IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

The Honorable Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2016-001514

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

v.

James S. Archer.....Appellant.

FINAL BRIEF OF APPELLANT

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II. **Did the lower court err as a matter of law in awarding the Corporation a judgment against Shareholder in the sum of Nineteen Thousand Five Hundred Seventy Three and 27/100 (19,573.27) Dollars representing a 49% share of money paid by the majority shareholder to various creditors of the Corporation?**

III. **Did the lower court err as a matter of law in not awarding Shareholder a credit against his obligation to pay on the promissory note including for the $3,500.00 of the Corporation's debt paid by Shareholder in 2007?**

IV. **Did the lower court err as a matter of law in not awarding Shareholder damages and/or setoffs for the Corporation's breaches of statutory and fiduciary duties owed to Shareholder including: selling off substantially all of the assets and winding down the business without notice to Shareholder; selling substantially all of the assets of the Corporation for less than their fair market value; transferring all of the Corporation's inventory to another business without providing an accounting; transferring the Corporation's walk-in oven for less than its fair market value and failing to account for the proceeds; in continuing to operate the business at a loss for the sole purpose of benefiting the majority shareholder?**

STATEMENT OF THE CASE

Tiffany's Café and Bakery on Devine, Inc. (hereafter also referred to as "Corporation") commenced this action with the filing of a Summons and Complaint on May 1, 2008, alleging causes of actions for breach of contract, negligence, and breach of fiduciary duty. James S. Archer (hereafter also referred to as "Shareholder") timely filed an Answer and Counterclaim on May 16, 2008. In his Answer and Counterclaim, Shareholder asserts that his obligations under the note had previously been discharged and that the Corporation and its officers had breached fiduciary duties owed to Shareholder. The Corporation then filed and served its Reply on June 16, 2008.

By Consent Order entered by the parties, the action was referred to the Master in Equity for Richland County, with the provision that any appeal from a final Order be direct to the South Carolina Court of Appeals. Seven years after its initial filing, by letter dated May 21, 2015, the Corporation requested a final hearing and the Court scheduled the same for July 29, 2015.

On September 25, 2015, the Honorable Joseph M. Strickland issued an Order in favor of Shareholder, finding Shareholder owed no money on the subject note. Subsequent to service of this Order, the Corporation timely served and filed Plaintiff's Notice of Motion to Alter or Amend Order pursuant to Rules 52(b), 59(e) and 60(b), SCRCP. A hearing on Plaintiff's Motion was scheduled and held before the Honorable Joseph M. Strickland on February 8, 2016. Following this hearing, the Court vacated the entirety of its previous Order and substituted its Amended Order for Judgment, awarding the Corporation a judgment against Shareholder in the amount of $43,373.27. Shareholder timely filed a Motion to Alter or Amend and a hearing on said Motion was scheduled and

held on June 13, 2016. Thereafter, on July 7, 2016, the Honorable Joseph M. Strickland issued an order denying Shareholder's Motion. A copy of the Order Denying Motion to Alter or Amend Judgement was received by the Appellant via letter sent by Plaintiff/Respondent's counsel on July 20, 2016. Appellant filed his Notice of Appeal on July 21, 2016.

STATEMENT OF FACTS

On July 24, 2003, the Corporation and Shareholder executed a "Stock Purchase Agreement" whereby Shareholder agreed to pay the sum of $40,000 in exchange for 950 shares of common stock (49%) of Tiffany's Café and Bakery on Devine, Inc. (Pl. Tr. Ex. 2; R. p. 326.) On the same day, Shareholder transferred the sum of $30,000 cash to the Corporation, and executed a promissory Note (hereafter "promissory note") promising to pay the sum of $10,000 on or before July 24, 2005. (Tr. p. 12, lines 17-23; R. pp. 77, lines 17-23; Pl. Tr. Ex. 3.; R. p. 327.)

Prior to July 24, 2003, James J. McMillan (hereafter also referred to as "McMillan") owned 100% of the Corporation's stock. (Tr. pp. 6, line 21 – p. 7, line 15; R. p. 71, line 21 – p. 72, line 15.) At all times relevant to this action, McMillan acted as the President of the Corporation. (Tr. p. 12, line 2; R. p. 77, line 2.) Although some of the specifics regarding the management of the business are in dispute, there is a general agreement as to the following. Shortly before July 24, 2003, Shareholder began to manage the day-to-day operation of the business. (Tr. p. 124, lines 17-22; R. p. 189, lines 17-22.) However, McMillan, maintained the checkbook until January 2004. (Tr. p. 37, lines 2-24; R. p. 102, lines 2-24.) Accountant Glen Creel prepared monthly financial statements which were furnished to both James McMillan and Shareholder. (Tr. p. 101, lines 7-9; R. p. 166, lines

7-9.) McMillan and Shareholder met weekly to discuss matters related to the business. (Tr. p. 130, lines 4-19; R. p. 195, l, 4-19.)

On January 2, 2007, Shareholder resigned his position as an officer in the company. (Def. Tr. Ex. 1; R. p. 336.) Prior to his resignation, Shareholder had issued two checks payable to Institution Food House (hereafter also referred to as "IFH"), one of the Corporations' vendors. (Def. Tr. Ex. 4; R. p. 338.) Near the end of the 2006 calendar year, without informing Shareholder, McMillan closed Tiffany's Café and Bakery on Devine, Inc.'s checking account causing two checks issued by Shareholder to bounce. (Tr. pp. 56-59; R. pp. 121-123.) Because personally obligated on these checks, Shareholder paid them from his personal funds in the amount of $3,500.00. (Tr. p. 140, lines 12-18; R. p. 205, lines 12-18.) The Corporation has failed to reduce Shareholder's indebtedness on the promissory note or otherwise account for this transaction.

In or around 2007, the Internal Revenue Service (hereafter also referred to as "IRS") made contact with the Corporation in regard to a past due tax liability, in the amount of $16,775.88. (Tr. p. 19, lines 15-18; R. p. 84, lines 15-18.) McMillan paid this debt from his personal account directly to the IRS. (Tr. p. 22, lines 6-9; R. p. 87, lines 6-9.) Additionally, although unclear when and how, McMillan testified that he paid other debts owed by the Corporation from his personal funds in the amount of $26,812.34. (Tr. p. 23, line 22 – p. 24, line 19; R. p. 88, line 22 – p. 89, line 19.)

From the beginning of calendar year 2007 until the business closed, McMillan acted as the sole officer of the company. (Tr. p. 64, lines 18-22; R. p. 129, lines 18-22.) During this time, McMillan hired his son to manage the business. (Tr. p. 64, lines 23-25; R. p. 129, lines 23-25.) In addition to the compensation paid to his son, McMillan also began

paying his son's health insurance premiums out of the checking account of the Corporation. (Tr. p. 76, lines 14-22; R. p. 141, lines 14-22.) His son had no prior managerial experience nor any experience working at Tiffany's Café and Bakery on Devine. (Tr. p. 65, lines 3-5; R. p. 130, lines 3-5.) There is no dispute that during this time, the company was losing a substantial amount of money each month, however McMillan chose to keep the business operational to avoid defaulting on a lease for which he was personally liable. (Tr. p. 72 lines 3-12; R. p. 137, lines 3-12.)

In addition to his 51% interest in the Corporation, McMillan owns a Tiffany's Bakery on Two Notch Road in Columbia, South Carolina (hereafter referred to as "Two Notch"). (Tr. p. 6, lines 9-10; R. p. 71, lines 9-10.) During 2007, McMillan regularly wrote checks to Two Notch vendors out of the Corporation's checking account. (Def. Tr. Ex. 6; R. pp. 339-363.) Two Notch would provide baked goods to the Corporation for sale at its retail counter. (Tr. p. 8, lines 12-14; R. p. 73, lines 12-14.) In 2007, in a year where the company lost over $30,000, rather than pay other past due obligations of the Corporation, McMillan decided to use the Corporation's revenues to pay at least $9,000 to Two Notch for these goods. (Tr. pp. 66-68; R. pp. 131-133.)

Around December of 2007, McMillan, without offering any notice to Shareholder, closed the business and sold all of its assets. (Tr. p. 61, line 16 – p. 62, line 1; R. p. 126, lines 16 – p. 127, line 1.) Some assets were auctioned off for which an accounting was provided. (Pl. Tr. Ex. 7; R. pp. 332-335.) McMillan testified that assets sold at auction may bring in as low as 10% of their fair market value. (Tr. p. 31, lines 2-6; R. p. 96, lines 2-6.) At the close of the business, all of the inventory was transferred to Two Notch. (Tr. p. 64, lines 2-17; R. p. 129, lines 2-17.) This inventory transfer was never accounted for

other than an admission by James McMillan that it was enough to fill an entire van. (Tr. p. 64, lines 2-17; R. p. 129, lines 2-17.) The testimony from James Archer is that there would have been approximately $7,000 to $10,000 of inventory at any given time. (Tr. p. 149, line 22 – p. 150 line 4; R. p. 214, line 22 – p. 215, line 4.) Additionally, a walk-in oven was sold outside of the auction. (Tr. p. 61, lines 12-15; R. p. 126, lines 12-15.) These proceeds were never accounted for however, the undisputed testimony from Shareholder is that its fair market value would have been approximately $30,000. (Pl. Tr. Ex. 7; R. pp. 332-335, Tr. pp. 145 lines 17-22; R. p. 210, lines 17-22.)

STANDARD OF REVIEW

In an action at law referred to a master or special referee for final judgment, appellate courts will correct errors of law, but must affirm the master's factual findings unless no evidence reasonably supports those findings. *Townes Associates, Ltd. v. City of Greenville*, 226 S.C. 81, 221 S.E.2d 773 (1976). The appellate court undertakes a *de* novo review of all issues of law, and is free to decide matters of law with no particular deference to the trial court. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). In an action in equity referred to a master for final judgment with direct appeal to the Court of Appeals, the appellate court may determine facts in accordance with its own view of the preponderance of the evidence. *See, e.g.*, *Fox v. Moultrie*, 379 S.C. 609, 666 S.E.2d 915 (2008).

ARGUMENT

I. The lower court erred as a matter of law in not dismissing Plaintiff's action for its unreasonable neglect in proceeding with its suit.

The Supreme Court of South Carolina has held "[t]he plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's

unreasonable neglect in proceeding with his cause." *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 301 S.E.2d 757, 758, 279 S.C. 58, 60 (1983). The Court goes on to note that "it would be anomalous to require a defendant to force or encourage a plaintiff to proceed with his suit." *Id.* Continuing, the Court notes, "[t]he defendants no less than the plaintiff had the right ... to press for trial; but the duty to do so was the plaintiff's, not theirs. While a defendant may bring about an expeditious trial of a case, he has no legal obligation to do so; except to meet such actions as are taken by the plaintiff, he may remain passive." *Id.* Here, the Corporation commenced this action against Shareholder on May 1, 2008. The Corporation then waited seven years, until May 21, 2015 to request a final hearing on the matter. No extenuating circumstances existed to warrant such a delay by Plaintiff in the prosecution of this case.

The issue of Plaintiff's delay in prosecuting this case was raised at the beginning of the proceeding. (Tr. p. 4, lines 11-15; R. p. 69, lines 11-15.) Plaintiff offered no explanation or justification for its delay other than to state "some inertia set in." (Tr. p. 4, lines 16-18; R. p. 69, lines 16-18.)

Accordingly, the lower court erred as a matter of law in not dismissing Plaintiff's action for its unreasonable neglect in proceeding with its suit and Shareholder respectfully request an Order of this Court reversing same.

II. The lower court erred as a matter of law in awarding the Corporation a judgment against the Shareholder in the sum of Nineteen Thousand Five Hundred Seventy Three and 27/100 ($19,573.27) Dollars representing a 49% share of money paid by McMillan to various creditors of the Corporation.

"[A] corporation is an entity, separate and distinct from its officers and stockholders, and ... its debts are not the individual indebtedness of its stockholders." *Hunting v. Elders*, 359 S.C. 217, 223, 597 S.E.2d 803, 806 (Ct. App. 2004). Under South

Carolina law, a shareholder is not responsible for a pro rata share of corporate debt based solely on his stock ownership. *Id.* It is a fundamental tenant of corporate law that a corporation cannot seek contribution or indemnity from a shareholder for the corporation's debts, nor is a shareholder at risk beyond the extent of their capital contribution. *Id.* At trial, McMillan offered testimony that in 2007, the Corporation had outstanding liabilities in the amount of $43,588.22. (Pl. Tr. Ex. 6; R. p. 331; Tr. pp. 23-24; R. pp. 88-89.) There is no evidence in the record that the Corporation actually paid these debts. Rather, McMillan claims that he paid these debts from his personal funds directly to the payees. (Tr. p. 24 lines 15-19; R. p. 89, lines 15-19.) It is undisputed that no money for the payment of these debts was transferred to the company and thus no accounting is provided for the payment of these debts by the Corporation. Nevertheless, a note payable to McMillan in the amount of $43,588.22 is carried on the books. In the event McMillan actually made the payments he testified to, they can be characterized in one of three different ways, as considered in detail below. However, regardless of how McMillan's payments are characterized, they do not give the Corporation a cause of action against Shareholder for corporate debt. *Id.*

First, and most properly, the payment of the Corporation's debt by McMillan could be characterized as a gift from McMillan to the Corporation. The payment of a debt by an individual not obligated to pay that debt, as happened here, is most accurately described as a gift. Black's Law Dictionary defines 'gift' as "the voluntary transfer of property to another without compensation." *Black's Law Dictionary* 803 (10th ed. 2014). Here, with the exception of the IRS tax debt, McMillan had no personal obligation for any of the Corporation's liabilities. As to the tax debt, the shareholders are liable to the IRS if, and

only if, the Corporation lacked sufficient assets to satisfy this debt. (Tr. p. 92, line 21 – p. 93, line 2; R. p. 157, line 21 – p. 158, line 2.) Almost one year after McMillan paid the IRS tax bill, he auctioned off the assets of the Corporation and received well in excess of $16,775.88. (Tr. p. 106, lines 8-14; R. p. 171, lines 8-14.) Accordingly, the Corporation owned assets sufficient to pay the tax debt at the time McMillan chose to pay it and thus, McMillan had no risk of personal liability on that debt.

Second, the payment of the Corporation's debt by McMillan could be categorized as a capital contribution from him to the Corporation. Black's Law Dictionary defines 'capital contribution' as "funds made available by a shareholder, usually without an increase in stock holdings." *Black's Law Dictionary* 251 (10th ed. 2014). Here, McMillan did not transfer any money to the corporation, rather he alleges to have paid corporate debts. If this is characterized as a capital contribution, then to the extent sufficient assets are available to do so, McMillan may be entitled to an additional payout upon dissolution of the business, but McMillan assumed the risk that the business would have insufficient funds to reimburse him for the additional paid in capital. Further, there is no evidence that McMillan and Shareholder agreed that it was necessary to make a subsequent capital contribution, there is no evidence that McMillan notified Shareholder of the need for a subsequent capital contribution, and there is no evidence of any proposed use of a subsequent capital contribution.

Third, the payment of the Corporation's debt by McMillan could be categorized as a loan from him to the Corporation. Black's Law Dictionary defines 'loan' as "a thing lent for the borrower's temporary use; especially a sum of money lent at interest." *Black's Law Dictionary* 1077 (10th ed. 2014). There is no evidence in the record of any contract or

agreement the Corporation entered into for the repayment of any money paid by McMillan towards the liabilities of the Corporation. In the event payment of the Corporation's debt by McMillan is properly characterized as a loan, which is disputed, then the Corporation may have an obligation to repay McMillan for the $43,588.22 he claims to have paid. However, that obligation does not flow through to the other shareholders. Further, there is no evidence or allegation of a contract between Corporation and Shareholder for the payment of the Corporation's debts, nor has the Corporation set forth any other legal theory which would render Shareholder liable for the debts of the Corporation. Succinctly, no legal theory or authority has been provided by the Corporation or the trial judge, nor has Shareholder been able to find any authority that would render Shareholder liable to the Corporation for corporate debt paid by a co-shareholder.

Accordingly, the lower court erred as a matter of law in awarding the Corporation a judgment against Shareholder in the sum of Nineteen Thousand Five Hundred Seventy Three and 27/100 ($19,573.27) Dollars representing a 49% share of money claimed to have been paid by McMillan for various liabilities of the Corporation and Shareholder respectfully request an Order of this Court reversing same.

III. The lower court erred as a matter of law in not awarding Shareholder a credit against his obligation to pay on the Promissory Note for the $3,500.00 of the Corporation's debt paid by Shareholder in 2007.

On January 2, 2007, Shareholder issued two checks payable to IFH, one of the Corporation's vendors. (Def. Tr. Ex. 4; R. p. 338.) Shortly thereafter, and unbeknownst to Shareholder, McMillan closed the bank account that the checks were drawn on. (Tr. pp. 56-59; R. pp. 121-124.) McMillan did this without notice to Shareholder, and knowing Shareholder would be personally liable for the checks. *Id.* Shareholder, understanding his

personal liability for the checks paid them with his personal funds, in the total amount of $3,500.00. (Tr. p. 140, lines 12-15; R. p. 205, lines 12-15.)

At the trial, Shareholder asked for a setoff of this amount against any obligation he may have under the Promissory Note. (Tr. p. 148, lines 17-23; R. p. 213, lines 17-23.) It is intuitive that if a debtor pays money to or on behalf of a creditor, that money should be applied to the balance of the debt, rather than creating a new obligation from the creditor to the debtor. At the time Shareholder paid the $3,500.00, the Corporation had made its intention clear when it knowingly and willfully caused the checks to bounce. Accordingly, this payment should act as a set off to the $10,000.00 obligation Shareholder had to the Corporation at the time the payment was made.

The lower court erred as a matter of law in not awarding Shareholder a credit against his obligation to pay on the promissory note for the $3,500.00 of the Corporation's debt paid by Shareholder in 2007 and Shareholder respectfully request an Order of this Court reversing same.

IV. The lower erred as a matter of law in not awarding Shareholder damages and/or setoffs for the Corporation's breaches of statutory and fiduciary duties owed to Shareholder including: selling off substantially all of the assets and winding down the business without notice to Shareholder; selling substantially all of the assets of the Corporation for less than their fair market value; transferring all of the Corporation's inventory to another business without providing an accounting; transferring the Corporation's walk-in oven for less than its fair market value and failing to account for the proceeds; continuing to operate the business at a loss for the sole purpose of benefiting the majority shareholder.

South Carolina law provides that "an officer with discretionary authority shall discharge his duties under that authority: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interest of the corporation and its

shareholders." S.C. Code Ann. § 33-8-420. The Supreme Court of South Carolina in discussing these fiduciary duties has stated,

> The duties of a fiduciary are composed of three elements: care, loyalty, and good faith. . . .Courts monitor the duty of care through the business judgment rule, which delegates the business affairs of ... corporations to the board of directors. The business judgment rule presumes that in making decisions and managing the corporation, fiduciaries have acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.
>
> The duty of loyalty requires corporate officers and directors act in the best interest of the corporation and prioritize the corporation's interest above their own. The traditional formulation of the duty of loyalty states that if corporate directors and officers are independent of, and disinterested in, the complained transaction, the court will not find them liable for a breach of that duty, unless the facts of the transaction are 'such that no person could possibly authorize it if he or she were attempting in good faith to meet their duty.'
>
> Finally, corporate directors and officers acting in good faith abide by the norms of corporate governance and comply with legal standards while performing their jobs. Egregious or conspicuous failures to do so are subject to liability under the duty of good faith.

Menezes v. WL Ross & Co., LLC, 403S.C. 522, 531, 744 S.E.2d 178, 183 (2013). McMillan, in his capacity as President of the Corporation, breached all of these aforementioned duties when he continued to operate the business despite it losing substantial sums of money, paid another corporations bills from the Corporation's checkbook; paid his Two Notch bill first, giving it priority over other liabilities of the Corporation; put his son in charge of the business; sold off corporate assets without notification to and approval from Shareholder; and not accounting for the disposition of valuable assets.

More specifically, McMillan, in his capacity as the President of the Corporation, breached the aforementioned fiduciary duties in addition to certain statutory duties. South Carolina law provides that a corporation may dispose of substantially all of its property only "if the board of directors proposes *and its shareholders approve the proposed transaction.*" S.C. Code Ann. § 33-12-102(a). There is no dispute that the Corporation failed to propose a sale of substantially all the assets in violation of this code section prior to it doing exactly that at the end of 2007. (Tr. p. 61, lines 16-19; R. p. 126, lines 16-19.) Further, although McMillan held 51% of the stock, the transaction "must be approved by two-thirds of all the votes entitled to be cast on the transaction. S.C. Code Ann § 33-12-102(e). Thus, McMillan, as a 51% shareholder lacked sufficient control to bypass the notice and approval requirements of this statute.

McMillan testified at trial that at auction, assets may be sold for as low as 10% of the fair market value. (Tr. p. 31, lines 5-6; R. p. 96, lines 5-6.) It is unclear as to what the fair market value of the Corporation's assets were at the time of the auction because no appraisal was ever obtained. However, based on McMillan's testimony alone, it is clear that the assets were liquidated for an amount substantially less than their actual worth. (Tr. p. 31, lines 5-6; R. p. 96, lines 5-6.) By depriving Shareholder of notice and thereby the power to veto the decision to liquidate the Corporation's assets, Shareholder was deprived of an opportunity to sell the assets for more than was received at the auction. Shareholder was further deprived of the opportunity to take any meaningful action to protect the value of his stock. The unilateral decision of the Corporation to liquidate its assets made the stock that Shareholder owned completely worthless and destroyed the consideration

received by Shareholder in exchange for his payment of $30,000.00 and execution of the promissory note.

Next, there is no dispute that at the end of 2007 the Corporation transferred all of its inventory to Two Notch and never accounted for the value of this inventory to Shareholder. (Tr. p. 64, lines 9-10; R. p. 129, lines 9-10.) Because McMillan is the sole owner of the Two Notch business, a transfer of inventory from the Corporation to Two Notch for zero cost is clear evidence of self-dealing and an action unequivocally adverse to the interest of the Corporation and its shareholders. Shareholder testified that in general the Corporation would carry approximately $7,000 to $10,000 worth of inventory at any given time. (Tr. p. 149, line 22 – p. 150, line 4; R. p. 214, line 22 – p. 215, line 4.) Although McMillan testified that the Corporation had depleted its inventory before transferring these assets to Two Notch, he admitted that it required the use of a commercial truck to transfer the remaining amount. (Tr. p. 64, lines 9-14; R. p. 129, lines 9-14.) Shareholder is entitled to damages and/or a setoff against his obligation on the note for his proportionate share of the inventory that existed at the time the business closed.

Third, Shareholder testified that the single most valuable asset that the Corporation owned was a walk-in oven which he estimated to be worth approximately $30,000. (Tr. p. 145, lines 30-22; R. p. 210, lines 17-22.) This valuation is unrefuted in the record and there is no dispute that the Corporation failed to account to Shareholder for the transfer of this asset. Accordingly, Shareholder is entitled to damages and/or a setoff against his obligation on the note for his proportionate share of this walk-in oven.

Fourth, at trial, McMillan admits that the Corporation continued to operate in 2007, despite losing substantial sums of money, for the sole purpose of paying a lease on which

McMillan was personally liable. The Corporation, through McMillan, incurred additional and substantial losses which could have been avoided had the corporation dissolved sooner. Here again is clear evidence of McMillan's self-dealing and an action unequivocally adverse to the interest of the Corporation and its shareholders. Accordingly, Shareholder is entitled to damages and/or a setoff against his obligation on the note for the Corporations' breach of duty to Shareholder.

The lower erred as a matter of law in not awarding Shareholder damages and/or a setoff against his obligation on the note for the Corporation's breaches of statutory and fiduciary duties owed to Shareholder and Shareholder respectfully request an Order of this Court reversing same and remanding to the trial court for a determination of the damages owed to Shareholder.

CONCLUSION

Shareholder respectfully request that this Court issue an order dismissing Plaintiff's action in its entirety for its willful and unjustified delay in prosecuting its case. In the alternative, Shareholder respectfully request that this Court (1) reverse the trial court's order granting Plaintiff a judgment against Shareholder for debts claimed to have been paid by a co-shareholder; (2) reverse the trial court's order denying Shareholder a setoff against the promissory note for corporate debts he paid in the amount of $3,500.00; (3) reverse the trial court's order denying Shareholder relief in the form of damages and/or setoffs for the Corporation's numerous breaches of fiduciary and statutory duties; and (4) issue an Order that any remaining obligation Shareholder had on the promissory note has been fully discharged.

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Respectfully Submitted,

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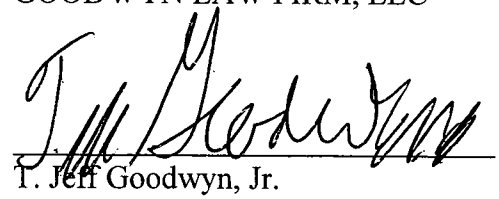

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

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