others to be completely obligated to observe it.' As a naturally known member of the patent bar has written, one who claims that he has a trade secret must exercise **eternal vigilance**. This calls for constant warnings to all persons to whom the trade secret has become known and obtaining from each an agreement, preferably in writing, acknowledging its secrecy and promising to respect it. To exclude the public from the manufacturing area is not enough.

Lowndes Prods., 259 S.C. at 331, 191 S.E.2d at 766 (emphasis added). "All proper and reasonable steps" differs only in semantics from the "reasonable efforts under the circumstances" standard found in S.C. Code Ann. §39-8-20(5). "Vigilance" is nothing more than the state of keeping careful watch. And as the trial court in our own case properly noted, "[u]nlike other assets, the value of a trade secret hinges on its secrecy. As more people or organizations learn the secret, the value diminishes quickly." (R. pages 1785-1786, *quoting Lafitte v. Bridgestone Corp.*, 381 S.C. 460, 472, 674 S.E.2d 154, 161 (2009)). It is not enough to be temporarily vigilant; reasonable efforts must continue or else secrecy is eroded, value is diminished, and trade secret protection is lost because it no longer meets the definition.

As further indication that the trial court understood and applied the correct standard, consider the trial court's denial of Respondent's Neologic/Fresh Water's motion for attorneys' fees under the South Carolina Trade Secrets Act. In denying Respondent Neologic's motion for attorney's fees, the court stated "South Carolina law states that employees have a duty not to use or disclose trade secrets independent of and in addition to any written contract of employment or secrecy agreement. S.C. Ann. §39-8-30. It is not required that a contract or secrecy agreement exist, and it is understandable that a very small company such as CCC did not have elaborate

agreements in affect." (R. p. 1788). Clearly the Court understood and applied the correct standard while recognizing that Defendants had failed to present sufficient evidence that its information met the legal definition of "trade secrets." The court applied the "reasonable efforts under the circumstance" test, bolstered by the guidance of S.C. Ann. §39-8-30.

But, even if this Court concludes that, as applied, the standard was in error, the record leaves little doubt that CCC did *not* take "reasonable efforts under the circumstances." S.C. Code Ann. §39-8-20(5).[16] The facts clearly demonstrate that Appellant CCC failed to prove it had taken reasonable steps to protect information it claimed as trade secrets. In fact the contrary is true: Gandis and Shirley used and misappropriated this same information to create another business entity (ZOi) to sell polyester film to CCC's customers. Just two months after locking Wilson out of CCC (March 15, 2012), Gandis and Shirley began plotting to create a competing entity so they did not have "to haggle with Dave W about how much of the new stuff was his." (R. p. 186, lines 1-7; p. 713, lines 20-25; pages 1125-1133). In July 2012, Gandis and Shirley, created ZOi Films, LLC to secretly compete in the film business; ZOi would have two members, one a company owned by Gandis (M-Tech) and the other a Georgia company owned by Comeau-Shirley (Major Brainstorms, Inc.). (R. p. 187, line 16-p. 189, line 21; pages 1134-1135; pages 1198-1200; *see also* p. 1197, pages 1201-1205, pages 1216-1218). Gandis was its president and Comeau-Shirley was its vice-president. (R. p. 190, line 17-p. 191, line 1; pages 1198-1200).

With Gandis' blessing, Comeau-Shirley sought an investment from Gandis' father, Cliff Gandis, to fund ZOi, including funding for a import deal belonging to CCC. (R. p. 193, line 22-p.

[16] This court can affirm on any ground found in the record. There are several alternative grounds presented based upon the findings of fact of this court, and Respondent requests this Court to affirm the judgment below on any such grounds. S.C. Appellate Rule 220(c) (2007).

194, line 3; pages 1138-1143). She asked Cliff Gandis to fund a credit line for ZOi, which would fund the "silver transactions" while telling vendors and customers that CCC had no money to purchase inventory. (R. pages 1138-1143). CCC, through its manager John Gandis, was using information about CCC's corporate opportunities and sharing it all with ZOi – and creating a $30,000 fee for Cliff Gandis. (R. pages 1198-1200; p. 184, line 12-p. 186, line 22; p. 194, line 19-196, line 22). It seems impossible for CCC to claim at one time that CCC took reasonable steps to maintain the secrecy of its company information and its customer information when at the same time it created ZOi to utilize that information to generate profits that would be unknown to Wilson.[17]

Bill Shaw testified that he was told ZOi Films was "a new company that John [Gandis] and Andrea [Comeau-Shirley] were starting up." (Tr. 325, 18-23). Shaw further testified that while he was being paid by CCC, he was in reality working on ZOi Film deals, before Gandis and Shirley became secretive about ZOi's business. (R. p. 325, line 5-p. 327, line 18). ZOi Film business was being conducted at CCC and using its Quickbooks system to enter sales transactions and purchase orders to make it appear that ZOi was buying film from CCC. (R. p. 326, lines 1-8). Accordingly, CCC's pricing and customer information used by Shaw in performing his customer service duties on behalf of CCC were being used by Shaw in performing purchasing and sales for ZOi Films

Thus, not only did CCC fail to take reasonable steps to maintain the secrecy of its "trade secrets," but it also affirmatively gave information (and deals) to the newly created entity, ZOi

[17] ZOi was formed in July 2012, discovered by Wilson in August 2012 on LinkedIn. (R. p. 454, line 23-p. 456, line 6). In response, Gandis and Comeau-Shirely created a "declaration" in late August and attempted to back date it to July 9, 2012 to make it appear that it had been created at time ZOi Films was formed in Georgia. However, an email from Comeau-Shirely to Cliff Gandis tells the true intentions of the parties. (R. pages 1138-1143).

Films. Moreover, despite e-mails and corporate resolutions showing a scheme to secretly funnel the best deals through ZOi Films, Gandis and Shirley maintained that ZOi was simply a "wholly owned subsidiary" of CCC. (*See e.g.,* R. p. 187, lines 12-15). Of course, the creation of ZOi and the cover story was exposed by emails, and the credibility of Gandis and Shirley was completely impeached on this subject as well as others.

Although the ZOi scheme is sufficient to sustain the court's finding that Appellant did not take reasonable steps to protect its company information, there was more evidence that reasonable efforts to maintain its secrecy were not undertaken to protect its information. In fact, other than password protecting Quickbooks, there was no testimony offered by CCC as to any effort to protect the secrecy of its information. (R. p. 883, lines 5-16). Bill Shaw, CCC's customer service representative, had possession of purchase orders and sales orders containing pricing and customer information in his home that contained all the information CCC now claims to be trade secrets (R. p. 318, lines 1-9; p. 320, line 24-p. 321, line 1). Shaw did not sign a non-disclosure agreement nor a non-compete. (R. p. 318, lines 21-25). Employees and members did not sign non-disclosures, and neither Wilson nor Andrea Comeau-Shirely had non-disclosure agreements (R. p. 179, lines 7-8; p. 175, lines 16-20; p. 434, lines 7-12). Mike Myers, an independent sales representative who had worked with CCC making sales to select customers, did not have a non-disclosure. (R. p. 304, lines 18-20). If Appellant CCC actually believed that Wilson had was using misappropriated trade secrets to compete, it would be reasonable have sought the Court's intervention. CCC never did.

3. The Circuit Court Applied the Correct Legal Standard In Concluding that Appellant CCC Defendants Failed to Establish by a Preponderance of the Evidence that Information Claimed to be Trade Secrets Were "Misappropriated."

The Trade Secrets Act states as follows:

> "Misappropriation" means:
>
> (a) acquisition of a trade secret of another by a person by improper means;
>
> (b) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
>
> (c) disclosure or use of a trade secret of another without express or implied consent by a person who:
>
> > (i) used improper means to acquire knowledge of the trade secret; or
> >
> > (ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
> >
> > > (A) derived from or through a person who had utilized improper means to acquire it;
> > >
> > > (B) acquired by mistake or under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
> > >
> > > (C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use;
> >
> > iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

S.C. Code Ann. §39-8-20(2) (2016). "Improper means include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, duties imposed by the common law, statute, contract, license, protective order, or other court or administrative order, or espionage through electronic or other means." S.C. Code Ann. §39-8-20(1). There is no evidence in the record that Wilson obtained any alleged trade secrets by "improper means" or used or disclosed such information.

When Gandis arrived at Wilson's office with law enforcement in January 2012 and told Wilson to leave, Wilson took his computer with him when he left so he could preserve the emails

on the hard drive to protect his membership interest and to pursue remedies in connection with the oppression that had been in full force for months. (R. p. 442, line 1-p. 444, line 8). Importantly, he returned his CCC computer with all the information contained in the 40,000 emails, which were on the computer. (R. p. 442, lines 1-3). This is hardly "theft" as it has been interpreted under South Carolina law. "[T]o constitute a theft it is necessary that there be a taking of the property without the consent of the owner coupled with an intention on the part of the taker to convert it to his own use and deprive the owner of his property rights therein." *Geiger v. Aetna Ins. Co.*, 215 S.C. 144, 149, 54 S.E.2d 549, 551 (1949) (interpreting meaning of "theft" within the context of insurance policy.); *see also Moore v. Weinberg,* 373 S.C. 209, 226-227, 644 S.E.2d 740, 749 (Ct. App. 2007) ("Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights.")[18] It is undisputed that Wilson returned the computer to Nexsen Pruet, one of the law firms that would represent CCC, Gandis, and Shirley. (R. p. 442, line 20-p. 444, line 8). There was no improper means used to obtain any information in Wilson's possession after he left. CCC was not deprived of any of its business information. In fact, Wilson brought a derivative claim on behalf of CCC, and this information was intended to protect CCC from the sort of conduct that makes up the oppression case.

Moreover, there was no evidence presented at trial that Wilson used any of CCC's "trade secrets." CCC's brief represents that "Wilson left CCC, then took and used all of this confidential information at Neologic/FWS – the circuit court made that specific finding." (App. Brief 20). Yet Appellant CCC makes no citation to the record where such a finding is supported, and the trial court's order in fact did not make a finding that Wilson "took and used all of CCC's

[18] CCC's complaint alleged a conversion claim relating to trade secrets.

confidential information," as claimed by CCC. In fact, Bill Shaw testified that he used a single Excel spreadsheet (not a "program") on which he had entered publicly is available information to assist him in doing his job at CCC. (R. p. 331, lines 3-21). Shaw testified that the spreadsheet was "a very generic vendor cross-reference for my own purpose there at CCC." (R. p. 331, lines 3-21; pages 1534-1587). This document did not have customer information and there was no evidence this information was used in connection with any CCC customers. (R. pages 1534-1587). This is the single piece of information from Shaw's time at CCC that he later used while at Neologic, and all of the information was readily and publicly available or ascertainable. (R. p. 331, line 22-p. 332, line 3). However, the spreadsheet in Neologic's possession (R. pages 1534-1587) was dated 11/4/2010, approximately fourteen months before Wilson's ouster. Gandis' testimony at trial about this spreadsheet was sparse, and Gandis' lack of credibility made Bill Shaw's testimony more believable on this precise nature of the spreadsheet and the information contained therein.

Clearly, Appellant failed to prove any use of trade secrets, and therefore failed to prove any damages arising from such use. As stated above, every single customer Dave Wilson sold film to in 2012 was a customer he had sold to prior to coming to CCC. (R. p 447, lines 15-18; p. 445, lines 16-25; p. 446, lines 2-6; p. 446, lines 7-12; p. 446, lines 16-20; p. 446, line 21-p. 447, line 6; p. 447, lines 7-12; p. 447, lines 13-17). These accounts were small accounts and the total in sales for all of 2012 was $132,000. Appellant claims that Gandis' testimony demonstrated that eleven of Neologic's customers "were customers that CCC gained on its own." (App. Brief 23). However, reading the testimony of Gandis cited in CCC's brief in support of this argument simply established that there were eleven customers that were not on ONE list of former EFS customers, but Gandis made no mention of Wilson's relationships dating back to PCFI or

Interfilm. (R. p. 883, line 23-p. 885, line 25). As outlined in the statement of facts above, there was evidence that all but three were customers with which Wilson had pre-existing relationships, and two of the three left CCC because of quality issues and the other did not do business with Neologic until 2014. (R. p. 449, lines 13-20; p. 448, lines 7-16; p. 449, line 21-p. 450 line 13). The biggest account, Supply One, initiated the contact with Wilson in 2013 (R. p. 451, lines 4-8). As the Court concluded "that there was insufficient evidence that [Wilson's] post-CCC activity was anything but legitimate competition by one who had superior knowledge of and wide contacts in the film industry." (R. p. 1786).

C. THE TRIAL COURT APPLIED THE CORRECT LEGAL STANDARD WHEN IT JUDGED THE BREACH OF FIDUCIARY DUTY CLAIM.

The fourth issue presented for appeal has been sparsely and insufficiently briefed; there are no arguments for which to draft a reply. The trial court applied the correct legal standards when it judged all aspects of this case, including the fiduciary duty claims and related issues. Appellant purports to incorporate arguments yet to come from Gandis and Comeau-Shirely by reference. Respondent will await its turn to address those arguments when the arguments are actually made.

IV. CONCLUSION

The circuit court properly applied the South Carolina Trade Secrets Act and made findings of facts supported by the record, including findings related to credibility. There was little evidence presented regarding alleged trade secrets, and none regarding the use of alleged trade secrets that caused even the slightest monetary damage to Appellant CCC. The trial court observed this weeklong preceding and sat eyewitness to defendants' testimony that all too often

lacked in credibility. This Court should affirm the trial court's decision in all respects, including those finding for Respondent on Appellant CCC's trade secret and fiduciary duty claims.

Respectfully submitted,

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Dated June 16th, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill
Circuit Court Judge

App. Case No. 2015-000476
Lower Case No. 2012-CP-23-02887

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC,..... Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC,..... Defendants,

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ... Third-Party Plaintiffs,

vs.

CAROLINA CUSTOM CONVERTING, LLC,
..... Third-Party Defendant and Counterclaim Plaintiff,

vs.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the ..... Respondents,

and

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND CAROLINA CUSTOM CONVERTING, LLC,..... Appellants.

FINAL REPLY BRIEF OF APPELLANT CAROLINA CUSTOM CONVERTING, LLC

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When Wilson left, he created a brand new company using CCC's hard earned confidential information, and at that company, he began selling CCC's products to CCC's customers. Respondents' briefing seeks to portray that fact as much ado about nothing. They argue that the confidential information at issue in this case is nothing more than public data available to anyone. And, that Wilson and Neologic/FWS didn't need any of CCC's confidential information to start the new company. The argument begs the question: then why did Wilson take it with him when he left? Similarly, when he pursued FilmTech as his next employer, why did Wilson provide a detailed list of the industry segments for CCC's customers, the precise products those customers were buying, with pricing detail, and the related supplier information? Again, if this information had no value, then why didn't he just send his resume instead?

I. THE CONFIDENTIAL COMMERCIAL INFORMATION IS A TRADE SECRET

A. Supplier & Customer Detail Meet the Definition of a Trade Secret

The confidential information at issue in this case is comprised, in part, of a compilation of customer and supplier information that CCC uses to conduct its business. S.C. Code Ann. § 39-8-20(5)(a). Courts from across the country have held that this precise type of commercial information is a trade secret. *See, e.g., Home Pride Foods, Inc. v. Johnson*, 634 N.W.2d 774, 781 (Neb. 2001); *Fred's Stores of Miss., Inc. v. M & H Drugs, Inc.*, 725 So.2d 902, 909-910 (Miss. 1998); *Webcraft Technologies, Inc. v. McCaw*, 674 F. Supp. 1039, 1044-46 (S.D.N.Y. 1987); *see also Williams v. Riedman*, 339 S.C. 251, 284, 529 S.E.2d 28, 45 (Ct. App. 2000) (Goolsby, J. concurring) (concurring in the opinion and clarifying that "I do not construe it to hold that a customer

list cannot be a trade secret"). Transcript cites from the lower court proceedings are provided below to give context to the legal issue before this Court.

1. Context from the Lower Court Proceedings

At the very beginning of this case, before CCC had even been named as a defendant, Gandis and Comeau-Shirley agreed with Wilson's pleadings, and sought to have CCC dissolved in an orderly fashion. The plan was that the parties could split up the proceeds and go their separate ways. At a December 6, 2012 hearing before the circuit court, however, Wilson abruptly opposed the dissolution.[1] In open court he noted that "[w]e don't want to gut the entity. We think the business has value. Remember, we were here not long ago because they didn't want to give us the customer list because that customer list has such value. Well, we agree it has value." (R. p. 975, lines 9-13).[2]

When Wilson left CCC, eleven months before that hearing, he was the Vice President of Sales and Purchasing for the entire company and in that role charged with overseeing the company's sales force, its purchasing decisions, and its vendor (supply) sourcing and qualifying.

On direct examination by his counsel, Wilson testified on this point as follows:

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[1] Prior to abruptly opposing dissolution, Wilson had been working on a dissolution order. In a December 3, 2012 e-mail to Steve Norvell, Wilson wrote that "[w]e have a hearing this Thursday regarding dissolution of CCC and ZOi. We have drafted our own dissolution order . . . ." (R. p. 1287; *see also*; R. p. 509, line 1-p. 510, line 1; R. p. 506, lines 19-22).

[2] Before this litigation began, Wilson understood the confidential nature of this information. During the buy-sell negotiations among the members in January 2012, in an e-mail Wilson was cautioned to protect the company's confidential information during discussions with third parties. (R. p. 1675 (par. 3). In response Wilson assured the other members that "I certainly would not divulge information that could be potentially harmful to the company in the hands of a competitor. That really should not be a concern of yours since I have a vested interest in protecting the company . . . ." (R. p. 1674, p.2 (second sentence)).

Q: And how were your sells [sic] to your customers going? Are you above or below projections [for 2011]?

A: Well, as the VP of sales, I had transitioned a lot of my accounts to our reps. I viewed my role as more of supporting them. And, of course, I was still heavily involved in the ***vendor side, qualifying vendors and purchasing.***

So I had been ***transitioning accounts over to them.*** So I couldn't really tell you which accounts I was personally managing at that time . . . .

(R. p. 415, lines 1-10) (emphasis added). During cross examination, Wilson testified that while at Neologic/FWS, he had all of CCC's data:

Q: You had company data. We've already talked about that; right?

A: I had company data, absolutely.

Q: The company data would have had ***all the e-mails of the customers***. It would have had ***the prices***. It would have had what CCC sold. . . . And you had all the information about ***what CCC was selling its customers, their pricing, their acquisitions, costs***, and ***specifications of the products***, all the products of CCC; right?

A: Yes. Royal Metal was not a customer of CCC.

Q: Well, you had it for everybody else; right?

A: Sure.

(R. p. 506, lines 1-18).[3]

CCC did not always undertake a qualifying process for every sale to a customer. But in the majority of CCC's regular sales to large volume accounts a qualification process was the norm. At trial, both sides discussed the concept of qualifying or finding the precise film that would work for a given customer's needs.

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[3] On cross examination Wilson also admitted that when he began working for Neologic/FWS, he began e-mailing (soliciting) CCC customers, (R. p. 505, lines 24-25), customers which as noted above, he had ceased servicing well before leaving CCC.

Mike Meyers (Respondents' Witness) verified this process when he testified as follows:

Q So that deal would have started in 2007. Why did that deal take so long to develop?

A Well, we were using a different type of film. It was polyester, but it had gone through a special kind of process. And we had to send it to the customer to test. They had to do all of their testing and make sure that it works for all their process, and everything like that. And then, after that, that's when we started getting some orders.

Q So, essentially, you've got this process where you've got to show them the film you're going to sell them; right?

A Yes.

Q And it's kind of got to go through a qualification process?

A Right.

Q And y'all had done that in 2007?

A The end of 2007 to 2008.

(R. p. 301, lines 3-20). Bruce Hotmer (Respondents' Witness) testified in a related manner as follows:

Q Well, what about the products they need?

A Well, you wouldn't find that in the Thomas Register, according to my memory. Now, if they've changed, I would be surprised. But the polyester business is a very specific detailed business. In ICI, we had over 20,000 product codes. So it's very, very -- and we probably had -- I don't know--250 customers. ***So it all boils down to a very specific requirement by customer.***

(R. p. 345, lines 2-9) (emphasis added).

Gandis testified as to the qualifications process as follows:

Q Okay. And let's talk about that spec in. What are we really talking about there? How does that work?

A I mean, I think even Bruce Hotmer mentioned, whenever it was, yesterday or the day before yesterday, some of these manufactures make up to 20,000 kinds of films. That doesn't mean all of them

> will work for every application. So there's got to be an evaluation to make sure that [a] manufacturer's film will, in fact, meet the [customer] specification. Each manufacturer has its own little thing that's a little different that meets different codes, FDA approvals, those sort of things.
>
> So it's not -- it's never as simple as just walking in. It just doesn't happen, especially in food packaging.
>
> Q But he could just walk straight in, couldn't he?
>
> A He did.

(R. p. 872, lines 5-19).

Wilson also discussed this very concept. "[The customer was] looking for other sources of polyster, and [said] we'd love to have you quote us, if you can supply it. So I gave them a quote. ***I started to get products qualified.*** And, initially, I picked up their 142-guage business. (R. p. 374, lines 9-16) (emphasis added).

It is important to underscore the fact that nowhere in Respondents' briefing do they challenge the rigorous and time consuming process that CCC undertook to qualify various films. The qualification process was discussed by both parties at trial and corroborated by Wilson and his own witnesses. The circuit court did not even acknowledge this aspect of the confidential information in its Order.

2. *The Circuit Court's Conclusion that the Supplier and Customer Information Was Not a Trade Secret Was Legal Error*

The circuit court committed legal error when it concluded that the confidential information was not a trade secret because some of this information was procured from public sources. (R. pp. 1784-1785).[4] The South Carolina Trade Secret Act (the "Act")

[4] As noted in CCC's opening brief, the facts of this case are fundamentally different and substantially more complex than the facts of *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 883 (2007). (Appellant's Opening Brief, pp. 18-19).

instructs that a "trade secret may consist of a simple fact, item . . . [and] [t]he collective effect of the items . . . must be considered in any analysis of whether a trade secret exists ***and not the general knowledge of each individual item.***" § 39-8-20(5)(b) (1997) (emphasis added). The circuit court's order did not even acknowledge the presence of subsection (b) of the statute. Indeed, ***nowhere*** in the order is this subsection of the statute even cited. The circuit court's legal conclusion that the use of public information precluded the existence of a trade secret is irreconcilable with the language of the statute. This was legal error.

The circuit court's failure to acknowledge subsection (b) aside, the supplier and customer lists taken by Wilson to Neologic/FWS were developed by CCC with time and effort. CCC spent the time to find customers that needed specific film, and then spent the time and effort to find suppliers that could provide those needs.[5] "[W]here time and effort ha[s] been expended to identify particular customers with particular needs or characteristics, courts will prohibit others from using this information to capture a share of the market." *Home Pride*, 634 N.W.2d at 782; *see also Ecolaire Inc. v. Crissman*, 542 F. Supp. 196, 206 (E.D. Penn. 1982) (noting that customer lists which contain confidential customer data are of "considerably greater value than information contained in publicly available directories"). "Such lists are distinguishable from mere identities and locations of customers that anyone could easily identify as possible customers." *Home Pride*, 634 N.W.2d at 782; *see also id* (noting that courts are reluctant to protect the latter type of public customer list).

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[5] Wilson's own brief acknowledges that in one given year where CCC had roughly $7 million in sales, that only half of those sales were from EFS customers. (Wilson Br., 15 (last paragraph)).

Moreover, confidential information is not precluded from trade secret protection merely because it is based upon information from the public domain. *See Servo Corp of Am. v. General Elec. Co.*, 393 F.2d 551, 555 (4th Cir. 1968) ("But if [the cited case] holds that the mere presence in the public domain of the information upon which a trade secret is based precludes recovery for breach of a confidential relationship, we decline to follow it."). "Such a burden would be insurmountable since trade secrets frequently contain elements that by themselves may be in the public domain but together qualify as trade secrets." *The Boeing Co. v. Sierracin Corp.*, 738 P.2d 665, 675 (Wash. 1987) (citing *Servo Corp.*, 393 F.2d at 555).

The circuit court committed legal error by failing to apply the plain language of § 39-8-20(5)(b), which follows well established law that the mere presence of public information does not defeat trade secret protection.

3. *Respondents' Efforts to Gloss Over the Circuit Court's Legal Error Fail*

First and foremost, Wilson contributed his industry know how and customer and supplier information in return for his equity in CCC. (R. pp. 1285-1286; R. p. 1529). Consequently, Wilson's discussion of previous contacts with the CCC customers that he brought to Neologic/FWS misses the point. Likewise, Wilson's effort to portray the confidential information in this case as independently gained from years of industry experience also misses the point. "Although the friends and acquaintances acquired in the course of a history of business dealings in an industry is not generally considered a trade secret, different considerations apply where a list of useful and influential contacts among customers and prospects is accumulated with considerable effort for the benefit of the employer." *Webcraft Tech's.*, 674 F. Supp. at 1046. "There is little doubt that information

which [Wilson] learned while employed at [CCC] concerning customer preferences and . . . pricing is protectable."[6] *Id.* And, although Wilson said he didn't need any of the confidential information to compete, "the fact remains that []he took the list and no doubt it helped h[im] remember far more than []he could have remembered without it." *Id.*; *see also Home Pride*, 634 N.W.2d at 782 (noting that if the information on the list were so readily available, then why go to the trouble of obtaining it (and in that case paying for it)).[7]

Second, Wilson's brief has oversimplified the typical one-off film-sales transaction. For example, Wilson notes testimony regarding a transaction as follows: "[I]f we had a customer—specific customer need, we'd go out. We'd look at three or four different vendors, find the film that we needed. If it was available, then, you know, the decision to purchase it was made." (Wilson Br., p. 11). Wilson then cursorily concludes no trade secrets were required to make that transaction. (Wilson Br., p. 11). Of course, what Wilson does not discuss is the previous efforts it took to have that customer look to CCC for supply in the first place. *Fred's Stores*, 725 So.2d at 909 (noting that "it is this very work effort or process of acquiring and retaining clientele, that constitutes a protectable trade secret" (citation omitted)). Wilson also does not discuss the previous

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[6] CCC generated substantial amounts of new business while Wilson was working for the company. Again, he acknowledged in his responding brief that in one year CCC had $7 million in sales and of those sales only half were from former EFS customers. (Wilson Br., 15 (last paragraph)).

[7] Wilson claims that the identity of the customers he called on supports the claim that he did not use any of the confidential information, and that "[a]ppellants presented no evidence to the contrary." (Wilson Br., 8). But that statement has no support in the record. *See, e.g.*, R. p. 869, line 6-p. 871, line 2 (discussing solicitation by Neologic/FWS of Patrick Industries); R. p. 871, line 3-p. 872, line 4; see also R. p. 1387 (customer noting that "Dave was in last week and he said that this is the same material that we get from Carolina [Custom Converting]")).

efforts it took for CCC to locate the different vendors as a source of supply, and any efforts to ensure the supply was of a reliable quality. *Ecolaire Inc.*, 542 F. Supp. at 203 (noting that defendant "could not have realistically made certain bids for projects without this supplier information"). Likewise, Wilson does not discuss the fact that the ability to locate those vendors was made possible by use of the electronic vendor reference program created by CCC. (*See infra* at Part II.B).

Third, Respondents' description of the film supply market as a commodities market fares no better. (Wilson Br., p.15; Neologic/FWS Br., p. 6). The price that a company like CCC pays a supplier for its film stock is not the point. It is the suitability of the film from that supplier for a given customer that creates the value for CCC. *See Sigma Chemical Co. v. Harris*, 794 F.2d 371, 373 (8th Cir. 1986) (noting that "which suppliers supplied chemicals at the requisite quality and price was not in public domain" and protected as a trade secret).

Finally, Respondents argue that pricing is not a trade secret because customers freely provide sales persons with competing companies' current prices. While that statement is the subject of debate,[8] whether it is correct or not is irrelevant to this appeal. Wilson knew all of the customers that were buying from CCC, and he already had CCC's pricing information. *Webcraft Tech.'s*, 674 F. Supp. at 1046 (pricing information is a trade secret). Accordingly, Wilson was able to underbid CCC, (R. p. 870, line 18-p. 871, line 2; R. p. 873, lines 2-20; R. p. 874, lines 6-11; R. p. 1342(stating "these prices are

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[8] For example, if the purchasing agent at potential Customer A tells Salesman X that he buys a roll of film from Competitor Company for $1.50, then Customer A is bidding against itself because now Salesman X knows he just needs to come in below $1.50 as opposed to $1.00.

very attractive"; R. p. 1384 (showing $400 profit on roughly $80,000 sale), which explains why Neologic/FWS's net sales numbers were not higher.

B. The Modified Excel Programs are Trade Secrets

The circuit court did not even acknowledge the presence of these programs in its Order. Discovery confirmed that Neologic/FWS had these programs in their possession.[9] Neologic/FWS argue that CCC was not damaged by the misappropriation of these efficiency programs. (Neologic/FWS Br. 12). This argument represents a misapprehension of the Act. When trade secrets like the subject efficiency programs are taken, the General Assembly recognized that it may be hard to quantify damages. For that reason, the Act authorizes a "reasonable royalty for a misappropriator's unauthorized . . . use of a trade secret." S.C. Code Ann. § 39-8-40(B). CCC incorporates by reference its discussion of this issue in its opening brief. (CCC Br., pp. 16-17).

II. WILSON & NEOLOGIC/FWS MISAPPROPRIATED THE CONFIDENTIAL INFORMATION

As detailed in CCC's opening brief, when Wilson began making plans to leave the company with intentions to join FilmTech, he harvested all of the company's confidential information. And, when FilmTech did not bite, Wilson used his family's resources to start a new film company. Discovery confirmed this fact; and, therefore, Wilson was forced to admit that he took the confidential information with him to Neologic/FWS. (R. p. 505, line 18-p. 506, line 18).

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[9] Respondents attempt to distract from this finding by noting that the document itself was dated. The only reason the document was "dated" is because Neologic/FWS produced the program in pdf form, as opposed to electronic format. The information was not dated.

Wilson and Neologic/FWS's attempt to narrow the amount of confidential information that they used down to the single inventory tracking program is belied by the record. (Wilson Br., p.13; Neologic/FWS Br., p.11). The record is replete with evidence that Respondents traded on CCC's confidential information. (*E.g.*, R. p. 868, line 10-p. 887, line 18; *see also* R. p. 1788 ("Evidence shown at trial demonstrated that Neologic/Freshwater used CCC's confidential information and that CCC was justified in bringing the trade secrets claim.")).

III. CCC EXERCISED REASONABLE EFFORTS TO MAINTAIN THE SECRECY OF ITS CONFIDENTIAL INFORMATION

In a background section of its Order, the circuit court noted that "CCC made little if any effort to protect the information; neither Wilson, Gandis, Shirley, Bill Shaw, Mike Myers, nor any other CCC employee or contractor was required to sign a non-disclosure agreement prior to Wilson's ouster.[10]" (R. p. 1779) (emphasis added). Respondents pushed the circuit court in this erroneous legal direction throughout the trial, (*E.g.*, R. p. 175, lines 16-25; R. p. 179, lines 1-17; R. p. 304, lines 18-20; R. p. 318, lines 21-23; R. p. 434, lines 3-12) in the exact same manner they are attempting to push this Court. (Wilson Br., p.11, 14, 25; Neologic/FWS Br., p.9). The circuit court took this factual observation and then applied it to a legally erroneously standard. The circuit court wrote that a "party claiming a trade secret violation must exercise '***eternal vigilance,' which 'calls for constant warnings to all persons to whom the trade secret has become known and obtaining from each an agreement, preferably in writing, acknowledging its secrecy***

[10] Whether Wilson was ousted from CCC, or not, had no bearing on the question whether he and Neologic/FWS misappropriated CCC's trade secrets. *(See also* R. p. 1786) ("The evidence merely demonstrated that Wilson was able to conduct business with some of CCC's former customers after his ouster from CCC." (emphasis added))

and promising to respect it.'" (R. p. 1785) (emphasis added). By misconstruing the applicable law, the circuit court rendered a legally erroneous decision.

Respondents' briefs argue that the Act's reasonable efforts standard is nothing more than a different phraseology of the above standard requiring ***eternal vigilance***, ***constant warnings***, and a ***required secrecy agreement***. (Wilson Br., pp. 21-22; Neologic/FWS Br., pp. 7-8). The plain language of the Act, however, does not include these heightened standards. Respondents' argument that these common law standards are the same standard embodied in the Act is legally incorrect.

As noted in CCC's opening brief, only three individuals had access to all of the confidential information relating to the suppliers (vendors) and the customers: Wilson, Gandis, and Comeau-Shirley. Furthermore, the testimony showed that this information was password protected on CCC's server. Password protecting confidential information and making it available to only a limited number of individuals constitutes reasonable efforts. *Fred's Stores*, 725 So.2d at 910-11 (holding reasonable efforts met where access to the "computer on which the list was stored was obtainable only though a password" and the "number of employees who had access to the list was limited"). As a matter of law, CCC employed reasonable efforts.

IV. CCC WAS DAMAGED

The circuit court judged this trade secret case through an erroneous legal lens. Wilson and Neologic/FWS misappropriated CCC's trade secrets. Respondents were able to capture a share of the market with this information. Respondents were also able to buy (through underbidding) a share of the market with this information. (See CCC Br., 20).

CCC incorporates by reference its discussion of this issue in its opening brief. (CCC Br., pp. 22-24).

V. RESPONSE TO RHETORIC

In the lower court Respondents defended this case by introducing a number of inflammatory claims about CCC and its members. These attacks were effective in the lower court as they distracted from plain legal defects in their defenses. The record before this Court, however, does not back up the rhetoric. CCC will provide a brief response.

A. Corporate E-mail

Wilson argues that CCC spied on him by monitoring, in real time, his personal email. (Wilson Br., p.6). That statement has no basis in fact or the record. The incoming e-mails for key staff members at CCC were compiled in an archive system. (E.g., R. p. 118, lines 19-23; R. p. 291, lines 9-11). When Wilson claims his e-mails were monitored, he is referring to this archive system. Consequently, the only Wilson e-mail that was ever reviewed came from his corporate e-mail account: dave@ccc-films.com. And, again, only the incoming e-mails could be seen. (R. p. 118, lines 19-23). Wilson's personal e-mail addresses, *e.g.*, davewilson@easternfilms.net or davewilsonsr@charter.net, were never reviewed—until discovery.

Despite claims to the contrary, Wilson understood that his corporate e-mail account was not private. When corresponding with FilmTech, Wilson primarily did so by sending e-mails from his charter e-mail account, (R. p. 1684), and from his easternfilms e-mail account. (R. p. 1687). An exception is an e-mail exchange on January 13, 2012. On that date, FilmTech initiated the correspondence by sending Wilson, at his corporate e-mail account, some ideas about their potential business. (R. pp. 1688-1689). Wilson

immediately forwarded that e-mail to his easternfilms account; he then promptly responded from the easternfilms account acknowledging the e-mail and asking that "all future emails pertaining to our working together [be sent] to my eastern films email address. I can't be 100% sure that the CCC email is secure." (Id.). Of course, he knew it wasn't secure as CCC had a handbook that said that very thing. (R. p. 119, lines 6-9; *see also* R. pp. 1401-1427).

The claims of "real time" monitoring are likewise not well founded. There is an e-mail from Wilson's wife to Wilson where, one week after it was sent to Wilson, Gandis forwarded the e-mail to Comeau-Shirley. (R. pp. 1045-1046)). There was an e-mail exchange regarding Comeau-Shirley's proposed tax reduction plan for Wilson's tax liability that included Wilson's accountant, but it is unclear whether Wilson forwarded that e-mail to Gandis. Gandis testified that his review of the archived e-mails was primarily after Wilson left the company. (R. p. 121, line 21-p. 122, line 7). Contrary to Wilson's claims, there is no evidence that anyone reviewed communications between Wilson and his lawyer.

B. ZOi Films, LLC

When Wilson started this litigation in April of 2012, he named only Gandis and Comeau-Shirley as defendants and sought dissolution of CCC, among other relief. (R. p. 2206-17). Gandis and Comeau-Shirley agreed to dissolve CCC. For the entire first year of the below litigation it was believed that CCC would be dissolved.[11] When Respondents refer to Comeau-Shirley's e-mail where she says they would not have to "haggle" over the new stuff, she is referring to the new stuff after CCC's dissolution and the new stuff

[11] *See* n. 1, *supra.*

they were hoping to generate. (R. pp. 1125). An e-mail from July 20, 2012 outlined this very issue. As noted above, the parties were moving toward dissolution. In the e-mail, Comeau-Shirley noted that, "CCC will be aggressive in reducing its film stock between now and November 30th - with a goal to have all film sold by October 31st at the retail level and then spend November selling the residual in bulk sales to other brokers/scrap dealers. This would allow for collection of the receivables by December 31st." (R. pp. 1138-1143). She further noted that:

> [a]s there likely won't be new film purchases (there are some open POs still to be fulfilled) – this cash should allow CCC to pay all its vendors and . . . if we do this right, have cash left over – which would be divisible amongst the owners. The first portion of cash goes to John (and Me) to catch us up to the cash that Dave has already received (via loans) from CCC. Any excess would be divided appropriately - - the court &/or the attorneys will guide us as to how to properly settle. . . . And when that cash comes out of CCC in December – John and I will be placing ours into ZOi.

(R. p. 1140). As it turned out, however, Wilson decided not to allow CCC to be dissolved at that time.

Respondents contend that far from protecting CCC's trade secrets, its members freely gave them away to a competing entity. That is simply not the case. First, the proceeds of all ZOi transactions went from the ZOi bank account into CCC. The Court's expert confirmed this very fact.[12] (R. p. 583, line 25-p. 584, line 15). For that reason, all

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[12] The Court's expert also did not cost $150,000; he cost $112,000. And the expert was requested by Wilson; this was not a *sua sponte* decision by the court. Indeed, the appointment was largely driven by an affidavit from Wilson's retained consultant that alleged indicia of fraud in the balance sheet. This claim hinged upon year-end adjustments to the inventory. Wilson plainly knew CCC's inventory was overstated by $300,000 - $400,000. (R. p. 483, lines 6-18; R. p. 488, lines 2-8; R. p. 507, lines 2-14; R. p. 541, line 20-p. 542, line 4). Accordingly, Wilson knew the adjustments were necessary but apparently withheld that important information from his retained consultant. (Motion to Exclude Stoddard, R. pp. 2142-43, 2137-38).

work done by CCC employees to further a ZOi transaction were for the benefit of CCC. Accordingly, Respondents claims that CCC employees worked to aid a competitor has no basis in fact or the record. Indeed, almost as soon as ZOi was formed, in or around July 2012, it became public knowledge to all parties.[13] And, while it is a correct statement that ZOi was formed separate from CCC initially (for the reasons discussed above), it is also a correct statement that soon after its formation ZOi became a wholly owned subsidiary of CCC.

C. Destruction of Evidence

Respondents portray the spoliation of evidence in this case as harmless. Wilson argues that there were 40,000 e-mails loaded back onto the CCC computers after he erased the computers. (Wilson Br., 7; see also Wilson Br., p. 27 (noting "he returned his CCC computers with all the information contained in the 40,000 e-mails, which were on the computer"). To support this claim, Wilson cites to a forensic exam of the computers which noted the presence of his e-mails. (R. pp. 1730-1751; R. p. 443, line 9-p. 444, line 2). What Wilson does not mention, however, is that the forensic exam described his e-mails as "corrupt or encrypted." (R. p. 1731, #11). Indeed, Gandis testified that when he attempted to review the recovered e-mails it was "like reading hieroglyphics." (R. p. 900, lines 24-25; see also R. p. 900. Line 1-p. 901, line 2(fuller discussion of same).

Nelogic/FWS makes the claim that "Wilson returned his computer to CCC with all information intact." (Neologic/FWS Br., 11 (citing transcript page 442, ln. 1-3R. p.

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[13] When counsel for the parties learned of the existence of ZOi, they advised the individuals that notwithstanding their desire to make preparations for a dissolution of CCC and perhaps branch into a different segment of film sales, (R. p. 184, line 12-p. 185, line 8), the related nature of the business counseled in favor of making ZOi a part of CCC.

442, lines 1-3). But that transcript cite is from the direct testimony of Wilson admitting that he erased the computers. (R. p. 442, lines 1-2). Indeed, in the lines immediately following that transcript cite Wilson also admitted that he "reformatted the Blackberry and made sure there was nothing on it." (R. p. 442, lines 9-10). There is no evidence in the record that supports the claim that Wilson "returned his computer to CCC with all information intact." Rather, the evidence shows that Wilson ran a hard drive erasure program and an e-mail shredder program on the computers before returning them to CCC. (R. p. 1733, ## 33-39, 43; R. p. 900, lines 16-20). Indeed, discovery showed that Wilson instructed others to delete e-mails about this litigation, during this litigation. (R. p. 523, line 21-p. 524, line 23; R. p. 1312).

The destruction of evidence in this case was substantial. Respondents' efforts to minimize this fact are not supported by the record. The circuit court's decision not to address or acknowledge this issue is confounding.

D. So-Called Afterthought Filing

Respondents argue that Appellants trade secret claims were nothing but leverage tactics. That is simply not the case. First, as noted above, the parties believed CCC would be dissolved in an orderly fashion in 2012. When it became clear that Wilson did not seek that type of resolution, the management authorized CCC to assert all claims available in an effort to make the company whole. An independent trade secret lawsuit was filed in 2013. After it was served, Wilson amended his complaint to add CCC as a party. (R. p. 2265-2281). In the interests of judicial economy and the resources of the litigants, CCC agreed to dismiss the independent trade secret action, and it was agreed that CCC would answer the amended complaint with all counterclaims.

Respondents fault CCC for not serving the counterclaims until later in the litigation. But the later service date was entirely driven by Respondents decision to pull the parties into a second round of settlement talks. Indeed, CCC was handicapped in its prosecution of the trade secret case by this fact because it did not start receiving discovery from Nelogic/FWS until a few months before trial. The trade secret claims have always been asserted to make CCC whole.[14]

VI. BREACH OF FIDUCIARY DUTY

CCC hereby incorporates by reference the reply briefing set forth by Gandis and Comeau-Shirley regarding the claims against Wilson for breach of fiduciary duty associated with the usurpation of corporate opportunities.

VII. CONCLUSION

The circuit court failed to apply the plain language of the Act when it judged CCC's trade secret claim. CCC submits that the plain language of the Act demonstrates the confidential information at issue in this case is a trade secret. The record evidences that the trade secrets were misappropriated by Wilson and Neologic/FWS. Accordingly, CCC is entitled to an award of damages. CCC respectfully requests that this Court reverse that portion of the circuit court's Order that concluded CCC did not prove its trade secret claim, and remand for a new trial.

[*SIGNATURE PAGE FOLLOWS*]

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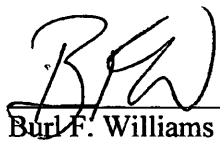
[14] With all due respect to the circuit court, and although it failed to properly apply the Act, it ***did*** correctly note that the timing of the trade secret claims was due to the "convoluted history of this case and [that] the actions of Wilson and Norvell delayed CCC from pressing the claims it decided to bring." (R. p. 1788).

Respectfully submitted,



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July 7, 2016

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Appellate Case No.: 2015-000476

Lower Case No.: 2012-CP-23-02887

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,
Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC,
Defendants,

John Gandis and Andrea Comeau-Shirley, Third Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,
Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the
Respondents/Appellants,

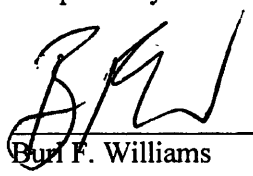
and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the
Appellants/Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the **FINAL REPLY BRIEF OF APPELLANT CAROLINA CUSTOM CONVERTING, LLC,** complies with Rule 211(b), SCACR.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Ganison Hill
Circuit Court Judge

App. Case No. 2015-000476

Lower Case No. 2012-CP-23-02887

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC, ... Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC, ... Defendants,

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ... Third-Party Plaintiffs,

vs.

CAROLINA CUSTOM CONVERTING, LLC,
..... Third-Party Defendant and Counterclaim Plaintiff,

vs.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the ..... Respondents,

and

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND CAROLINA CUSTOM CONVERTING, LLC, ... Appellants.

PROOF OF SERVICE

I certify that I have served the **FINAL REPLY BRIEF OF APPELLANT CAROLINA CUSTOM CONVERTING, LLC,** by depositing a copy of same in the United States Mail, postage prepaid, on July 7, 2016, addressed to its attorneys of record:

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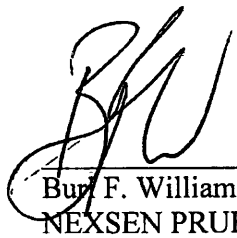

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

Appellate Case No. 2015-000476

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2018-UP-078
Heard November 8, 2017 – Filed February 7, 2018

AFFIRMED

Joseph Owen Smith, of Roe Cassidy Coates & Price, PA, and D. Randle Moody, II, of Jackson Lewis, P.C., both of Greenville, for Appellants John Gandis and Andrea Comeau-Shirley; and Burl F. Williams, of Nexsen Pruet, LLC, of Greenville, for Appellant Carolina Custom Converting, LLC.

Bruce Bellinger Campbell, of Horton Law Firm, P.A., of Greenville, for Respondents Neologic Distribution, Inc. and Fresh Water Systems, Inc.; and W. Andrew Arnold, of Horton Law Firm, P.A., of Greenville, for Respondent David Wilson.

PER CURIAM: In this civil matter, Carolina Custom Converting, LLC (CCC), John Gandis, and Andrea Comeau-Shirley appeal the circuit court's order finding Gandis and Shirley "froze-out" David Wilson as the minority shareholder of CCC and ordering Gandis and Shirley to buy out Wilson's interest in CCC. On appeal, Gandis and Shirley argue the circuit court erred in (1) finding Wilson did not breach his fiduciary duties to Gandis and Shirley, (2) finding Gandis and Shirley froze-out and oppressed Wilson, (3) ordering them to buy out Wilson's interest despite the absence of unconscionable conduct, and (4) awarding Wilson equitable relief when he had unclean hands. CCC argues the circuit court erred in (1) finding no trade secret existed under the South Carolina Trade Secret Act, (2) finding CCC did not sufficiently safeguard its confidential information, (3) finding CCC was not entitled to damages for trade secret misappropriation, and (4) misapplying fiduciary duty law and the statute of limitations to the claims of breach of fiduciary duty and usurpation of corporate opportunity. We affirm and

adopt the circuit court's order in full. *See Byrd v. Livingston*, 398 S.C. 237, 245, 727 S.E.2d 620, 624 (Ct. App. 2012) (adopting the circuit court's order as to some issues); *Grosshuesch v. Cramer*, 367 S.C. 1, 6, 623 S.E.2d 833, 835 (2005) (adopting the reasoning set forth in the circuit court's order as to some of the issues on appeal).

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill
Circuit Court Judge

App. Case No. 2015-000476

Lower Case No. 2012-CP-23-02887

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC,..... Plaintiff,

v.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC,..... Defendants,

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ... Third-Party Plaintiffs,

v.

CAROLINA CUSTOM CONVERTING, LLC,
..... Third-Party Defendant and Counterclaim Plaintiff,

v.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the ..... Respondents,

and

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND CAROLINA CUSTOM CONVERTING, LLC,..... Appellants.

PETITION FOR REHEARING

Appellant Carolina Custom Converting, LLC ("CCC"), by and through undersigned counsel and pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, hereby files this petition for rehearing ("Petition"). The grounds for this Petition are that the Panel's opinion in this matter overlooked or misapprehended several matters of fact and law.

In Unpublished Opinion No. 2018-UP-078, filed February 7, 2018, a Panel of this Court adopted and affirmed the circuit court's order finding CCC did not prove its trade secret misappropriation claims against Neologic Distribution, Inc., Freshwater Systems, Inc., and David Wilson, and its breach of fiduciary duty claim against David Wilson. By adopting the circuit court's order, the Panel overlooked or misapprehended several matters of law and fact in the opinion. The Panel should rehear this matter and issue a published opinion that addresses these issues.

First, the Panel improperly concluded that no trade secret existed under the South Carolina Trade Secret Act. Second, the Panel improperly concluded that CCC did not sufficiently safeguard its confidential information. Third, the Panel improperly concluded that CCC was not entitled to damages for trade secret misappropriation. Fourth, the Panel improperly affirmed the trial court's misapplication of fiduciary duty law and the statute of limitations to the claims of breach of fiduciary duty and usurpation of corporate opportunity. Accordingly, CCC respectfully submits that rehearing is warranted.

ARGUMENT

I. The Panel Erred In Concluding That No Trade Secret Existed Under The South Carolina Trade Secret Act.

In adopting the circuit court's order, the Panel found that no trade secret existed

under the South Carolina Trade Secret Act. Because the Panel's holding is based on a misapprehension of law, rehearing is warranted.

A. Legal Standard

South Carolina adopted the Uniform Trade Secret Protection Act in 1992. Within five years, apparently concluding that the Uniform Act was insufficient, the General Assembly enacted the South Carolina Trade Secret Act. *Employees Beware: Employer Rights Under the South Carolina Trade Secret Act*, Kirk T. Bradley, Note, 49 S.C. L. Rev. 597, 597-98 (Spring 1998) (hereinafter "Employees Beware"). The article posits that the South Carolina Act "arguably establishes the most comprehensive compilation of trade secret laws in the United States." *Id.* One of the grounds for this statement is the presence of S.C. Code Ann. § 39-8-30(B) (1997), which is not found in the Uniform Act, and provides as follows:

> ***Every employee*** who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret ***has a duty to refrain from using or disclosing the trade secret*** without the employer's permission ***independently of*** and in addition to ***any written contract of employment, secrecy agreement, noncompete agreement, nondisclosure agreement, or other agreement between the employer and the employee.***

S.C. Code Ann. § 39-8-30(B) (emphasis added). Accordingly, the General Assembly has created an obligation upon all employees in South Carolina, notwithstanding the absence of a written agreement, to refrain from using their employer's trade secrets.

Under South Carolina law, a trade secret means the following:

> (a) information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:
>
> > (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain

economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) ***A trade secret may consist of a simple fact***, item, or procedure, or a series or sequence of items or procedures which, ***although individually could be perceived as relatively minor or simple, collectively*** can make a substantial difference in the efficiency of a process or the production of a product, or ***may be the basis of a*** marketing or ***commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.***

S.C. Code Ann. § 39-8-20(5) (1997) (emphasis added).

Under South Carolina law, misappropriation means:

(a) acquisition of a trade secret of another by a person by improper means;

(b) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means;

S.C. Code Ann. § 39-8-20(2)(a-b) (1997). South Carolina law provides that "[i]mproper means" includes "theft." S.C. Code Ann. § 39-8-20(1) (1997).

Finally, under South Carolina law, "[a] complainant is entitled to recover actual damages for misappropriation of trade secrets." S.C. Code Ann. § 39-8-40(A) (1997). The damages available to a plaintiff "include both the actual loss caused by misappropriation or the unjust enrichment caused by misappropriation." S.C. Code Ann. § 39-8-40(B) (1997). Accordingly, once a plaintiff proves that his trade secret has been misappropriated by a defendant, a plaintiff is entitled to damages. If the facts of a case show that a full award would be "inequitable," then a court has the authority to "reduce[] monetary recovery." S.C. Code Ann. § 39-8-40(A) (1997).

B. Trade Secrets Existed

1. The Confidential Information is a Trade Secret

Wilson took all of CCC's customer lists, supplier lists, pricing information,

prospective customer lists, its electronic vendor reference program, and its inventory reference program. (R. p. 506, lines 1-18). CCC spent significant corporate resources and time building this body of information. (R. p. 870, lines 10-18; R. p. 871, line 20-p. 872, lines 1-17; R. p. 873, line 24-p. 874, lines 1-5; R. p. 875, lines 3-14; R. p. 876, lines 1-17; R. p. 877, line 8-p. 881, lines 4, and 12-24).[1]

The confidential information was comprised of "simple fact[s] . . . [that] although individually could be perceived as . . . minor or simple, collectively . . . [were] the basis for [CCC's] commercial strategy." S.C. Code Ann. § 39-8-20(5)(b) (1997). The plain language of the South Carolina Trade Secret Act makes clear that this information is a trade secret. *See also Williams v. Riedman*, 339 S.C. 251, 284, 529 S.E.2d 28, 45 (Ct. App. 2000) (Goolsby, J. concurring) (concurring in the opinion and clarifying that "I do not construe it to hold that a customer list cannot be a trade secret"). Further, courts have concluded that this type of information is a trade secret. *See, e.g., Craig Outdoor Advertising, Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1018-19 (8th Cir. 2008) (noting that public information gained "only after, extensive, time-consuming research [is] information entitled to protection"); *N. Atlantic Instruments, Inc. v. Haber*, 188 F.3d 38, 46 (2d Cir. 1999) (collecting cases and noting same); *see also* S.C. JUR. INTELLECTUAL PROPERTY § 77 & n.1 (noting that "customer lists and other sales and marketing information can be trade secrets"). The circuit court committed legal error by failing to apply the plain language of the South Carolina Trade Secret Act.

The circuit court also failed to acknowledge that the efforts involved in locating

[1] CCC also presented testimony that Wilson and Neologic/FWS were improperly conducting business based on information gained through the discovery process. (R. p. 876, line 18-p. 877, line 7; R. p. 882, line 4-p. 883, line 4; R. pp. 1394-1400).

the correct film for a customer required significant intellectual input by CCC. (R. p. 870, lines 5-17). It likewise erred in failing to acknowledge the complexity of the supplier market, and the resources CCC utilized in navigating that market in order to locate the correct film for a customer. (R. p. 872, lines 7-10).

The circuit court also failed to acknowledge the electronic vendor reference program and inventory reference program that CCC created and Wilson took. (R. p. 877, line 8-p. 881, line 4; R. pp. 1534-1587). During the discovery process, Neologic/FWS produced a printed out copy of the electronic vendor reference program. (*Id.*). The program operates using the Excel program. (R. p. 877, lines 24-25). Gandis testified that it was developed over time with the input of a number of CCC employees and Comeau-Shirley. (R. p. 878, lines 6-10).

Gandis testified about the operation of the program. CCC compiled into the program all of the different manufacturers of film, specific films types, and manufacturer codes. (R. p. 878, lines 1-20). Gandis testified that some of the codes are not publicly available. (*Id.*). He testified that when a customer calls with a description of what they need, he can put those specifications into the program and it will generate a result that provides you with every manufacturer that makes that film. (R. p. 879, lines 4-8).

Gandis also testified about the inventory reference program. That program was developed to provide a searchable system that immediately showed what inventory CCC had in its inventory at any given time. (R. p. 879, lines 18-p. 880, line 7). Gandis testified the development of this program increased CCC's efficiencies and gave it a competitive advantage. (R. p. 879, lines 9-17; *see also* R. p. 1661, first two sentences of "Company strengths," (***Wilson*** noting the competitive advantage of CCC in its ability

"turn an order faster than our competition")).

Both of these programs are a trade secret. They are a "program . . . [that] derives independent economic value . . . from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use." S.C. Code Ann. § 39-8-20(5)(a)(i) (1997). They are also a "procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process . . . ." S.C. Code Ann. § 39-8-20(5)(b) (1997).

2. Reliance Upon Atwood v. Black was Improper

The circuit court erred in concluding that CCC's confidential information did not constitute a trade secret. Against the backdrop of the confidential information detailed in Part I.B.1., *supra*, and at issue in this case, the circuit court committed legal error by relying upon *Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (2007) for the proposition that CCC's confidential information did not constitute a trade secret. *Atwood* did not hold that the confidential information at issue in this case is not a trade secret.

Atwood addressed a rental home business located in Edisto Beach. One of Atwood's employees left to join a competing company, and Atwood brought a claim for misappropriation of its trade secrets against the former employee and her current employer. *Id.* at 70-71, 646 S.E.2d at 883. The trade secrets alleged in *Atwood* constituted the "homeowners list" and the "renters list." *Id.* at 71, 646 S.E.2d at 883. In a split decision[2], the *Atwood* court concluded that these lists did not constitute trade

[2] Two Supreme Court justices concluded that the "renters list" qualified as a trade secret. *Atwood*, 374 S.C. at 74, 646 S.E.2d at 884.

secrets.

The *Atwood* court based this finding on the "undisputed fact that a list of all the homeowners in Edisto Beach and their contact information is a matter of public record available at Town Hall." *Id.* at 72, 546 S.E.2d at 884. The Court also based this finding on the fact that the former employee was "contacted directly by Atwood renters after Atwood sent out an announcement of her departure." *Id.* at 72, 646 S.E.2d at 884.

The facts of *Atwood* are significantly different from this case. CCC's business involves working with customers to qualify a film before entering into long-term supply relationships. (R. p. 886, lines 11-15). The qualifying process can take months. Wilson's own witness confirmed this fact. (R. p. 301, lines 7-20). During the qualifying process, many times a CCC employee was required to travel to the customer's plant for trial runs. (e.g., R. p. 911, lines 3-10).

Qualifying the right film also requires CCC to first find the right film at the right price—both for CCC and the customer. (*E.g.*, R. p. 874, line 12-p. 875, line 14; R. p. 876, lines 1-17). That process involves expending employee time and resources to locate the correct film, and the most suitable supplier of that film. Indeed, locating the most suitable supplier of film is often the most valuable information, for it provides the competitive pricing advantage. (*E.g.*, R. p. 871, line 7-p. 873, line 8). *See Elm City Cheese Co. v. Federico*, 752 A.2d 1037, 1040-41, 1053 (Conn. 1999) (noting that cheese company's commercial strategy of locating "return milk" for use in its processes was a trade secret as it allowed the cheese company to purchase its raw goods at a much lower cost); *see also Sigma Chemical Co. v. Harris*, 794 F.2d 371, 373 (8th Cir. 1986) (noting that "which suppliers supplied chemicals at the requisite quality and price was not in public

domain" and protected as a trade secret). The circuit court failed to appreciate the significant amount of time and energy that CCC devoted to creating its confidential information. This confidential information was not merely sitting at a "Town Hall" for anyone to simply review.

Unlike *Atwood*, documentary evidence showed that Wilson contacted the customers himself after he left. (*E.g.*, R. pp. 1757-1759 (noting that "[w]hen I told them I had left CCC weeks ago"); R. p. 1336 (stating "Hi Trip, Good catching up with you today. As discussed, my new company is Neologic Distribution."); R. p. 1337 (stating "I hope you are well. As you may have heard, I left [CCC] in January. I am still very much in the film business . . . .")).

Atwood also did not involve competitive pricing. The price that a rental company charges is expressly advertised. CCC does not advertise the price that its customers pay for their film because its competitor could then underbid the company. The testimony at trial showed that Wilson and Neologic/FWS were underbidding CCC's customers based upon their possession of CCC's confidential information. (R. p. 870, line 18-p. 871, line 2; R. p. 873, lines 2-20; R. p. 874, lines 6-11; R. pp. 1342-1343 (stating "these prices are very attractive"); R. p. 1384 (showing $400 profit on roughly $80,000 sale)).

The circuit court also improperly relied upon *Carolina Chemical Equipment Co. v. Muckenfuss*, 322 S.C. 289, 471 S.E.2d 721 (Ct. App. 1996), for the proposition that Wilson's previous work in the industry precluded the confidential information from becoming a trade secret. In *Muckenfuss*, the company did not claim that the employee "took actual customer lists, pricing lists, or formula cards with him." *Id.* at 297, 471 S.E.2d at 725. Rather, the company alleged the misappropriation occurred from the

employee's use of "knowledge he acquired during the 17 years he was employed" by the company. *Id.* at 297, 471 S.E.2d at 725. In this case, CCC expressly claimed, and Wilson was forced to admit, that he did take all of the confidential information. (R. p. 506, lines 1-18). And, CCC based its claim for relief upon the fact that Wilson took this confidential information with him tc Neologic/FWS where he ***started a film company***.

CCC devoted employee resources, time, and money into developing its confidential information. Wilson left CCC, then took and used all of this confidential information at Neologic/FWS—the circuit court made that specific finding. (R. p. 1788). The circuit court's conclusion, however, that this confidential information was not a trade secret constituted an error of law.

II. The Panel Erred In Concluding That CCC Did Not Sufficiently Safeguard Its Confidential Information.

In adopting the circuit court's order, the Panel found that CCC did not sufficiently safeguard its confidential information. In so holding, the Panel misapprehended the law and failed to apply the correct legal standard to the instant matter.

The undisputed testimony at trial established the following:

- Only three people had access to all of the confidential information: Wilson, Gandis, and Comeau-Shirley (R. p. 883, lines 5-16);
- The confidential information was located on a password protected server (*Id.*);
- When CCC was led to believe that Wilson was going to leave, his access to the server was disabled (R. p. 163, lines 2-17; R. p. 435, line 22-p. 436, line 13);
- When Gandis met Wilson to get him to leave the Greenville office, he brought along a member of law enforcement in order to prevent Wilson from taking CCC property with him (R. p. 164, lines 5-14).

South Carolina law provides that the owner of a trade secret must employ "efforts that are reasonable under the circumstances to maintain its secrecy." S.C. Code Ann. § 39-8-

20(5)(b) (1997). At the time Wilson left CCC, it had 24 employees, (R. p. 39, lines 22-24), yet only the three owners had access to all of the confidential information. (R. p. 883, lines 5-16). When the threat of a misappropriation occurred, CCC acted to maintain the secrecy of its confidential information. (*See also* R. pp. 1673-1675 (learning that Wilson was sharing confidential information with potential suitors and asking him to protect the secrecy of the information)).

The circuit court did not apply the reasonable under the circumstances legal standard. Instead, the circuit court applied a different legal standard. The circuit court incorrectly stated that a "party claiming a trade secret violation must exercise 'eternal vigilance,' which calls for constant warnings to all persons to whom the trade secret has become known and obtaining from each an agreement, preferably in writing, acknowledging its secrecy and promising to respect it.'" (R. p. 1785). South Carolina law, however, does not include these requirements. S.C. Code Ann. § 39-8-30(B) (1997).

The incorrect legal standard cited by the circuit court came from an unpublished decision by the United States Court of Appeals for the Fourth Circuit. *Hill Holliday Connors Cosmopulos, Inc. v. Greenfield*, 433 Fed. Appx. 207 (4th Cir. 2011). That unpublished decision based its reasoning upon the South Carolina Supreme Court's ***1972*** decision in *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972). Following the enactment of the South Carolina Trade Secret Act ***in 1997***—which "arguably establishe[d] the most comprehensive compilation of trade secret laws in the United States"[3]—*Lowndes* is no longer controlling law. Thus, the circuit court's reliance on the unpublished Fourth Circuit decision constituted legal error.

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[3] *Employees Beware*, 49 S.C. L. Rev. at 597-98.

III. The Panel Erred In Concluding That CCC Was Not Entitled To Damages For Trade Secret Misappropriation.

By adopting the circuit court's order, the Panel found that CCC was not entitled to damages for trade secret misappropriation. Because this conclusion resulted from a legally incorrect application of the South Carolina Trade Secret Act, the Panel misapprehended the law in adopting it.

Section 39-8-20 provides that "misappropriation means . . . acquisition of a trade secret of another by a person by improper means"; or "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means." S.C. Code Ann. § 39-8-20(2)(a)-(b) (1997). In turn, § 39-8-40(A) provides that a "complainant is entitled to recover actual damages for misappropriation of trade secrets." S.C. Code Ann. § 39-8-40(A) (1997). Because CCC's trade secrets were misappropriated, it was entitled to damages as a matter of law.

Wilson admitted that he took all of CCC's confidential information. (R. p. 506, lines 1-18). Wilson admitted that at the time he left CCC he was primarily running the sales force, and not interacting with customers. (R. p. 415, lines 1-12). E-mails were stipulated into evidence, and presented at trial, showing that Wilson and Neologic/FWS were using CCC's confidential information. (*E.g.*, R. pp. 1534-1587; R. p. 1313; R. p. 1338; R. p. 1339; R. pp.1342-1343 ; R. p. 1368; R. pp. 1369-1383; R. pp. 1385-1386; R. pp. 1387-1389; R. pp. 1390-1393; R. pp. 1394-1400; R. pp. 1401-1427). Neologic/FWS produced financial information showing that they were conducting business with CCC's customers. (R. p. 1329). Trial testimony showed that 23 of 27 Neologic customers were

CCC customers.[4] (R. p. 883, lines 17-24). But even setting aside Wilson's pre-CCC customers, the trial testimony showed that 11 of Neologic/FWS's customers were customers that CCC gained on its own. (R. p. 883, line 23-p. 885, line 25). As a matter of law, CCC was entitled to an award of damages.[5] S.C. Code Ann. § 39-8-40(A) (1997).

The circuit court's conclusion that the "evidence merely demonstrated that Wilson was able to conduct business with some of CCC's former customers after his ouster[6] from CCC" is legal error. It is based upon a legally erroneous application of the South Carolina Trade Secret Act.[7]

In *Williams v. Riedman*, 339 S.C. 251, 529 S.E.2d 28 (Ct. App. 200), this Court addressed whether the facts of that case provided for a trade secret claim. This court concluded that it did not, and did so based upon the following factors:

- No evidence that employee took any tangible customer information. *Id.* at 281, 529 S.E.2d at 43.
- No evidence that employee actively solicited the customers. *Id.* at 281, 529 S.E.2d at 43.

---

[4] The circuit court apparently overlooked the fact that the agreement to create the combined company called for Wilson to provide all of his customers to CCC. (R. pp. 1285-1286; R. p. 1529).

[5] With all due respect to the circuit court, the absence of routine post-trial briefing apparently limited the circuit court's ability to properly judge this case. (R. p. 866, line 2-p. 867, line 18). It is important to point out that when counsel for CCC proposed a post-trial briefing schedule to set forth the law and its application to the evidence, counsel for the respondents objected. (*Id.*).

[6] The circuit court's choice of the word "ouster" indicates the erroneous lens through which it must have viewed this claim. Whether Wilson was ousted from CCC, or not, had no bearing on the question whether he and Neologic/FWS misappropriated CCC's trade secrets.

[7] In the alternative, and against the backdrop of the confidential information misappropriated in this case, the circuit court's legal conclusion is not reasonably supported by the evidence. *Bell v. Progressive Di. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014).

- Employee denied she had a plan to solicit the customers after termination. *Id.* at 280, 529 S.E.2d at 43.

- Every client employee had at the new company was a client from the company that she sold to her former employer.[8] *Id.* at 281, 529 S.E.2d at 44.

Each one of these factors points in in the opposite direction in this case. Accordingly, the circuit court committed legal error by failing to properly interpret and apply the South Carolina Trade Secret Act.

IV. The Panel Erred In Affirming The Trial Court's Misapplication Of Fiduciary Duty Law And The Statute Of Limitations To The Claims Of Breach Of Fiduciary Duty And Usurpation Of Corporate Opportunity.

In adopting the circuit court's order, the Panel affirmed the misapplication of fiduciary duty law and the statute of limitations to the claims of breach of fiduciary duty and usurpation of corporate opportunity. The Panel misapprehended the law in adopting both conclusions.

A. The Circuit Court Applied the Wrong Burden of Proof

Our courts have long recognized that the duty of a partner to exercise the utmost good faith, fairness and loyalty is required both by statute and by common law. *Anthony v. Padmar, Inc.*, 320 S.C. 436, 448-49, 465 S.E.2d 436, 752 (Ct. App. 1995) (internal citations omitted). "Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." *Id.* at 449, 465 S.E.2d at 752 (internal citations omitted). Moreover, this Court has stated that a fiduciary's duty of disclosure imposes an "obligation of ***refraining from taking any advantage of one another by the slightest***

[8] The analogue here would be customers that Wilson had previously sold film to at EFS.

misrepresentations or concealment." *Moore v. Moore*, 360 S.C. 241, 252, 599 S.E.2d 467, 473 (Ct. App. 2004) (emphasis in original).

Accordingly, as a partner and later co-manager of CCC, Wilson owed a fiduciary duty to the company and his fellow members to disclose all known information that was significant and material. As a result of that fiduciary duty, it was Wilson's burden to prove that he disclosed all significant and material information relating to the corporate opportunities that he took from the company and fellow members. *See Meinhard v. Salmon*, 164 N.E. 545, 546-49 (N.Y. 1928). The circuit court committed reversible error by placing the burden of proof upon the non-violating party, CCC.

B. Wilson Breached His Fiduciary Duty to CCC

Wilson breached his fiduciary obligations to refrain from competing with CCC before dissolution.

The South Carolina Limited Liability Act provides:

> (a) The 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 imposed by subsections (b) and (c).
>
> (b) A member's duty of loyalty to a member-managed company and its other members is limited to the following:
>
> > (1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;
> >
> > (2) to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and
> >
> > (3) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.
>
> (c) A member's duty of care to a member-managed company and its other

> members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
>
> (d) 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.

S.C. Code Ann. § 33-44-409 (1996). Specifically, Subsection (b)(3) expressly states that a member's fiduciary duty of loyalty to a member-managed company requires that he refrain from competing with the company before dissolution.

As detailed above, CCC was incorporated as an LLC with Wilson and Gandis as its sole members. Their shared membership and interest in CCC carried with it a fiduciary relationship. As such, Wilson owed CCC fiduciary duties, including that of refraining from competing with the company before dissolution, which he indisputably breached. The circuit court erred by disregarding this duty and instead evaluating whether the evidence established that Wilson agreed to transfer three import accounts to CCC in 2008. This evaluation was more akin to a contract claim than a breach of fiduciary duty claim. The appropriate inquiry is whether the evidence showed that Wilson fulfilled his fiduciary duties to CCC by acting in good faith and refraining from competing with CCC before its dissolution.

Wilson clearly breached his fiduciary duty to "refrain from competing with [CCC] in the conduct of [CCC's] business before the dissolution of [CCC]." S.C. Code Ann. § 33-44-409(b)(3) (1996). Wilson unequivocally admitted that he engaged in side deals through EFS while CCC was operating, including during the times he was receiving $8,000 per month from CCC. He argued that this was allowed because his agreement with Gandis carved out three accounts. (R. p. 378, line 25 – p. 379, line 18). The

testimony and evidence at trial showed that the agreement between Gandis and Wilson was for EFS to roll all of its business into CCC and for Wilson to receive $8,000 per month from CCC in exchange. (R. p. 78, lines 8-14). Gandis later discovered that unbeknownst to him, Wilson continued to engage in side deals with EFS after all of its customers were supposed to be transitioned to CCC. (R. p. 211, lines 18-22; R. p. 216, lines 14-18; R. p. 217, lines 20-22). In fact, Wilson continued to engage in side deals through EFS even after he began receiving the $8,000 per month from CCC. (R. pp. 1318-27). By engaging in such conduct, Wilson clearly breached his fiduciary duty to refrain from competing with CCC before dissolution.

Moreover, after leaving CCC, Wilson immediately set out to compete with CCC by utilizing CCC's confidential information. The Reporter Comments to § 33-44-409 make clear that competitive activity constitutes a breach of a member's fiduciary duty to the company. *See* Comment to S.C. Code Ann. § 33-44-409 ("[T]he duty to not compete terminates upon dissociation . . . However, a dissociated member is not free to use confidential company information after dissociation."). The circuit court expressly found that Neologic/Freshwater used CCC's confidential information. (R. p. 1788) ("Evidence shown at trial demonstrated that Neologic/Freshwater used CCC's confidential information and that CCC was justified in bringing its trade secrets claim."). Because Wilson provided this confidential information to Neologic, he breached his fiduciary duty to CCC.

B. CCC's Breach of Fiduciary Duty Claim Was Not Time Barred

Generally, in South Carolina, a plaintiff has three years from the time he knew or should have known he had a cause of action to file suit. S.C. Code Ann. § 15-3-530; *see also Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998). A cause of

action should be discovered through exercise of reasonable diligence when the facts and circumstances would put a person of common knowledge and experience on notice that some right has been invaded or a claim against another party might exist. *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520, 524, 443 S.E.2d 537, 539 (1994). The statute begins to run from this point – the date upon which a plaintiff discovers the injury – and not when a plaintiff learns the identity of all the alleged wrongdoers. *Tollison v. B&J Machinery Co., Inc.*, 812 F. Supp. 618, 619-20 (D.S.C. 1993).

The circuit court concluded that Appellants received notice of Wilson's side dealing activities in July 2009, and because they failed to engage in a reasonable inquiry after receiving notice that Wilson had engaged in such conduct, their counterclaims for breach of fiduciary duty were time-barred. (R. pp. 1783-84). In reaching this conclusion, the circuit court failed to specifically cite any evidence or trial testimony in support of its conclusion, and likewise failed to take into account the totality of the record.

Furthermore, "[d]eliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations." *Doe v. Bishop of Charleston*, 407 S.C. 128, 140, 754 S.E.2d 494, 500-01 (2014). As noted above, the agreement between Gandis and Wilson was for EFS to roll all of its business into CCC and for Wilson to receive $8,000 per month from CCC in exchange. (R. p. 78, lines 8-14). Gandis later discovered that unbeknownst to him, Wilson continued to engage in side deals with EFS after all of its customers were supposed to be transitioned to CCC. (R. p. 211, lines 18-22, R p. 216, lines 14-18; R. p. 217, lines 20-22; R. pp. 1318-27).

Notably, Gandis testified that he only learned of these side deals "by accident,"

and that when he confronted Wilson about them, Wilson denied engaging in such conduct. (R. p. 215, lines 6-14; R. p. 217, lines 3-22). The evidence and testimony at trial showed that Wilson took active steps to conceal his side dealings. Specifically, Wilson only used his EFS email address – rather than his CCC email address – while engaging in side deals. (R. p. 215, lines 6-14). He never copied Gandis or CCC on the side deal correspondence, and never informed them that he was conducting business outside of CCC for his sole benefit. (R. p. 215, lines 6-14). When Gandis confronted Wilson about his side deals, Wilson denied engaging in such conduct except for an admission in late 2010, when he attempted to justify his conduct by saying, "it's Christmas." (R. p. 215, lines 6-14; R. p. 1528). Until this admission in late 2010, Wilson deceived CCC and concealed his illicit activities. As such, the statute was tolled until at least when Wilson offered his paltry "Christmas" excuse in late 2010.

At trial, Wilson submitted email correspondence from June 17, 2009 and October 30, 2009 regarding EFS sales to West Carrolton. (R. pp. 1006-08). That email correspondence did not provide Appellants sufficient notice of the scope of Wilson's illicit activities. Moreover, it could have related to deals Wilson maintained were precluded as an import deal that predated CCC. In any event, Appellants' claim for breach of fiduciary duty was not time barred because it related back to Wilson's initial filing on April 27, 2012. *See* SCRCP 15(c). When CCC was added to the case via Wilson's Second Amended Complaint, it timely counterclaimed for breach of fiduciary duty. Therefore, pursuant to Rule 15(c), SCRCP, Appellants' breach of fiduciary duty claims against Wilson related back to the original April 27, 2012 filing.

CONCLUSION

This Court should grant CCC's Petition because the Panel overlooked or misapprehended several matters of fact and law when it:

1. Improperly concluded that no trade secret existed under the South Carolina Trade Secret Act;
2. Improperly concluded that CCC did not sufficiently safeguard its confidential information;
3. Improperly concluded that CCC was not entitled to damages for trade secret misappropriation; and
4. Improperly affirmed the trial court's misapplication of fiduciary duty law and the statute of limitations to the claims of breach of fiduciary duty and usurpation of corporate opportunity.

Respectfully submitted,

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Attorneys for Carolina Custom Converting, LLC

February 22, 2018
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill
Circuit Court Judge

App. Case No. 2015-000476

Lower Case No. 2012-CP-23-02887

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC,..... Plaintiff,

v.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC,..... Defendants,

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ... Third-Party Plaintiffs,

v.

CAROLINA CUSTOM CONVERTING, LLC,
..... Third-Party Defendant and Counterclaim Plaintiff,

v.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the ..... Respondents,

and

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, AND CAROLINA CUSTOM CONVERTING, LLC,..... Appellants.

PROOF OF SERVICE

This is to certify that this 22nd day of February, 2018, a copy of the foregoing Petition for Rehearing has been served upon the following counsel of record by placing the same in the United States mail, first class, postage prepaid, addressed to the following as shown below.

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NEXSEN PRUET, LLC

NEXSEN|PRUET

Burl F. Williams
Member

February 22, 2018

RECEIVED
FEB 22 2018
SC Court of Appeals

VIA HAND DELIVERY

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

Re: David Wilson v. John Gandis / C/A No.: 2015-000476

Dear Ms. Kitchings:

Enclosed please find the Petition for Rehearing. If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Burl F. Williams

BFW/hjr
Enclosure
cc w/encl.: D. Randle Moody, II, Esquire
Joseph Owen Smith, Esquire
W. Andrew Arnold, Esquire
Bruce Bellinger Campbell, Esquire

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The South Carolina Court of Appeals

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

Appellate Case No. 2015-000476

ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

J.

J.

J.

Columbia, South Carolina

FILED

May 24, 2018

cc:
D. Randle Moody, II, Esquire
Joseph Owen Smith, Esquire
Burl F. Williams, Esquire
W. Andrew Arnold, Esquire
Bruce Bellinger Campbell, Esquire
The Honorable D. Garrison Hill