

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2008-CP-26-6169

RECEIVED
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SC Court of Appeals

Joseph E. Mason, Jr.,

Appellant,

v.

Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, and Mason Holding
Company, Inc., and Irwin Levine,

Respondents.

**RECORD ON APPEAL
VOLUME I
PAGES 1 - 418**

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-26- 6169

Joseph E. Mason, Jr.,

Plaintiff,

vs.

Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, and Mason Holding
Company, Inc.,

Defendants.

COMPLAINT

(JURY TRIAL DEMAND)

FILED
HORRY COUNTY
2008 AUG -5 PM 2:59
MELANIE HUGHINS
CLERK OF COURT

Plaintiff, complaining of Defendants named above, would allege and show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff Joseph E. Mason, Jr. is a citizen and resident of Horry County, State of South Carolina, and is a shareholder, director and former President of the defendant, Mason Holding Company, Inc.
2. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, are citizens and residents of Horry County, South Carolina and are shareholders, directors and officers of the defendant, Mason Holding Company, Inc.
3. The defendant, Mason Holding Company, Inc., (hereinafter "the Corporation") is a corporation organized and existing under the laws of the State of South Carolina.

FACTUAL ALLEGATIONS

4. In 1984, the plaintiff, and the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard (collectively "the family members"), started a small corporation which did business as Mason Tire and Auto Services.

5. At the inception of the business, Defendant Joseph E. Mason, Sr. was working full time as an active partner in Miami Tiresoles Incorporation in Miami, Florida. At the request of the family members, the plaintiff relocated from Clearwater, Florida to Surfside Beach, South Carolina in March of 1984 to tend to the business affairs of the enterprise. Kathy St. Blanchard relocated from Miami, Florida to Myrtle Beach, South Carolina in August of 1984 to handle recordkeeping for the enterprise on a part-time basis. Joseph E. Mason Sr. and Catherine Mason remained in Miami, Florida.
6. The plaintiff served the Corporation as its President, and he devoted his entire time and endeavor to the business enterprise, working full-time. The plaintiff dedicated his time, money and endeavor to grow and build the business into a profitable enterprise which would provide to the plaintiff and the defendants a job, a salary, a significant place in management, and economic security for their families. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, through a course of conduct, actions and words, induced the plaintiff to make such a commitment of time, energy and efforts with the reasonable expectation of financial rewards, continuous employment, and beneficial co-ownership of the cooperative business enterprise.
7. The plaintiff worked in the business full-time with the reasonable expectation and assurance that he would be permanently employed by the Corporation and enjoy the financial benefits as a co-partner of the enterprise for the rest of his productive life.
8. In 1989, the defendant, Joseph E. Mason, Sr., joined the plaintiff in Surfside Beach, South Carolina and with the plaintiff, expanded the business to include commercial operations. The plaintiff continued to oversee the business operations and serve as President of the company.

9. Over the course of time, as new stores have been opened, they have been incorporated as new entities. The entities are: M&S Tire Company, Inc., Mason Tire and Auto Service, Inc., J&O Tire and Auto Service, Inc. and K&J Tire, Inc.
10. In 1998, Mason Holding Company, Inc. (the "Corporation") was incorporated, and all of the stock of the business entities, which existed at the time were transferred to the Corporation. The Corporation now owns 100% of all of the operating entities named above, which conduct the operations of the business enterprise. The Corporation also owns fifty five (55%) percent of BCJ Tires, Inc., which operates an auto service and tire enterprise.
11. The plaintiff has continuously served as an officer and employee of the Corporation. The plaintiff was employed by the Corporation until October 2007, during which time he received a salary and enjoyed many other corporate benefits and perquisites associated with the co-ownership of the business.
12. Presently, the plaintiff and Kathy St. Blanchard each own thirty (30%) percent of the outstanding stock of the Corporation; Catherine L. Mason and Joseph E. Mason, Sr. jointly own the remaining forty (40%) percent of the outstanding stock.
13. As the controlling shareholders, officers and directors, the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard owed the plaintiff the highest fiduciary duty of utmost good faith and fair dealing.

SUBSTANTIVE ALLEGATIONS

14. In December 2004, Kathy St. Blanchard's husband, Oswaldo St. Blanchard, who was a shareholder and employee of the Corporation, was involved in a motorcycle accident.

Oswaldo St. Blanchard was seriously injured in the accident and was rendered a quadriplegic.

15. In order to provide Oswaldo St. Blanchard with worker's compensation benefits, the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard, devised a scheme to falsely represent that Oswaldo St. Blanchard was engaged in the course and scope of his employment at the time of his accident.
16. The plaintiff opposed any such plan. Plaintiff informed the defendants that such a scheme was fraudulent and could result in severe burdens for the Corporation, including higher workman's compensation rates.
17. In disregard of the plaintiff's concerns, the defendant, Joseph E. Mason, Sr., upon information and belief, gave false testimony during his deposition, and Oswaldo St. Blanchard has been awarded worker's compensation benefits.
18. Subsequently, Oswaldo and Kathy St. Blanchard divorced, and the stock held by Oswaldo St. Blanchard was reassigned to Kathy St. Blanchard.
19. After the accident, Kathy St. Blanchard sought full-time employment with the Corporation. Although she had very little experience, St. Blanchard was hired as the corporate bookkeeper.
20. While she works less than forty hours per week, the Corporation pays St. Blanchard approximately \$75,000.00 per year. The plaintiff has repeatedly objected to this waste of corporate assets and requested that St. Blanchard's salary be adjusted to reflect her capabilities and quantity of work.

21. The defendants, Catherine L. Mason and Joseph E. Mason, Sr., hired an accountant, who for several years, prepared fraudulent accountings on behalf of the Corporation. In addition, the accountant filed false corporate income tax returns.
22. When the plaintiff brought the false and fraudulent accountings and tax returns to the attention of the defendants, he was reprimanded. Thereafter, he has been persecuted and subjected to retaliatory actions by the defendants.
23. In October 2007, Catherine L. Mason and Joseph E. Mason, Sr. called a special meeting of the Corporation.
24. At the meeting, the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard, as directors, voted to remove the plaintiff as President and appoint Joseph E. Mason, Sr. in his place. Thereafter, all of the plaintiff's authority with regard to company finances was terminated. Plaintiff's authority to manage at all levels has been withdrawn.
25. In June 2008, while examining payroll records of the Corporation, the plaintiff noticed irregularities in the Corporation's payments to one of the bookkeeping employees. A closer investigation revealed the employee had been misappropriating corporate funds for her personal benefit.
26. After discussing the matter with the defendants, Joseph E. Mason Sr. and Kathy St. Blanchard, the plaintiff terminated the employee.
27. The following day, the defendant, Joseph E. Mason Sr., informed the plaintiff that he made a mistake in allowing the termination of the employee and over the objections of the plaintiff, the employee was rehired.
28. Thereafter, the employees of the Corporation were made aware that the plaintiff was merely a figurehead, with no authority to manage the business affairs of the Corporation.

29. The defendants' retaliation and demeaning treatment of the plaintiff held him up to ridicule and embarrassment among the managers and other employees of the Corporation.
30. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard have breached their fiduciary duties, abused their control, grossly mismanaged the Corporation, and wasted the Corporation's assets.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

31. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
32. In October 2007, after the plaintiff had faithfully devoted his full-time efforts and attention to the affairs of the Corporation for almost twenty-five years, Mason Holding Company, Inc., through its Board of Directors, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, maliciously and in bad faith constructively terminated the plaintiff's employment in breach of the express and implied agreements between the plaintiff and the defendants.
33. The defendants, Catherine L. Mason and Joseph E. Mason, Sr., as controlling shareholders, directors, and officers, along with Kathy St. Blanchard, as director and officer, orchestrated the plaintiff's wrongful termination and expulsion so that the defendants would enjoy the financial fruits and rewards of the enterprise to the exclusion of the plaintiff. The defendants' conduct and actions were, and continue to be, a breach of their express and implied promises and agreements with the plaintiff.
34. After the plaintiff was wrongfully removed from his position as President of the Corporation, the defendant Joseph E. Mason, Sr. was appointed by the other two

defendants to serve in the plaintiff's stead. The defendants, Catherine L. Mason and Kathy St. Blanchard have continued as officers and directors of the Corporation.

35. As a proximate result of such wrongful acts by the defendants and the Corporation under their control, the plaintiff has suffered significant damages, including but not limited to the following:
- a. The plaintiff has been deprived of his employment with the Corporation and the appropriate salary and bonuses associated therewith;
 - b. The plaintiff has been deprived of the many corporate perquisites and benefits he had been receiving from the Corporation; and
 - c. The plaintiff has been deprived of the fair market value of his shares in the Corporation.
36. As a result of the defendants' unjustified, willful and malicious breach of contract, the plaintiff has sustained actual damages in an amount to be proven at trial and for which the plaintiff is entitled to recover, due to the actions of the defendants.

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

37. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
38. The Corporation is controlled by the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard, who have the sole power to appoint the Corporation's officers and directors. The defendants owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to the Corporation and its shareholders to appoint competent and independent individuals to serve as officers and employees of the Corporation. The

defendants must act in the best interests of the Corporation and its shareholders, including the plaintiff.

39. In their positions as officers and directors of the Corporation, the defendants owed and owe a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to the Corporation and its shareholders, including the plaintiff, and were obligated and required to use their utmost ability to operate and manage the Corporation in a fair, just, honest, and equitable manner pursuant to the South Carolina Business Corporation Act, specifically §§ 33-8-300 and 33-8-420. They were and are required to act in furtherance of the best interests of the Corporation and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interests or benefits.
40. The defendants owe to the Corporation and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Corporation and in the use and preservation of its property and assets, and the highest obligation of fair dealing.
41. The defendants have breached their fiduciary duty to the Corporation and its shareholders in numerous respects including, but not limited to, refusing to take appropriate steps to rectify problems and terminate employees when those employees acted to the detriment of the Corporation and its shareholders; failing to properly manage, oversee, safeguard, and protect the Corporation; exposing the Corporation to potential liability and incurring unnecessary expenses on behalf of the Corporation by submitting a fraudulent worker's compensation claim; wasting corporate assets; utilizing corporate assets for personal monetary gain; filing or authorizing the filing of false tax returns on behalf of the Corporation; failing to properly account; and depriving the plaintiff of his ability to protect his investment.

42. The conduct of the defendants is willful and malicious and detrimental to the Corporation and its shareholders, including the plaintiff.
43. The plaintiff is entitled to compensatory and punitive damages, costs, and attorney fees as a direct and proximate result of these breaches of fiduciary duties to the Corporation and its shareholders.

FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy)

44. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
45. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, have combined together and have conspired with the purpose of injuring the plaintiff. In furtherance of the conspiracy, the defendants set out upon a course of conduct with the purpose being to deprive the plaintiff of his employment with the Corporation, and to cause him harm. The defendants have conspired to cause special damage to the plaintiff in such a way that the plaintiff will not receive the fair value of his stock in the Corporation or the opportunity to effectively manage the business affairs of the Corporation.
46. The plaintiff has suffered significant damages as a result of the defendants' willful, wanton, and reckless conduct committed in the furtherance of the conspiracy, and the plaintiff is entitled to recover punitive damages, as well as actual damages as hereinabove alleged.

FOR A FOURTH CAUSE OF ACTION
(Relief Pursuant to S.C. Code Ann. § 33-14-300 *et seq.*)

47. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
48. The individual defendants, as the officers and directors in control of the Corporation, have acted, and are continuing to act, in a manner that is illegal, fraudulent, oppressive and unfairly prejudicial to the plaintiff as has been hereinabove alleged.
49. The corporate assets are being misapplied or wasted by the individual defendants.
50. The plaintiff is entitled to an Order from the Court requiring the defendants to purchase, at fair value, the shares of the plaintiff he holds in Mason Holding Company, Inc.

FOR A FIFTH CAUSE OF ACTION
(Wrongful Termination of Employment – Constructive Discharge)

51. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
52. The plaintiff was employed by the Corporation as its President until October 2007. Thereafter, the plaintiff was employed by the Corporation as its Vice President, until he was constructively discharged in July 2008.
53. The Corporation has a general employment policy, as outlined in its Employee Handbook, which specifies certain conditions that must be met by corporate employees. In exchange for complying with those conditions, the employee is assured continued employment with the Corporation.
54. There is no effective disclaimer in the Employee Handbook, and the plaintiff did not sign an acknowledgement of any such disclaimer, which is required by statute.
55. After October 2007, the defendants effected a significantly adverse change in the plaintiff's working conditions. The conditions include, but are not limited to, a demotion, a freeze in pay, a reduction in job responsibilities, on-the-job harassment calculated to

encourage the plaintiff's resignation, a reassignment to meaningless or menial duties, and the infliction of humiliation and embarrassment.

56. Based upon the foregoing, the defendants constructively discharged the plaintiff from his job, his authority, and his responsibilities; the plaintiff no longer has any authority or ability to meet the responsibilities of effectively managing the Corporation.

57. The termination of employment by the Corporation was a breach of the plaintiff's contract of employment and was a wrongful termination.

58. As a result of such wrongful termination, the plaintiff is entitled to an award of actual damages resulting from such wrongful termination.

FOR A SIXTH CAUSE OF ACTION
(Wrongful Termination – Violation of Public Policy)

59. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

60. The plaintiff reasonably perceived the filing of false and fraudulent corporate accountings, corporate income tax returns, and worker's compensation claim, to be a violation of the law, which he opposed.

61. The plaintiff brought his concerns to the attention of the defendants in their capacities as shareholders, directors and officers of the Corporation. As a direct result of the plaintiff's expressed opposition, he was constructively terminated from his employment.

62. The retaliatory, constructive discharge of the plaintiff constitutes wrongful termination and a violation of a clear mandate of public policy.

63. As a result of such wrongful termination of employment, the plaintiff is entitled an award of actual and punitive damages

THEREFORE, the plaintiff, Joseph E. Mason, Jr., prays for the following relief:

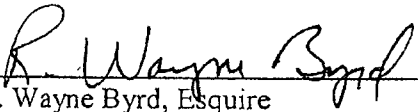
- (A) For a judgment against the defendants, Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and the Corporation pursuant to the First Cause of Action;
- (B) For a judgment against the defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, jointly and severally, pursuant to the Second Cause of Action for actual and punitive damages;
- (C) For a judgment against the individual defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, for actual and punitive damages pursuant to the Third Cause of Action;
- (D) That the Court, pursuant to S.C. Code Ann. § 33-14-300, *et seq.*, cause the defendants, Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, or Mason Holding Company, Inc., to purchase the plaintiff's stock in the Corporation for fair value pursuant to the Fourth Cause of Action;
- (E) For a judgment against the defendants for the damages the plaintiff has sustained pursuant to the Fifth Cause of Action;
- (F) For a judgment against the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard, for actual and punitive damages pursuant to the Sixth Cause of Action;
- (G) That the Court grant him a jury trial; and
- (H) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

[SIGNATURE PAGE FOLLOWS]

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ATTORNEYS FOR JOSEPH E. MASON, JR.

August 5, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,)
Plaintiff,)

vs.)

ANSWER

Catherine L. Mason, Joseph E.)
Mason, Sr., Kathy St. Blanchard, and)
Mason Holding Company, Inc.,)
Defendants.)

FILED
HORRY COUNTY
2008 AUG 28 PM 1:22
MELANIE HUSGINS
CLERK OF COURT

Defendants Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and
Mason Holding Company, Inc. (hereinafter "Defendants"), answering the Plaintiff's
Complaint, would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Complaint not
hereinafter admitted or explained.

2. Defendants admit the allegations of Paragraphs 1, 2, and 3 of the
Complaint.

3. In response to the allegations of Paragraph 4 of the Complaint, Defendants
admit that Defendants Catherine L. Mason and Joseph E. Mason, Sr., started a
Corporation which did business as Mason Tire and Auto in approximately 1983/1984 and
further allege that Defendant Kathy St. Blanchard and Plaintiff, upon learning of the
venture, asked to participate in the start-up of the company and were allowed to buy into
the business.

4. Defendants admit so much of Paragraph 5 of the Complaint as alleges that at the time of the start-up of the company, Defendant Joseph E. Mason, Sr., was working full-time as a partner in Miami Tiresoles, Incorporated, in Miami, Florida; that Plaintiff, at his request to do so, relocated from Clearwater, Florida to Surfside Beach, South Carolina, in March of 1984 to participate in the business; and that Defendant Kathy St. Blanchard relocated from Miami, Florida to Myrtle Beach, South Carolina in August of 1984 to handle sales and bookkeeping of the company. Defendants deny that Defendant Kathy St. Blanchard's employment at that time was part-time and further allege that when the store opened in 1984 she worked for the company on a full-time basis. Defendants admit that Defendant Joseph E. Mason, Sr. and Catherine Mason maintained their residence in Miami, Florida, and further allege that Joseph E. Mason, Sr., traveled back and forth between his Florida job and the Surfside Beach store periodically to oversee the new business because neither Plaintiff nor Defendant Kathy St. Blanchard had any experience in the tire business. Defendants deny that Plaintiff's participation in the venture was at Defendants' request.

5. Defendants admit so much of Paragraph 6 of the Complaint as alleges that Plaintiff has served, at certain times, as President of the Corporation and has worked for the Corporation on a full-time basis at times. Defendants deny that Plaintiff was induced to join the employment of the company and further allege that Plaintiff initiated his involvement in the business by asking Defendant Joseph E. Mason, Sr. to allow him to participate in the business. Defendants admit that the business has grown into a profitable enterprise and further allege that said growth is a result of the combined efforts of the parties.

6. Defendants admit so much of Paragraph 7 of the Complaint as alleges that Plaintiff worked in the business during certain time periods on a full-time basis. In response to the remaining allegations of Paragraph 7, Defendants are without knowledge or information sufficient to form an opinion or belief as to Plaintiff's expectations and therefore deny same; in further response thereto, Defendants further respond that Plaintiff quit his employment on multiple occasions.

7. Defendants admit so much of Paragraph 8 of the Complaint as alleges that Defendant Joseph E. Mason, Sr., relocated his residence to Surfside Beach, South Carolina, in 1989 and that he worked with Plaintiff to expand the business to include commercial operations. Defendants admit that Plaintiff provided oversight of certain business operations and, at times, served as President of the Company, and further allege the Defendant Joseph E. Mason, Sr., also provided oversight of certain operations.

8. Defendants admit the allegations of Paragraphs 9 and 10 of the Complaint.

9. Defendant admit so much of Paragraph 11 of the Complaint as alleges that Plaintiff has continuously served as an officer of the Corporation and that Plaintiff has received a salary and other benefits from the Corporation.

10. Defendants admit the allegations of Paragraph 12 of the Complaint.

11. Paragraph 13 of the Complaint calls for a legal conclusion to which no response is required.

12. Defendants admit the allegations of Paragraph 14 of the Complaint.

13. Defendants deny the allegations of Paragraphs 15 and 16 of the Complaint.

14. In response to the allegations of Paragraph 17 of the Complaint, Defendants admit only that Oswaldo St. Blanchard has received certain workers compensation benefits through a settlement of his claim; the remaining allegations thereof are denied.

15. Defendants admit the allegations of Paragraph 18 of the Complaint.

16. Defendants admit so much of Paragraph 19 of the Complaint as alleges that Defendant Kathy St. Blanchard resumed full-time employment with the Corporation following the accident involving Oswaldo St. Blanchard and that she was hired as the corporate bookkeeper.

17. Defendants admit so much of Paragraph 20 of the Complaint as alleges that Defendant Kathy St. Blanchard is paid approximately \$75,000.00 per year and that Plaintiff has voiced objections concerning the amount of pay; the remaining allegations thereof are denied.

18. Defendants deny the allegations of Paragraphs 21 and 22 of the Complaint.

19. Defendants admit the allegations of Paragraph 23 of the Complaint.

20. Defendants admit the first sentence of Paragraph 24 of the Complaint; the remaining allegations thereof are denied.

21. Defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 25 of the Complaint and therefore deny same.

22. Defendants admit so much of Paragraph 26 of the Complaint as alleges that a bookkeeping issue pertaining to a bookkeeping employee was discussed between Defendants and Plaintiff and that Plaintiff terminated the employee.

23. Defendants admit the allegations of Paragraph 27 of the Complaint.

24. Defendants deny the allegations of Paragraphs 28, 29 and 30 of the Complaint.

25. In response to the allegations of Paragraphs 31 of the Complaint, Defendants reallege the allegations of Paragraphs 1 through 24 above as fully as if set forth herein.

26. Defendants deny the allegations of Paragraphs 32 and 33 of the Complaint.

27. Defendants admit so much of Paragraph 34 of the Complaint as admits that Defendant Joseph E. Mason, Sr., was elected by the remaining two defendants to serve as president of the Corporation at the referenced meeting and that the other Defendants have remained as officers and directors of the Corporation; the remaining allegations of Paragraph 34 of the Complaint are denied.

28. Defendants deny the allegations of Paragraphs 35 and 36 of the Complaint.

29. In response to the allegations of Paragraph 37 of the Complaint, Defendants reallege the allegations of Paragraphs 1 through 28 above as fully as if set forth herein.

30. Defendants deny the first sentence of Paragraph 38 of the Complaint; the remaining allegations thereof call for a legal conclusion to which no response is required.

31. Paragraphs 39 and 40 of the Complaint call for a legal conclusion to which no response is required.

32. Defendants deny the allegations of Paragraphs 41, 42 and 43 of the Complaint.

33. In response to the allegation of Paragraph 44 of the Complaint, Defendants reallege the allegations of Paragraphs 1 through 32 above as fully as if set forth herein.

34. Defendants deny the allegations of Paragraphs 45 and 46 of the Complaint.

35. In response to the allegations of Paragraph 47 of the Complaint, Defendants reallege the allegations of Paragraphs 1 through 34 above as fully as if set forth herein.

36. Defendants deny the allegations of Paragraphs 48, 49 and 50 of the Complaint.

37. In response to the allegations of Paragraph 51 of the Complaint, Defendants reallege the allegations of Paragraphs 1 through 36 above as fully as if set forth herein.

38. Defendants admit so much of the allegations of Paragraph 52 of the Complaint as alleges that Plaintiff served as corporate President at some time in the past until October 2007, at which time he was elected Vice-President; Defendants deny that Plaintiff was employed as a corporate officer and deny that he was discharged in any manner.

39. In response to the allegations of Paragraph 53 of the Complaint, Defendants incorporate the referenced employment policy and deny that any employee is assured continued employment with the Corporation.

40. The allegations of Paragraph 54 of the Complaint call for a legal conclusion to which no response is required.

41. The allegations of Paragraphs 55, 56, 57 and 58 of the Complaint are denied.

42. In response to the allegations of Paragraph 59 of the Complaint, Defendants reallege the allegations of Paragraphs 1 through 41 above as fully as if set forth herein.

43. Defendants deny the allegations of Paragraphs 60, 61, 62 and 63 of the Complaint.

44. All allegations contained in the Complaint that are not admitted, qualified, or explained, are denied.

FOR A SECOND DEFENSE

45. Defendants reallege the allegations of Paragraphs 1 through 44 above as fully as if set forth herein verbatim.

46. Plaintiff's Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), S.C.R.C.P.

FOR A THIRD DEFENSE

47. Defendants reallege the allegations of Paragraphs 1 through 46 above as fully as if set forth herein.

48. Plaintiff's claim for wrongful discharge in violation of public policy is barred to the extent he has a statutory remedy to address the wrong alleged.

FOR A FOURTH DEFENSE

49. Defendants reallege the allegations of Paragraphs 1 through 48 above as fully as if set forth herein.

50. Any recovery on Plaintiff's Complaint may be barred, in whole or in part, based upon after-acquired evidence.

FOR A FIFTH DEFENSE

51. Defendants reallege the allegations of Paragraphs 1 through 50 above as fully as if set forth herein.

52. Upon information and belief, some or all of the claims set forth in Plaintiff's Complaint are barred by the virtue of Plaintiff's failure to mitigate his alleged damages.

FOR A SIXTH DEFENSE

53. Defendants reallege the allegations of Paragraphs 1 through 52 above as fully as if set forth herein.

54. The Plaintiff's claim for punitive damages is barred because the alleged wrongful acts fails to rise to the level required to sustain an award of punitive damages.

FOR A SEVENTH AND AFFIRMATIVE DEFENSE

55. Defendants reallege the allegations of Paragraphs 1 through 54 as fully as if set forth herein.

56. The Plaintiff's claims for relief are barred by Plaintiff's unclean hands and the doctrine of unclean hands is pled as a complete and affirmative defense thereto.

FOR A FIRST COUNTERCLAIM AND EIGHTH DEFENSE
(BREACH OF FIDUCIARY DUTY)

57. Defendants reallege the allegations of Paragraphs 1 through 56 as fully as if set forth herein.

58. Plaintiff, by virtue of corporate offices held with Mason Holding Company, Inc., his status as a shareholder and his position as a company manager, owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to the Corporation and its shareholders to handle corporate affairs in a manner that was in the best interests of the Corporation and its shareholders, including the Defendants.

59. In his position as an Officer and Director of the Corporation, Plaintiff owed and owes a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to the Corporation and its shareholders, including the Defendants, and was obligated and required to use his utmost ability to operate and to manage the Corporation in a fair, just, honest, and equitable manner. He was also and is required to act in furtherance of the best interests of the Corporation and its shareholders, so as to benefit all shareholders equally and not in furtherance of his personal interests or benefits.

60. Plaintiff owed and owes to the Corporation and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Corporation, and the use and preservation of its properties and assets, and the highest obligation of fair dealing.

61. Plaintiff has breached his fiduciary duty to the Corporation and its shareholders in numerous respects, including, but not limited to, signing, filing, and authorizing the filing of false tax returns on behalf of the Corporation; failure to properly account for the funds of the Corporation; refusing to take appropriate steps to rectify

problems and manage corporate assets; failing to properly manage, oversee, safeguard, and protect the Corporation; wasting corporate assets; utilizing corporate assets for personal monetary gain; and misappropriation of corporate funds and property.

62. The Plaintiff's conduct is willful and malicious and detrimental to the Corporation and its shareholders, including the Defendants.

63. Defendants are entitled to compensatory and punitive damages, costs, and attorneys' fees as a direct and proximate result of these breaches of fiduciary duties to the Corporation and its shareholders.

FOR A SECOND COUNTERCLAIM AND NINTH DEFENSE
(CONVERSION)

64. Defendants reallege the allegations of Paragraphs 1 through 63 as fully as if set forth herein.

65. During the course of his employment with the Defendant Company, Plaintiff was entrusted with and received company funds for services rendered and products sold by the company.

66. Upon information and belief, Plaintiff converted Company funds and property to his own use without authorization or permission of the Defendants.

67. Plaintiff's retention of funds and property belonging to the Company has resulted in damages to the Company and Plaintiff is therefore liable to the Defendant Mason Holding Company, Inc., for the amount of funds and property converted by him to his personal use, plus legal interests from the dates of conversion.

68. Additionally, Plaintiff's actions were taken with reckless and conscious indifference to the rights of the Defendants, and therefore, punitive damages should be awarded as a result of Plaintiff's unlawful conversion of funds.

WHEREFORE, having fully answered the allegations of the Plaintiff's Complaint, these Defendants pray that the same be dismissed and request that judgment be entered in Defendants' favor and against the Plaintiff, for Defendants' attorneys' fees and costs, and for such other relief as the Court may deem just and proper.

Defendants, as to their counterclaims, pray for a judgment against the Plaintiff in their favor for actual and punitive damages and for interest as alleged above.

THOMPSON & HENRY, P.A.

By: Emma Ruth Brittain
Emma Ruth Brittain
S.C. Bar #5298
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S.C. Bar #5527
P.O. Box 1290
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Phone: (843) 692-2628
Fax: (843) 692-0928
Attorneys for the Defendants

August 28, 2008
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Joseph E. Mason, Jr.,

Plaintiff,

vs.

Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, and Mason Holding
Company, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-26-6169

ANSWER TO THE COUNTERCLAIM OF
THE DEFENDANTS

HORRY COUNTY
08 SEP 25 AM 10:54
MELANIE HUGGINS
CLERK OF COURT

Plaintiff Joseph E. Mason, Jr., by and through his undersigned counsel, makes answer to the Counterclaim of Defendants and would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of Defendants' Counterclaim not hereinafter specifically admitted is denied by Plaintiff.
2. Plaintiff demands a jury trial.
3. The allegations of Paragraphs 1 – 57 do not require an affirmative response from Plaintiff. However, to the extent said allegations could be construed so as to form affirmative allegations against Plaintiff, the allegations are denied and strict proof is demanded thereof.
4. The allegations of Paragraphs 58 – 60 state legal conclusions to which no responses are required.
5. The allegations of Paragraphs 61 – 63 are denied, and strict proof is demanded thereof.

6. In response to Paragraph 64, Plaintiff reiterates his prior answers and defenses as if restated verbatim herein.
7. Paragraph 65 is admitted.
8. The allegations of Paragraphs 66 – 68 are denied, and strict proof is demanded thereof.

FOR A SECOND AND FURTHER DEFENSE

9. The foregoing defense is incorporated hereinto by reference as if fully repeated verbatim herein.
10. Plaintiff would further state that Defendants have failed to state facts sufficient to constitute a cause of action against Plaintiff for which relief may be granted, and therefore, Defendants' claims against Plaintiff must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD AND FURTHER DEFENSE

11. The foregoing defenses are incorporated hereinto by reference as if fully repeated verbatim herein.
12. Plaintiff would further state that Defendants are not entitled to recover in tort for purely economic losses.

FOR A FOURTH AND FURTHER DEFENSE

13. The foregoing defenses are incorporated hereinto by reference as if fully repeated verbatim herein.
14. Plaintiff would further state that Defendants' claims may be barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH AND FURTHER DEFENSE

15. The foregoing defenses are incorporated hereinto by reference as if fully repeated verbatim herein.
16. Plaintiff would further state that Defendants' claims are barred by the doctrines of condonation and/or ratification.

FOR A SIXTH AND FURTHER DEFENSE

17. The foregoing defenses are incorporated hereinto by reference as if fully repeated verbatim herein.
18. Plaintiff would further state that Defendants' claims are barred by Defendants' unclean hands, and the doctrine of unclean hands is asserted as a complete defense thereto.

FOR A SEVENTH AND FURTHER DEFENSE

19. The foregoing defenses are incorporated hereinto by reference as if fully repeated verbatim herein.
20. Plaintiff would further state that any award of punitive damages in a civil action violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and denies Plaintiff the protection of the Fifth Amendment to the United States Constitution in that civil punitive damages are sufficiently criminal in nature so as to require criminal procedural safeguards.

FOR AN EIGHTH AND FURTHER DEFENSE

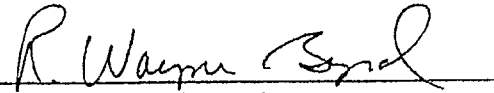
21. The foregoing defenses are incorporated hereinto by reference as if fully repeated verbatim herein.

22. This Defendant does not waive any further defenses as may be revealed by additional information acquired through discovery or otherwise and expressly reserves the right to raise additional defenses as they may arise.

WHEREFORE, Plaintiff, having fully answered the Counterclaim of Defendants, prays that the same be dismissed and for such other and further relief as to the Court may seem just and proper.

September 23, 2008

TURNER, PADGET, GRAHAM & LANEY, P.A.

By: 

R. Wayne Byrd, Esquire
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ATTORNEYS FOR THE PLAINTIFF
JOSEPH E. MASON, JR.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 2008-CP-26-6169

Joseph E. Mason, Jr.,)

Plaintiff,)

vs.)

Joseph E. Mason, Sr., Catherine L. Mason,)
Kathy St. Blanchard, Mason Holding)
Company, Inc., and Irwin Levine,)

Defendants.)

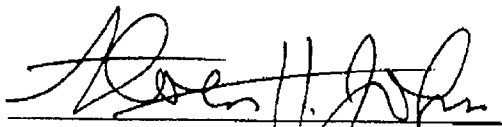
**CONSENT ORDER TO AMEND THE
COMPLAINT**

FILED
2008 SEP 23 AM 9:39

Pursuant to Rule 15(a) of the South Carolina Rules of Procedure, the parties hereby consent to allow Plaintiff Joseph E. Mason, Jr. to file an Amended Complaint to name Irwin Levine as an additional Defendant and assert a cause of action against Defendant Levine for Aiding and Abetting Breach of Fiduciary Duty. **IT IS, THEREFORE,**

ORDERED, ADJUDGED AND DECREED that Plaintiff Joseph E. Mason, Jr. is permitted to file an Amended Complaint to include Irwin Levine as an additional Defendant and assert a cause of action against Defendant Levine for Aiding and Abetting Breach of Fiduciary Duty.

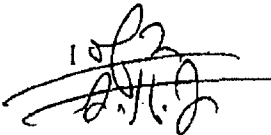
AND IT IS SO ORDERED.



THE HONORABLE STEVEN H. JOHN
CHIEF ADMINISTRATIVE JUDGE
FIFTEENTH JUDICIAL CIRCUIT

9/23/2009
Conway, J.E.

- CONSENT PAGE FOLLOWS -



Joseph E. Mason, Jr. v. Joseph E. Mason, Sr., Catherine L. Mason, Kathy St.
Blanchard, Mason Holding Company, Inc., and Irwin Levine
Civil Action No: 2008-CP-26-6169
Consent Order to Amend the Answer
Page Two

WE CONSENT:

Audra M. Byrd
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ATTORNEYS FOR THE PLAINTIFF

DATE: 9/22/09

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ATTORNEYS FOR THE DEFENDANTS
JOSEPH E. MASON, SR.,
CATHERINE L. MASON,
KATHY ST. BLANCHARD, AND
MASON HOLDING COMPANY, INC.

DATE: 9/22/09

2
11/1/09

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-26-6169

Joseph E. Mason, Jr.,

Plaintiff,

vs.

Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, Mason Holding
Company, Inc., and Irwin Levine,

Defendants.

**AMENDED COMPLAINT
(JURY TRIAL DEMANDED)**

HORRY COUNTY
09 SEP 23 AM 9:40
CLERK OF COURT

Plaintiff, complaining of Defendants named above, would allege and show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff Joseph E. Mason, Jr. is a citizen and resident of Horry County, State of South Carolina, and is a shareholder, director and former President of the defendant, Mason Holding Company, Inc.
2. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, are citizens and residents of Horry County, South Carolina and are shareholders, directors and officers of the defendant, Mason Holding Company, Inc.
3. The defendant, Irwin Levine, is, upon information and belief, a citizen and resident of the State of Florida and is, upon information and belief, a shareholder, director, and/or officer of the defendant, Mason Holding Company, Inc.
4. The defendant, Mason Holding Company, Inc., (hereinafter "the Corporation") is a corporation organized and existing under the laws of the State of South Carolina.

FACTUAL ALLEGATIONS

5. In 1984, the plaintiff, and the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard (collectively "the family members"), started a small corporation which did business as Mason Tire and Auto Services.
6. At the inception of the business, Defendant Joseph E. Mason, Sr. was working full time as an active partner in Miami Tiresoles Incorporation in Miami, Florida. At the request of the family members, the plaintiff relocated from Clearwater, Florida to Surfside Beach, South Carolina in March of 1984 to tend to the business affairs of the enterprise. Kathy St. Blanchard relocated from Miami, Florida to Myrtle Beach, South Carolina in August of 1984 to handle recordkeeping for the enterprise on a part-time basis. Joseph E. Mason Sr. and Catherine Mason remained in Miami, Florida.
7. The plaintiff served the Corporation as its President, and he devoted his entire time and endeavor to the business enterprise, working full-time. The plaintiff dedicated his time, money and endeavor to grow and build the business into a profitable enterprise which would provide to the plaintiff and the defendants a job, a salary, a significant place in management, and economic security for their families. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, through a course of conduct, actions and words, induced the plaintiff to make such a commitment of time, energy and efforts with the reasonable expectation of financial rewards, continuous employment, and beneficial co-ownership of the cooperative business enterprise.
8. The plaintiff worked in the business full-time with the reasonable expectation and assurance that he would be permanently employed by the Corporation and enjoy the financial benefits as a co-partner of the enterprise for the rest of his productive life.

9. In 1989, the defendant, Joseph E. Mason, Sr., joined the plaintiff in Surfside Beach, South Carolina and with the plaintiff, expanded the business to include commercial operations. The plaintiff continued to oversee the business operations and serve as President of the company.
10. Over the course of time, as new stores have been opened, they have been incorporated as new entities. The entities are: M&S Tire Company, Inc., Mason Tire and Auto Service, Inc., J&O Tire and Auto Service, Inc. and K&J Tire, Inc.
11. In 1998, Mason Holding Company, Inc. (the "Corporation") was incorporated, and all of the stock of the business entities, which existed at the time were transferred to the Corporation. The Corporation now owns 100% of all of the operating entities named above, which conduct the operations of the business enterprise. The Corporation also owns fifty five (55%) percent of BCJ Tires, Inc., which operates an auto service and tire enterprise.
12. The plaintiff has continuously served as an officer and employee of the Corporation. The plaintiff was employed by the Corporation until October 2007, during which time he received a salary and enjoyed many other corporate benefits and perquisites associated with the co-ownership of the business.
13. Upon information and belief, the plaintiff and Kathy St. Blanchard each own thirty (30%) percent of the outstanding stock of the Corporation; Irwin Levine, Catherine L. Mason and Joseph E. Mason, Sr. jointly own the remaining forty (40%) percent of the outstanding stock.

14. As the controlling shareholders, officers and/or directors, the defendants, Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and Irwin Levine owed the plaintiff the highest fiduciary duty of utmost good faith and fair dealing.

SUBSTANTIVE ALLEGATIONS

15. In December 2004, Kathy St. Blanchard's husband, Oswaldo St. Blanchard, who was a shareholder and employee of the Corporation, was involved in a motorcycle accident. Oswaldo St. Blanchard was seriously injured in the accident and was rendered a quadriplegic.
16. In order to provide Oswaldo St. Blanchard with worker's compensation benefits, the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard, devised a scheme to falsely represent that Oswaldo St. Blanchard was engaged in the course and scope of his employment at the time of his accident.
17. The plaintiff opposed any such plan. Plaintiff informed the defendants that such a scheme was fraudulent and could result in severe burdens for the Corporation, including higher workman's compensation rates.
18. In disregard of the plaintiff's concerns, the defendant, Joseph E. Mason, Sr., upon information and belief, gave false testimony during his deposition, and Oswaldo St. Blanchard has been awarded worker's compensation benefits.
19. Subsequently, Oswaldo and Kathy St. Blanchard divorced, and the stock held by Oswaldo St. Blanchard was reassigned to Kathy St. Blanchard.
20. After the accident, Kathy St. Blanchard sought full-time employment with the Corporation. Although she had very little experience, St. Blanchard was hired as the corporate bookkeeper.

21. While she works less than forty hours per week, the Corporation pays St. Blanchard approximately \$75,000.00 per year. The plaintiff has repeatedly objected to this waste of corporate assets and requested that St. Blanchard's salary be adjusted to reflect her capabilities and quantity of work.
22. The defendants, Catherine L. Mason and Joseph E. Mason, Sr., hired Defendant Irwin Levine, an accountant, who for several years, prepared fraudulent accountings on behalf of the Corporation.
23. Defendant Irwin Levine also filed false corporate income tax returns.
24. When the plaintiff brought the false and fraudulent accountings and tax returns to the attention of the defendants, he was reprimanded. Thereafter, he has been persecuted and subjected to retaliatory actions by the defendants.
25. In October 2007, Catherine L. Mason and Joseph E. Mason, Sr. called a special meeting of the Corporation.
26. At the meeting, the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard, as directors, voted to remove the plaintiff as President and appoint Joseph E. Mason, Sr. in his place. Thereafter, all of the plaintiff's authority with regard to company finances was terminated. Plaintiff's authority to manage at all levels has been withdrawn.
27. In June 2008, while examining payroll records of the Corporation, the plaintiff noticed irregularities in the Corporation's payments to one of the bookkeeping employees. A closer investigation revealed the employee had been misappropriating corporate funds for her personal benefit.
28. After discussing the matter with the defendants, Joseph E. Mason Sr. and Kathy St. Blanchard, the plaintiff terminated the employee.

29. The following day, the defendant, Joseph E. Mason Sr., informed the plaintiff that he made a mistake in allowing the termination of the employee and over the objections of the plaintiff, the employee was rehired.
30. Thereafter, the employees of the Corporation were made aware that the plaintiff was merely a figurehead, with no authority to manage the business affairs of the Corporation.
31. The defendants' retaliation and demeaning treatment of the plaintiff held him up to ridicule and embarrassment among the managers and other employees of the Corporation.
32. Upon information and belief, after the plaintiff was terminated, the defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard voted to issue or transfer some amount of stock in the Corporation to the defendant, Irwin Levine. The plaintiff was not consulted or informed prior to the issuance or transfer of stock ownership, and the exact percentage of Defendant Irwin Levine's stock ownership is unknown.
33. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and Irwin Levine have breached their fiduciary duties, abused their control, grossly mismanaged the Corporation, and wasted the Corporation's assets.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

As to Defendants Mason Holding Company, Inc., Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard

34. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
35. In October 2007, after the plaintiff had faithfully devoted his full-time efforts and attention to the affairs of the Corporation for almost twenty-five years, Mason Holding Company, Inc., through its then-existing Board of Directors, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, maliciously and in bad faith constructively

terminated the plaintiff's employment in breach of the express and implied agreements between the plaintiff and the defendants.

36. The defendants, Catherine L. Mason and Joseph E. Mason, Sr., as controlling shareholders, directors, and officers, along with Kathy St. Blanchard, as director and officer, orchestrated the plaintiff's wrongful termination and expulsion so that the defendants would enjoy the financial fruits and rewards of the enterprise to the exclusion of the plaintiff. The defendants' conduct and actions were, and continue to be, a breach of their express and implied promises and agreements with the plaintiff.
37. After the plaintiff was wrongfully removed from his position as President of the Corporation, the defendant Joseph E. Mason, Sr. was appointed by the other two defendants to serve in the plaintiff's stead. The defendants, Catherine L. Mason and Kathy St. Blanchard have continued as officers and directors of the Corporation.
38. As a proximate result of such wrongful acts by the defendants and the Corporation under their control, the plaintiff has suffered significant damages, including but not limited to the following:
 - a. The plaintiff has been deprived of his employment with the Corporation and the appropriate salary and bonuses associated therewith;
 - b. The plaintiff has been deprived of the many corporate perquisites and benefits he had been receiving from the Corporation; and
 - c. The plaintiff has been deprived of the fair market value of his shares in the Corporation.

39. As a result of the defendants' unjustified, willful and malicious breach of contract, the plaintiff has sustained actual damages in an amount to be proven at trial and for which the plaintiff is entitled to recover, due to the actions of the defendants.

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

As to Defendants Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard

40. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
41. The Corporation is controlled by the defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, who have the sole power to appoint the Corporation's officers and directors. The defendants owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to the Corporation and its shareholders to appoint competent and independent individuals to serve as officers and employees of the Corporation. The defendants must act in the best interests of the Corporation and its shareholders, including the plaintiff.
42. In their positions as officers and directors of the Corporation, the defendants owed and owe a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to the Corporation and its shareholders, including the plaintiff, and were obligated and required to use their utmost ability to operate and manage the Corporation in a fair, just, honest, and equitable manner pursuant to the South Carolina Business Corporation Act, specifically §§ 33-8-300 and 33-8-420. They were and are required to act in furtherance of the best interests of the Corporation and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interests or benefits.

43. The defendants owe to the Corporation and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Corporation and in the use and preservation of its property and assets, and the highest obligation of fair dealing.
44. The defendants have breached their fiduciary duty to the Corporation and its shareholders in numerous respects including, but not limited to, refusing to take appropriate steps to rectify problems and terminate employees when those employees acted to the detriment of the Corporation and its shareholders; failing to properly manage, oversee, safeguard, and protect the Corporation; exposing the Corporation to potential liability and incurring unnecessary expenses on behalf of the Corporation by submitting a fraudulent worker's compensation claim; wasting corporate assets; utilizing corporate assets for personal monetary gain; filing or authorizing the filing of false tax returns on behalf of the Corporation; failing to properly account; and depriving the plaintiff of his ability to protect his investment.
45. The conduct of the defendants is willful and malicious and detrimental to the Corporation and its shareholders, including the plaintiff.
46. The plaintiff is entitled to compensatory and punitive damages, costs, and attorney fees as a direct and proximate result of these breaches of fiduciary duties to the Corporation and its shareholders.

FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy)

As to Defendants Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard

47. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

48. The defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, have combined together and have conspired with the purpose of injuring the plaintiff. In furtherance of the conspiracy, the defendants set out upon a course of conduct with the purpose being to deprive the plaintiff of his employment with the Corporation, and to cause him harm. The defendants have conspired to cause special damage to the plaintiff in such a way that the plaintiff will not receive the fair value of his stock in the Corporation or the opportunity to effectively manage the business affairs of the Corporation.
49. The plaintiff has suffered significant damages as a result of the defendants' willful, wanton, and reckless conduct committed in the furtherance of the conspiracy, and the plaintiff is entitled to recover punitive damages, as well as actual damages as hereinabove alleged.

FOR A FOURTH CAUSE OF ACTION

(Relief Pursuant to S.C. Code Ann. § 33-14-300 *et seq.*)

As to Defendants Mason Holding Company, Inc., Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard

50. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
51. The individual defendants, as the officers and directors in control of the Corporation, have acted, and are continuing to act, in a manner that is illegal, fraudulent, oppressive and unfairly prejudicial to the plaintiff as has been hereinabove alleged.
52. The corporate assets are being misapplied or wasted by the individual defendants.
53. The plaintiff is entitled to an Order from the Court requiring the defendants to purchase, at fair value, the shares of the plaintiff he holds in Mason Holding Company, Inc.

FOR A FIFTH CAUSE OF ACTION

(Wrongful Termination of Employment – Constructive Discharge)

***As to Defendants Mason Holding Company, Inc., Catherine L. Mason, Joseph E. Mason, Sr.,
and Kathy St. Blanchard***

54. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
55. The plaintiff was employed by the Corporation as its President until October 2007. Thereafter, the plaintiff was employed by the Corporation as its Vice President, until he was constructively discharged in July 2008.
56. The Corporation has a general employment policy, as outlined in its Employee Handbook, which specifies certain conditions that must be met by corporate employees. In exchange for complying with those conditions, the employee is assured continued employment with the Corporation.
57. There is no effective disclaimer in the Employee Handbook, and the plaintiff did not sign an acknowledgement of any such disclaimer, which is required by statute.
58. After October 2007, the defendants effected a significantly adverse change in the plaintiff's working conditions. The conditions include, but are not limited to, a demotion, a freeze in pay, a reduction in job responsibilities, on-the-job harassment calculated to encourage the plaintiff's resignation, a reassignment to meaningless or menial duties, and the infliction of humiliation and embarrassment.
59. Based upon the foregoing, the defendants constructively discharged the plaintiff from his job, his authority, and his responsibilities; the plaintiff no longer has any authority or ability to meet the responsibilities of effectively managing the Corporation.
60. The termination of employment by the Corporation was a breach of the plaintiff's contract of employment and was a wrongful termination.

61. As a result of such wrongful termination, the plaintiff is entitled to an award of actual damages resulting from such wrongful termination.

FOR A SIXTH CAUSE OF ACTION

(Wrongful Termination – Violation of Public Policy)

As to Defendants Mason Holding Company, Inc., Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard

62. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
63. The plaintiff reasonably perceived the filing of false and fraudulent corporate accountings, corporate income tax returns, and worker's compensation claim, to be a violation of the law, which he opposed.
64. The plaintiff brought his concerns to the attention of the defendants in their capacities as shareholders, directors and officers of the Corporation. As a direct result of the plaintiff's expressed opposition, he was constructively terminated from his employment.
65. The retaliatory, constructive discharge of the plaintiff constitutes wrongful termination and a violation of a clear mandate of public policy.
66. As a result of such wrongful termination of employment, the plaintiff is entitled an award of actual and punitive damages

FOR A SEVENTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty)

As to Defendant Irwin Levine

67. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
68. As set forth above, the defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, in their positions as officers and directors of the Corporation, owed and owe a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to

the Corporation and its shareholders, including the plaintiff, and were obligated and required to use their utmost ability to operate and manage the Corporation in a fair, just, honest, and equitable manner pursuant to the South Carolina Business Corporation Act, specifically §§ 33-8-300 and 33-8-420. They were and are required to act in furtherance of the best interests of the Corporation and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interests or benefits.

69. The defendants have breached their fiduciary duty to the Corporation and its shareholders in numerous respects including, but not limited to, refusing to take appropriate steps to rectify problems and terminate employees when those employees acted to the detriment of the Corporation and its shareholders; failing to properly manage, oversee, safeguard, and protect the Corporation; exposing the Corporation to potential liability and incurring unnecessary expenses on behalf of the Corporation by submitting a fraudulent worker's compensation claim; wasting corporate assets; utilizing corporate assets for personal monetary gain; filing or authorizing the filing of false tax returns on behalf of the Corporation; failing to properly account; and depriving the plaintiff of his ability to protect his investment.
70. The conduct of the defendants is willful and malicious and detrimental to the Corporation and its shareholders, including the plaintiff.
71. Defendant Irwin Levine knowingly participated in the breaches of fiduciary duties by the defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard.
72. The plaintiff is entitled to compensatory and punitive damages, costs, and attorney fees as a direct and proximate result of Defendant Irwin Levine's aiding and abetting these breaches of fiduciary duties to the Corporation and its shareholders.

THEREFORE, the plaintiff, Joseph E. Mason, Jr., prays for the following relief:

- (A) For a judgment against the defendants, Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and the Corporation pursuant to the First Cause of Action;
- (B) For a judgment against the defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, jointly and severally, pursuant to the Second Cause of Action for actual and punitive damages;
- (C) For a judgment against the individual defendants, Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, for actual and punitive damages pursuant to the Third Cause of Action;
- (D) That the Court, pursuant to S.C. Code Ann. § 33-14-300, *et seq.*, cause the defendants, Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and/or Mason Holding Company, Inc., to purchase the plaintiff's stock in the Corporation for fair value pursuant to the Fourth Cause of Action;
- (E) For a judgment against the defendants, Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and Mason Holding Company, Inc., for the damages the plaintiff has sustained pursuant to the Fifth Cause of Action;
- (F) For a judgment against the defendants, Catherine L. Mason, Joseph E. Mason, Sr. and Kathy St. Blanchard and Mason Holding Company, Inc. for actual and punitive damages pursuant to the Sixth Cause of Action;
- (G) For a judgment against the defendant, Irwin Levine, for actual and punitive damages pursuant to the Seventh Cause of Action;
- (H) That the Court grant him a jury trial; and
- (I) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

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ATTORNEYS FOR JOSEPH E. MASON, JR.

September 23, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,)
)
Plaintiff,)

vs.)

Catherine L. Mason, Joseph E.)
Mason, Sr., Kathy St. Blanchard,)
Mason Holding Company, Inc.,)
and Irwin Levine,)
)
Defendants.)

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIMS OF DEFENDANTS
CATHERINE L. MASON, JOSEPH E.
MASON, SR., KATHY ST. BLANCHARD,
AND MASON HOLDING COMPANY, INC.

FILED
Horry County
2009 OCT 13 PM 12:42
CLERK OF COURT

Defendants Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard
Mason Holding Company, Inc. (hereinafter "these Defendants"), answering the Plaintiff's
Amended Complaint, would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. These Defendants deny each and every allegation of the Amended Complaint not hereinafter admitted or explained.
2. These Defendants admit the allegations of Paragraphs 1 and 2 of the Amended Complaint.
3. These Defendants deny the allegations of Paragraph 3 of the Amended Complaint that Defendant Levine is a director and/or officer of the Defendant Mason Holding Company, Inc. These Defendants admit that he is a shareholder and director of BCJ Tire, Inc., which is a division of Mason Holding Company, Inc., and that he is a citizen and resident of the State of Florida.

4. These Defendants admit the allegations of Paragraph 4 of the Amended Complaint.

5. In response to the allegations of Paragraph 5 of the Amended Complaint, these Defendants admit that Defendants Catherine L. Mason and Joseph E. Mason, Sr., started a Corporation which did business as Mason Tire and Auto in approximately 1983/1984 and further allege that Defendant Kathy St. Blanchard and Plaintiff, upon learning of the venture, asked to participate in the start-up of the company and were allowed to buy into the business.

6. These Defendants admit so much of Paragraph 6 of the Amended Complaint as alleges that at the time of the start-up of the company, Defendant Joseph E. Mason, Sr., was working full-time as a partner in Miami Tiresoles, Incorporated, in Miami, Florida; that Plaintiff, at his request to do so, relocated from Clearwater, Florida to Surfside Beach, South Carolina, in March of 1984 to participate in the business; and that Defendant Kathy St. Blanchard relocated from Miami, Florida to Myrtle Beach, South Carolina in August of 1984 to handle sales and bookkeeping of the company. These Defendants deny that Defendant Kathy St. Blanchard's employment at that time was part-time and further allege that when the store opened in 1984 she worked for the company on a full-time basis. These Defendants admit that Defendant Joseph E. Mason, Sr. and Catherine Mason maintained their residence in Miami, Florida, and further allege that Joseph E. Mason, Sr., traveled back and forth between his Florida job and the Surfside Beach store periodically to oversee the new business because neither Plaintiff nor Defendant Kathy St. Blanchard had any experience in the tire business. These

Defendants deny that Plaintiff's participation in the venture was at these Defendants' request.

7. These Defendants admit so much of Paragraph 7 of the Amended Complaint as alleges that Plaintiff has served, at certain times, as President of the Corporation and has worked for the Corporation on a full-time basis at times. These Defendants deny that Plaintiff was induced to join the employment of the company and further allege that Plaintiff initiated his involvement in the business by asking Defendant Joseph E. Mason, Sr. to allow him to participate in the business. These Defendants admit that the business has grown into a profitable enterprise and further allege that said growth is a result of the combined efforts of the parties.

8. These Defendants admit so much of Paragraph 8 of the Amended Complaint as alleges that Plaintiff worked in the business during certain time periods on a full-time basis. In response to the remaining allegations of Paragraph 8, these Defendants are without knowledge or information sufficient to form an opinion or belief as to Plaintiff's expectations and therefore deny same; in further response thereto, these Defendants further respond that Plaintiff quit his employment on multiple occasions.

9. These Defendants admit so much of Paragraph 9 of the Amended Complaint as alleges that Defendant Joseph E. Mason, Sr., relocated his residence to Surfside Beach, South Carolina, in 1989 and that he worked with Plaintiff to expand the business to include commercial operations. These Defendants admit that Plaintiff provided oversight of certain business operations and, at times, served as President of the Company, and further allege the Defendant Joseph E. Mason, Sr., also provided oversight of certain operations.

10. These Defendants admit the allegations of Paragraphs 10 and 11 of the Amended Complaint.

11. These Defendants admit so much of Paragraph 12 of the Amended Complaint as alleges that Plaintiff has continuously served as an officer of the Corporation and that Plaintiff has received a salary and other benefits from the Corporation.

12. These Defendants deny the allegation of Paragraph 13 of the Amended Complaint that Irwin Levine owns stock in Mason Holding Company, Inc.; the remaining allegations thereof are admitted.

13. Paragraph 14 of the Amended Complaint calls for a legal conclusion to which no response is required.

14. These Defendants admit the allegations of Paragraph 15 of the Amended Complaint.

15. These Defendants deny the allegations of Paragraphs 16 and 17 of the Amended Complaint.

16. In response to the allegations of Paragraph 18 of the Amended Complaint, these Defendants admit only that Oswaldo St. Blanchard has received certain workers compensation benefits through a settlement of his claim; the remaining allegations thereof are denied.

17. These Defendants admit the allegations of Paragraph 19 of the Amended Complaint.

18. These Defendants admit so much of Paragraph 20 of the Amended Complaint as alleges that Defendant Kathy St. Blanchard resumed full-time employment

with the Corporation following the accident involving Oswaldo St. Blanchard and that she was hired as the corporate bookkeeper.

19. These Defendants admit so much of Paragraph 21 of the Amended Complaint as alleges that Defendant Kathy St. Blanchard is paid approximately \$75,000.00 per year and that Plaintiff has voiced objections concerning the amount of pay; the remaining allegations thereof are denied.

20. These Defendants admit so much of Paragraph 22 of the Amended Complaint as alleges that at some point in time these Defendants hired Defendant Irwin Levine to perform accounting services; the remaining allegations thereof are denied.

21. These Defendants deny the allegations of Paragraph 23 of the Amended Complaint.

22. These Defendants deny all allegations of false and fraudulent accountings and tax returns and deny the remaining allegations of Paragraph 24 of the Amended Complaint.

23. These Defendants admit the allegations of Paragraph 25 of the Amended Complaint.

24. These Defendants admit the first sentence of Paragraph 26 of the Amended Complaint that an election of officers was held at the meeting and that these Defendants elected Joseph E. Mason, Sr., as President. The remaining allegations thereof are denied.

25. These Defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraph 27 of the Amended Complaint and therefore deny same.

26. These Defendants admit so much of Paragraph 28 of the Amended Complaint as alleges that a bookkeeping issue pertaining to a bookkeeping employee was discussed between these Defendants and Plaintiff and that Plaintiff terminated the employee.

27. These Defendants admit the allegations of Paragraph 29 of the Amended Complaint.

28. These Defendants deny the allegations of Paragraphs 30, 31, and 32 of the Amended Complaint.

29. These Defendants deny the allegations of Paragraph 33 of the Amended Complaint.

30. In response to the allegations of Paragraph 34 of the Amended Complaint, these Defendants reallege the allegations of Paragraphs 1 through 29 above as fully as if set forth herein.

31. These Defendants deny the allegations of Paragraphs 35 and 36 of the Amended Complaint.

32. These Defendants admit so much of Paragraph 37 of the Amended Complaint as admits that Defendant Joseph E. Mason, Sr., was elected by the remaining two of these defendants to serve as president of the Corporation at the referenced meeting and that these other Defendants have remained as officers and directors of the Corporation; the remaining allegations of Paragraph 37 of the Amended Complaint are denied.

33. These Defendants deny the allegations of Paragraphs 38 and 39 of the Amended Complaint.

34. In response to the allegations of Paragraph 40 of the Amended Complaint, these Defendants reallege the allegations of Paragraphs 1 through 33 above as fully as if set forth herein.

35. These Defendants deny the first sentence of Paragraph 41 of the Amended Complaint; the remaining allegations thereof call for a legal conclusion to which no response is required.

36. Paragraphs 42 and 43 of the Amended Complaint call for a legal conclusion to which no response is required.

37. These Defendants deny the allegations of Paragraphs 44, 45 and 46 of the Amended Complaint.

38. In response to the allegation of Paragraph 47 of the Amended Complaint, these Defendants reallege the allegations of Paragraphs 1 through 37 above as fully as if set forth herein.

39. These Defendants deny the allegations of Paragraphs 48 and 49 of the Amended Complaint.

40. In response to the allegations of Paragraph 50 of the Amended Complaint, these Defendants reallege the allegations of Paragraphs 1 through 39 above as fully as if set forth herein.

41. These Defendants deny the allegations of Paragraphs 51, 52, and 53 of the Amended Complaint.

42. In response to the allegations of Paragraph 54 of the Amended Complaint, these Defendants reallege the allegations of Paragraphs 1 through 41 above as fully as if set forth herein.

43. These Defendants admit so much of the allegations of Paragraph 55 of the Amended Complaint as alleges that Plaintiff served as corporate President at some time in the past until October 2007, at which time he was elected Vice-President; these Defendants deny that Plaintiff was employed as a corporate officer and deny that he was discharged in any manner.

44. In response to the allegations of Paragraph 56 of the Amended Complaint, these Defendants incorporate the referenced employment policy and deny that any employee is assured continued employment with the Corporation.

45. The allegations of Paragraph 57 of the Amended Complaint call for a legal conclusion to which no response is required.

46. The allegations of Paragraphs 58, 59, 60 and 61 of the Amended Complaint are denied.

47. In response to the allegations of Paragraph 62 of the Amended Complaint, these Defendants reallege the allegations of Paragraphs 1 through 46 above as fully as if set forth herein.

48. These Defendants deny the allegations of Paragraphs 63, 64, 65 and 66 of the Amended Complaint.

49. In response to the allegations of Paragraph 67 of the Amended Complaint, these Defendants reallege the allegations of Paragraphs 1 through 48 above as fully as if set forth herein verbatim.

50 Paragraph 68 of the Amended Complaint calls for a legal conclusion to which no response is required.

51. These Defendants deny the allegations of Paragraphs 69, 70, 71 and 72 of the Amended Complaint.

52. All allegations contained in the Amended Complaint that are not admitted, qualified, or explained, are denied.

FOR A SECOND DEFENSE

53. These Defendants reallege the allegations of Paragraphs 1 through 52 above as fully as if set forth herein verbatim.

54. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), S.C.R.C.P.

FOR A THIRD DEFENSE

55. These Defendants reallege the allegations of Paragraphs 1 through 54 above as fully as if set forth herein.

56. Plaintiff's claim for wrongful discharge in violation of public policy is barred to the extent he has a statutory remedy to address the wrong alleged.

FOR A FOURTH DEFENSE

57. These Defendants reallege the allegations of Paragraphs 1 through 56 above as fully as if set forth herein.

58. Any recovery on Plaintiff's Amended Complaint may be barred, in whole or in part, based upon after-acquired evidence.

FOR A FIFTH DEFENSE

59. These Defendants reallege the allegations of Paragraphs 1 through 58 above as fully as if set forth herein.

60. Upon information and belief, some or all of the claims set forth in Plaintiff's Amended Complaint are barred by the virtue of Plaintiff's failure to mitigate his alleged damages.

FOR A SIXTH DEFENSE

61. These Defendants reallege the allegations of Paragraphs 1 through 60 above as fully as if set forth herein.

62. The Plaintiff's claim for punitive damages is barred because the alleged wrongful acts fail to rise to the level required to sustain an award of punitive damages.

FOR A SEVENTH AND AFFIRMATIVE DEFENSE
(UNCLEAN HANDS)

63. These Defendants reallege the allegations of Paragraphs 1 through 62 as fully as if set forth herein.

64. The Plaintiff's claims for relief are barred by Plaintiff's unclean hands and the doctrine of unclean hands is pled as a complete and affirmative defense thereto.

FOR AN EIGHTH AND AFFIRMATIVE DEFENSE
(STATUTE OF FRAUDS)

65. These Defendants reallege the allegations of Paragraphs 1 through 64 as fully as if set forth herein.

66. The Plaintiff's claims for relief, or some of them, are barred by the Statute of Frauds, which is pled as a complete and affirmative defense thereto.

FOR A FIRST COUNTERCLAIM AND EIGHTH DEFENSE
(BREACH OF FIDUCIARY DUTY)

67. These Defendants reallege the allegations of Paragraphs 1 through 66 as fully as if set forth herein.

68. Plaintiff, by virtue of corporate offices held with Mason Holding Company, Inc., his status as a shareholder and his position as a company manager, owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to the Corporation and its shareholders to handle corporate affairs in a manner that was in the best interests of the Corporation and its shareholders, including these Defendants.

69. In his position as an Officer and Director of the Corporation, Plaintiff owed and owes a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to the Corporation and its shareholders, including these Defendants, and was obligated and required to use his utmost ability to operate and to manage the Corporation in a fair, just, honest, and equitable manner. He was also and is required to act in furtherance of the best interests of the Corporation and its shareholders, so as to benefit all shareholders equally and not in furtherance of his personal interests or benefits.

70. Plaintiff owed and owes to the Corporation and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Corporation, and the use and preservation of its properties and assets, and the highest obligation of fair dealing.

71. Plaintiff has breached his fiduciary duty to the Corporation and its shareholders in numerous respects, including, but not limited to, signing, filing, and authorizing the filing of false tax returns on behalf of the Corporation; failure to properly account for the funds of the Corporation; refusing to take appropriate steps to rectify problems and manage corporate assets; failing to properly manage, oversee, safeguard, and protect the Corporation; wasting corporate assets; utilizing corporate assets for personal monetary gain; and misappropriation of corporate funds and property.

72. The Plaintiff's conduct is willful and malicious and detrimental to the Corporation and its shareholders, including these Defendants.

73. These Defendants are entitled to compensatory and punitive damages, costs, and attorneys' fees as a direct and proximate result of these breaches of fiduciary duties to the Corporation and its shareholders.

FOR A SECOND COUNTERCLAIM AND NINTH DEFENSE
(CONVERSION)

74. These Defendants reallege the allegations of Paragraphs 1 through 73 as fully as if set forth herein.

75. During the course of his employment with the Defendant Company, Plaintiff was entrusted with and received company funds for services rendered and products sold by the company.

76. Upon information and belief, Plaintiff converted Company funds and property to his own use without authorization or permission of these Defendants.

77. Plaintiff's retention of funds and property belonging to the Company has resulted in damages to the Company and Plaintiff is therefore liable to the Defendant Mason Holding Company, Inc., for the amount of funds and property converted by him to his personal use, plus legal interests from the dates of conversion.

78. Additionally, Plaintiff's actions were taken with reckless and conscious indifference to the rights of these Defendants, and therefore, punitive damages should be awarded as a result of Plaintiff's unlawful conversion of funds.

WHEREFORE, having fully answered the allegations of the Plaintiff's Amended Complaint, these Defendants pray that the same be dismissed and request that judgment

be entered in these Defendants' favor and against the Plaintiff, for these Defendants' attorneys' fees and costs, and for such other relief as the Court may deem just and proper.

These Defendants, as to their counterclaims, pray for a judgment against the Plaintiff in their favor for actual and punitive damages and for interest as alleged above.

THOMPSON & HENRY, P.A.

By: Emma Ruth Brittain

Emma Ruth Brittain

S.C. Bar #5298

J. Jackson Thomas

S.C. Bar #5527

P.O. Box 1290

Myrtle Beach, SC 29578

Phone: (843) 692-2628

Fax: (843) 692-0928

Attorneys for the Defendants

Catherine L. Mason, Joseph E.

Mason, Sr., Kathy St. Blanchard,

and Mason Holding Company, Inc.

October 13, 2009

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,)
Plaintiff,)

vs.)

**ANSWER TO AMENDED COMPLAINT
OF DEFENDANT IRWIN LEVINE**

Catherine L. Mason, Joseph E.)
Mason, Sr., Kathy St. Blanchard,)
Mason Holding Company, Inc.,)
and Irwin Levine,)
Defendants.)

Defendant Irwin Levine (hereinafter "this Defendant"), answering the Plaintiff's Amended Complaint, would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Amended Complaint not hereinafter admitted or explained.

2. This Defendant admits the allegations of Paragraphs 1 and 2 of the Amended Complaint.

3. This Defendant denies the allegations of Paragraph 3 of the Amended Complaint alleging that he is a director and/or officer of the Defendant Mason Holding Company, Inc. This Defendant admits that he is a shareholder and director of BCJ Tire, Inc., which is a division of Mason Holding Company, Inc., and that he is a citizen and resident of the State of Florida.

4. This Defendant admits the allegations of Paragraph 4 of the Amended Complaint.

5. In response to the allegations of Paragraph 5 of the Amended Complaint, this Defendant admits upon information and belief that Defendants Catherine L. Mason and Joseph E. Mason, Sr., started a Corporation which did business as Mason Tire and Auto in approximately 1983/1984 and that Defendant Kathy St. Blanchard and Plaintiff, upon learning of the venture, asked to participate in the start-up of the company and were allowed to buy into the business.

6. This Defendant admits, upon information and belief, so much of Paragraph 6 of the Amended Complaint as alleges that at the time of the start-up of the company, Defendant Joseph E. Mason, Sr., was working full-time as a partner in Miami Tiresoles, Incorporated, in Miami, Florida; that Plaintiff, at his request to do so, relocated from Clearwater, Florida to Surfside Beach, South Carolina, in March of 1984 to participate in the business; and that Defendant Kathy St. Blanchard relocated from Miami, Florida to Myrtle Beach, South Carolina in August of 1984 to handle sales and bookkeeping of the company. This Defendant, upon information and belief, denies that Defendant Kathy St. Blanchard's employment at that time was part-time and further alleges, upon information and belief, that when the store opened in 1984 she worked for the company on a full-time basis. This Defendant admits that Defendant Joseph E. Mason, Sr. and Catherine Mason maintained their residence in Miami, Florida; upon information and belief this Defendant further alleges that Joseph E. Mason, Sr., traveled back and forth between his Florida job and the Surfside Beach store periodically to oversee the new business because neither Plaintiff nor Defendant Kathy St. Blanchard had any experience in the tire business. This Defendant, upon information and belief, denies that Plaintiff's participation in the venture was at the other Defendants' request.

7. This Defendant admits so much of Paragraph 7 of the Amended Complaint as alleges that Plaintiff has served, at certain times, as President of the Corporation and has worked for the Corporation on a full-time basis at times. This Defendant denies, upon information and belief, that Plaintiff was induced to join the employment of the company. This Defendant admits that the business has grown into a profitable enterprise and further alleges, upon information and belief, that said growth is a result of the combined efforts of the parties.

8. This Defendant admits so much of Paragraph 8 of the Amended Complaint as alleges that Plaintiff worked in the business during certain time periods on a full-time basis. In response to the remaining allegations of Paragraph 8, this Defendant is without knowledge or information sufficient to form an opinion or belief as to Plaintiff's expectations and therefore denies same; in further response thereto, this Defendant further responds that Plaintiff, upon information and belief, quit his employment on multiple occasions.

9. This Defendant admits so much of Paragraph 9 of the Amended Complaint as alleges that Defendant Joseph E. Mason, Sr., relocated his residence to Surfside Beach, South Carolina, in 1989 and that he worked with Plaintiff to expand the business to include commercial operations. This Defendant admits that Plaintiff provided oversight of certain business operations and, at times, served as President of the Company, and further alleges the Defendant Joseph E. Mason, Sr., also provided oversight of certain operations.

10. This Defendant admits the allegations of Paragraphs 10 and 11 of the Amended Complaint.

11. This Defendant admits so much of Paragraph 12 of the Amended Complaint as alleges that Plaintiff has continuously served as an officer of the Corporation and that Plaintiff has received a salary and other benefits from the Corporation.

12. This Defendant denies the allegation of Paragraph 13 of the Amended Complaint that he owns stock in Mason Holding Company, Inc.; the remaining allegations thereof are admitted.

13. Paragraph 14 of the Amended Complaint calls for a legal conclusion to which no response is required.

14. This Defendant admits the allegations of Paragraph 15 of the Amended Complaint.

15. This Defendant denies the allegations of Paragraphs 16 and 17 of the Amended Complaint upon information and belief.

16. In response to the allegations of Paragraph 18 of the Amended Complaint, this Defendant admits, upon information and belief, only that Oswaldo St. Blanchard has received certain workers compensation benefits through a settlement of his claim; this Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies same.

17. This Defendant admits the allegations of Paragraph 19 of the Amended Complaint.

18. This Defendant admits so much of Paragraph 20 of the Amended Complaint as alleges that Defendant Kathy St. Blanchard resumed full-time employment

with the Corporation following the accident involving Oswaldo St. Blanchard and that she was hired as the corporate bookkeeper.

19. This Defendant admits so much of Paragraph 21 of the Amended Complaint as alleges that Defendant Kathy St. Blanchard is paid approximately \$75,000.00 per year and that Plaintiff has voiced objections concerning the amount of pay; the remaining allegations thereof are denied.

20. This Defendant admits so much of Paragraph 22 of the Amended Complaint as alleges that he was hired by the Defendants to perform accounting services; the remaining allegations thereof are denied.

21. This Defendant denies the allegations of Paragraph 23 of the Amended Complaint.

22. This Defendant denies all allegations of false and fraudulent accountings and tax returns and denies the remaining allegations of Paragraph 24 of the Amended Complaint upon information and belief.

23. This Defendant admits the allegations of Paragraph 25 of the Amended Complaint upon information and belief.

24. This Defendant admits the first sentence of Paragraph 26 of the Amended Complaint that an election of officers was held at the meeting and that this Defendant elected Joseph E. Mason, Sr., as President, upon information and belief. The remaining allegations thereof are denied.

25. This Defendant is without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations of Paragraphs 27, 28 and 29 of the Amended Complaint and therefore denies same.

26. This Defendant denies the allegations of Paragraphs 30 and 31 of the Amended Complaint upon information and belief.

27. This Defendant denies the allegations of Paragraph 32 of the Amended Complaint.

28. This Defendant denies the allegations of Paragraphs 33 of the Amended Complaint.

29. In response to the allegations of Paragraph 34 of the Amended Complaint, this Defendant realleges the allegations of Paragraphs 1 through 28 above as fully as if set forth herein.

30. This Defendant denies the allegations of Paragraphs 35 and 36 of the Amended Complaint upon information and belief.

31. This Defendant, upon information and belief, admits so much of Paragraph 37 of the Amended Complaint as alleges that Defendant Joseph E. Mason, Sr., was elected by the remaining two of these Defendants to serve as president of the Corporation at the referenced meeting and that other Defendants have remained as officers and directors of the Corporation; the remaining allegations of Paragraph 37 of the Amended Complaint are denied upon information and belief.

32. This Defendant denies the allegations of Paragraphs 38 and 39 of the Amended Complaint.

33. In response to the allegations of Paragraph 40 of the Amended Complaint, this Defendant realleges the allegations of Paragraphs 1 through 33 above as fully as if set forth herein.

34. This Defendant denies the first sentence of Paragraph 41 of the Amended Complaint upon information and belief; the remaining allegations thereof call for a legal conclusion to which no response is required.

35. Paragraphs 42 and 43 of the Amended Complaint call for a legal conclusion to which no response is required.

36. This Defendant denies the allegations of Paragraphs 44, 45 and 46 of the Amended Complaint.

37. In response to the allegations of Paragraph 47 of the Amended Complaint, this Defendant realleges the allegations of Paragraphs 1 through 36 above as fully as if set forth herein.

38. This Defendant denies the allegations of Paragraphs 48 and 49 of the Amended Complaint upon information and belief.

39. In response to the allegations of Paragraph 50 of the Amended Complaint, this Defendant realleges the allegations of Paragraphs 1 through 38 above as fully as if set forth herein.

40. This Defendant denies the allegations of Paragraphs 51, 52, and 53 of the Amended Complaint.

41. In response to the allegations of Paragraph 54 of the Amended Complaint, this Defendant realleges the allegations of Paragraphs 1 through 40 above as fully as if set forth herein.

42. This Defendant admits so much of the allegations of Paragraph 55 of the Amended Complaint as alleges that Plaintiff served as corporate President at some time in the past until October 2007, at which time he was elected Vice-President; this

Defendant denies that Plaintiff was employed as a corporate officer and denies that he was discharged in any manner upon information and belief.

43. In response to the allegations of Paragraph 56 of the Amended Complaint, this Defendant is without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations thereof and therefore denies same.

44. The allegations of Paragraph 57 of the Amended Complaint call for a legal conclusion to which no response is required.

45. This Defendant denies the allegations of Paragraphs 58, 59, 60 and 61 of the Amended Complaint upon information and belief.

46. In response to the allegations of Paragraph 62 of the Amended Complaint, this Defendant realleges the allegations of Paragraphs 1 through 45 above as fully as if set forth herein.

47. This Defendant denies the allegations of Paragraphs 63, 64, 65 and 66 of the Amended Complaint.

48. In response to the allegations of Paragraph 67 of the Amended Complaint, this Defendant realleges the allegations of Paragraphs 1 through 47 above as fully as if set forth herein verbatim.

49. Paragraph 68 of the Amended Complaint calls for a legal conclusion to which no response is required.

50. This Defendant denies the allegations of Paragraphs 69, 70, 71 and 72 of the Amended Complaint.

51. All allegations contained in the Amended Complaint that are not admitted, qualified, or explained, are denied.

FOR A SECOND DEFENSE

52. This Defendant realleges the allegations of Paragraphs 1 through 51 above as fully as if set forth herein verbatim.

53. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), S.C.R.C.P.

FOR A THIRD DEFENSE

54. This Defendant realleges the allegations of Paragraphs 1 through 53 above as fully as if set forth herein.

55. Plaintiff's Amended Complaint should be dismissed on the grounds that there is a lack of jurisdiction over the person of Irwin Levine.

FOR A FOURTH DEFENSE

56. This Defendant realleges the allegations of Paragraphs 1 through 55 above as fully as if set forth herein.

57. Upon information and belief, some or all of the claims set forth in Plaintiff's Amended Complaint are barred by the virtue of Plaintiff's failure to mitigate his alleged damages.

FOR A FIFTH DEFENSE

58. This Defendant realleges the allegations of Paragraphs 1 through 57 as fully as if set forth herein.

59. The Plaintiff's claims for relief are barred by Plaintiff's unclean hands and the doctrine of unclean hands is pled as a complete and affirmative defense thereto.

FOR A SIXTH DEFENSE

60. This Defendant realleges the allegations of Paragraphs 1 through 59 above as fully as if set forth herein.

61. The Plaintiff's claim for punitive damages is barred because the alleged wrongful acts fail to rise to the level required to sustain an award of punitive damages.

FOR A SEVENTH DEFENSE

62. This Defendant realleges the allegations of Paragraphs 1 through 61 above as fully as if set forth herein.

63. The Plaintiff's claims may be barred by the doctrines of waiver, estoppel, and/or laches.

FOR AN EIGHTH DEFENSE

64. This Defendant realleges the allegations of Paragraphs 1 through 63 above as fully as if set forth herein.

65. The Plaintiff's claims may be barred by the doctrine of spoliation of evidence.

FOR A NINTH DEFENSE

66. This Defendant realleges the allegations of Paragraphs 1 through 65 above as fully as if set forth herein.

67. The Plaintiff's alleged injuries, losses, or damages, if any, were caused by the acts or omissions of third parties for which this Defendant has no responsibility.

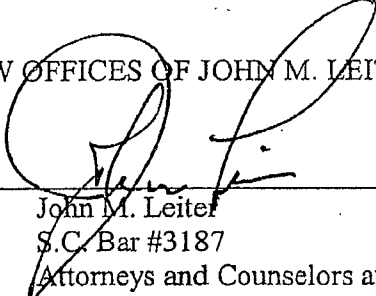
RESERVATIONS AND NON-WAIVER

68. This Defendant realleges the allegations of Paragraphs 1 through 67 above as fully as if set forth herein.

69. This Defendant reserves and does not waive any additional or further defenses or claims that he may have that may be revealed by information acquired in discovery or otherwise.

WHEREFORE, having fully answered the allegations of the Plaintiff's Amended Complaint, and having stated his affirmative defenses thereto, the Defendant, Irwin Levine, prays for dismissal of the Plaintiff's action with prejudice, that this Defendant be awarded his attorneys' fees and costs incurred in this matter, and for such other relief as the Court may deem just and proper.

LAW OFFICES OF JOHN M. LEITER, PA

By: 

John M. Leiter

S.C. Bar #3187

Attorneys and Counselors at Law

1203 48th Avenue North, Suite 109

Myrtle Beach, South Carolina 29577

Telephone: 843-449-1451

Fax: 843-449-4884

Attorneys for the Defendant

Irwin Levine

November 23, 2009
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-26-6169

Joseph E. Mason, Jr.,

Plaintiff,

vs.

Joseph E. Mason, Sr., Catherine L. Mason,
Kathy St. Blanchard, Mason Holding
Company, Inc., and Irwin Levine,

Defendants.

**MOTION FOR ORDER OF REFERENCE AND FOR SCHEDULING ORDER
OR, IN THE ALTERNATIVE, MOTION TO MODIFY
PRIOR ORDER REFERRING THE CASE AND SCHEDULING ORDER**

Plaintiff, by and through the undersigned counsel, hereby moves the Court for an order referring this case for all purposes and with finality to Ralph P. Stroman, Esq. as Special Referee, pursuant to Rule 53, SCRCF. Any appeal from any order or judgment issued by the Special Referee should be directly to the South Carolina Supreme Court or the South Carolina Court of Appeals. As evidenced by the prior proposed consent order and email to the court (attached as Exhibit A), all parties previously consented to the reference of this case to Mr. Stroman, and Mr. Stroman has agreed to serve as the Special Referee in this case.

In the original proposed consent order, the parties also agreed to certain scheduling deadlines. The first such deadline was for the submission of plaintiff's expert report by January 29, 2011. Defendants have not yet produced certain documents requested by formal discovery requests, which documents and responses are past-due. As a result of not having the requested

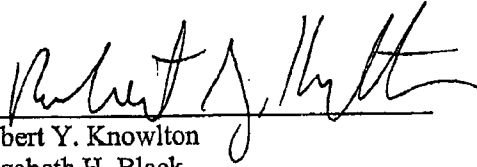
documents, plaintiff's expert is unable to complete his analysis. Accordingly, the original deadline of January 29, 2011 is no longer feasible.

Upon consultation, counsel for defendants agreed to extend the deadline for plaintiff's expert by 30 days but only upon the condition that the deadline for plaintiff's proposed rebuttal expert report be omitted. A copy of the e-mail between the parties on this issue is attached hereto as Exhibit B. Plaintiff cannot consent to the condition to a revision to the scheduling order that would prohibit or that could be construed to prohibit plaintiff's right to submit a rebuttal expert report if such a report is necessary or appropriate. Accordingly, plaintiff submits the attached proposed consent order of reference with scheduling deadlines to be entered at the discretion of the Court. In the alternative, the scheduling provisions can be omitted from the order of reference and thereby give the special referee the discretion to enter and, if necessary, revise, appropriate scheduling deadlines.

It is unclear to the undersigned whether or not the prior proposed consent order of reference and scheduling order has been executed by the Court or not. The Clerk of Court's records do not reflect the filing of the executed order and the undersigned has not received a copy. If that order has in fact been executed but has not yet reached the Court's file, plaintiff hereby moves, in the alternative, to modify that order consistent with the provisions of this motion as set forth above.

Signature Block on Next Page

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Robert Y. Knowlton

Elizabeth H. Black

1201 Main Street, Suite 2200 (29201)

PO Box 11889

Columbia, SC 29211-1889

803.779.3080

Attorneys for Plaintiff

January 31, 2011

Knowlton, Bob

From: Lee Ann W. Rice [leeann@48th.com]
Sent: Monday, January 03, 2011 4:43 PM
To: Hyman, Larry B. Law Clerk (Mary Hall)
Cc: Emma Ruth Brittain; John Leiter; Knowlton, Bob
Subject: Re: Mason v. Mason 08-CP-26-6169
Attachments: Consent Special Referee & Scheduling Order.doc

Claire,

The parties have agreed on Ralph Stroman as our special referee in this matter. We have placed a call to him to see if he will agree to serve in this capacity. If he is unable to, we will let you know.

I have attached the Order in Word just in case you still need it.

Jack Thomas represents the Defendants Mason Tire, Joseph Mason Sr., Catherine Mason, and Kathy St. Blanchard, and will be at the roster meeting tomorrow to clarify the status of our matter for the Judge presiding over the meeting. The other attorneys do not plan to be at tomorrow's roster meeting. If we need to do anything further in the meantime, please let me know.

Thanks so much for your help!

Sincerely,

Lee Ann W. Rice

Law Offices of John M. Leiter, PA

1203 48th Ave. N., Suite 109
Myrtle Beach, SC 29577
ph. 843.449.1451
fax 843.449.4884

*****NOTICE*****

This e-mail may contain confidential information for the recipient and is intended only for the use of the individual or entity named above. Do not read, copy or disseminate this communication unless you are the intended recipient. If you have received this e-mail in error, please contact the sender by reply e-mail or by telephone at 843-449-1451. Nothing contained in this e-mail is intended to be an electronic signature or to constitute an agreement of any kind unless otherwise expressly indicated.

--

On 12/31/2010 10:46 AM, Hyman, Larry B. Law Clerk (Mary Hall) wrote:

Lee Ann,

I got your message. Could you send me the order if Word form? That way I can change it so we

1/28/2011

EXHIBIT A

can put the Special Referee's name right in there and be done with it.

Thanks!

Hope you have a great weekend,

Claire

From: Lee Ann W. Rice [mailto:leeann@48th.com]
Sent: Wednesday, December 29, 2010 11:57 AM
To: Hyman, Larry B. Law Clerk (Mary Hall)
Subject: Mason v. Mason 08-CP-26-6169

Claire,

About a week before Christmas, we sent a to your office Consent Order for Referral to Special Referee and Scheduling Order in Mason v. Mason 08-CP-26-6169.

We're on the trial roster for next week, and the various parties' attorneys are trying to figure out whether we'll need to be at that roster meeting. What's your recommendation?

--

Sincerely,

Lee Ann W. Rice
Law Offices of John M. Leiter, PA

1203 48th Ave. N., Suite 109
Myrtle Beach, SC 29577
ph. 843.449.1451
fax 843.449.4884

*****NOTICE*****

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1/28/2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,)
)
Plaintiff,)

vs.)

**CONSENT ORDER FOR REFERRAL
TO SPECIAL REFEREE AND
SCHEDULING ORDER**

Catherine L. Mason, Joseph E.)
Mason, Sr., Kathy St. Blanchard,)
Mason Holding Company, Inc.,)
and Irwin Levine,)
)
Defendants.)

NOW, THEREFORE, ON JOINT MOTION of counsel for Plaintiff and Defendants, the parties to this action consent and agree to refer this matter to a Special Referee to be agreed upon by the parties on or before December 30, 2010. In the event the parties are unable to agree, the Special Referee shall be selected by the Court. The matter is to be referred for all purposes including hearing motions as necessary and making appropriate findings of fact and conclusions of law with the authority to enter a final judgment in this case pursuant to Rule 53, SCRPC. Any appeal from any order or judgment issued by the Special Referee shall be to the South Carolina Supreme Court or Court of Appeals as provided by the South Carolina Appellate Court Rules.

The parties in this action also have consented to and hereby tender a Scheduling Order to the Court for the purpose of setting a pretrial discovery and trial schedule in this action. This pretrial Scheduling Order will assist in the efficient management of this action. Now therefore, it is hereby

ORDERED that:

1. Plaintiff shall identify by full name, address, and telephone number each person whom Plaintiff expects to call as an expert witness on or before January 29, 2011, and shall also provide Defendants' counsel with each such expert's resume and detailed report(s).

2. Defendants shall identify by full name, address, and telephone number each person whom each Defendant expects to call as a rebuttal expert by March 15, 2011, and shall also provide Plaintiff's counsel with each such expert's resume and detailed report(s).

3. Plaintiff shall identify by full name, address, and telephone number each person whom Plaintiff expects to call as a rebuttal expert by April 15, 2011, and shall also provide Defendants' counsel with each such expert's resume and detailed report(s).

4. This matter shall be scheduled for trial on or about May 9, 2011, with a final order due no later than thirty (30) days after the trial date.

Dated this ____ day of December, 2010.

Chief Administrative Judge
Fifteenth Judicial Circuit

Conway, South Carolina

December ____, 2010

WE CONSENT:

HAYNSWORTH SINKLER BOYD, P.A.

By: _____

Robert Y. Knowlton
Post Office Box 11889
Columbia, South Carolina 29211
803.779.3080

and

J. Christopher Riddle
Post Office Box 6617
Florence, South Carolina 29502
843.669.3815

Attorneys for Plaintiff

December _____, 2010

WE CONSENT:

THOMPSON & HENRY, P.A.

By: _____

Emma Ruth Brittain
J. Jackson Thomas
Post Office Box 1290
Myrtle Beach, South Carolina 29578
843.692.2628

*Attorneys for Defendants Catherine L.
Mason, Joseph E. Mason, Sr., Kathy St.
Blanchard, and Mason Holding
Company, Inc.*

December _____, 2010

LAW OFFICES OF JOHN M. LEITER, PA

By: _____

John M. Leiter
1203 48th Avenue North, Suite 109
Myrtle Beach, South Carolina 29577
843.449.1451

jleiter@48th.com

Attorneys for Defendant Irwin Levine

December _____, 2010

Knowlton, Bob

From: Knowlton, Bob
Sent: Friday, January 28, 2011 3:27 PM
To: 'Kimberly Warren'
Cc: John Leiter; Lee Ann Rice; Emma Ruth Brittain; Jack Thomas; Black, Elizabeth
Subject: RE: Mason v. Mason and Levine

Counsel,

Based on this email, I will promptly file a motion. Although I thought we had been advised that the proposed consent order referring this case had been signed, I don't see where I ever received an executed copy and don't see one reflected in the court's electronic records. If any of you have seen the executed order, please send it to me.

I can't agree to the condition set forth in your email that would simply omit a provision for my client to submit a rebuttal expert report, which may leave the implication that I would not have the right to name one. As you know, the reason I need the extra time for an expert report is that I did not receive the documents from your clients when they were due. I certainly wanted to be flexible to allow the defendants more time to comply with their discovery obligations, but I can't do so to the prejudice of my client.

Bob

From: Kimberly Warren [mailto:KWarren@thompsonlaw.com]
Sent: Friday, January 28, 2011 2:46 PM
To: Knowlton, Bob
Cc: John Leiter; Lee Ann Rice; Emma Ruth Brittain; Jack Thomas
Subject: Mason v. Mason and Levine

Mrs. Brittain asked me to send you the following message:

This is to acknowledge receipt of your email requesting an extension of time for your expert to render his report by thirty days. We feel this amendment will need to be agreed to by the Court. We are willing to consent to the extension provided the trial date provision is not changed. The only way to accomplish this is to delete the provision allowing the Plaintiff 30 days to get their rebuttal expert. The provision allowing Defendants to obtain their rebuttal expert would be extended thirty days. The Defendants are willing to consent to the extension of thirty days on these terms.

Kim Warren

Kimberly H. Warren
Assistant to Emma Ruth Brittain, Esquire
Thompson & Henry, P.A.
Post Office Box 1290
Myrtle Beach, South Carolina
Phone: 692-2628
Fax: 692-0928

EXHIBIT B

1/28/2011

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Joseph E. Mason, Jr.,)

Plaintiff,)

vs.)

Catherine L. Mason, Joseph E.
Mason, Sr., Kathy St. Blanchard,
Mason Holding Company, Inc.,
and Irwin Levine,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

**CONSENT ORDER FOR REFERRAL
TO SPECIAL REFEREE AND
SCHEDULING ORDER**

FILED
COUNTY
2011 FEB 11 AM 9:37
MELANIE HUGGINS
CLERK OF COURT

NOW, THEREFORE, ON JOINT MOTION of counsel for Plaintiff and Defendants, the parties to this action consent and agree to refer this matter to a Special Referee to be agreed upon by the parties on or before December 30, 2010. In the event the parties are unable to agree, the Special Referee shall be selected by the Court. The matter is to be referred for all purposes including hearing motions as necessary and making appropriate findings of fact and conclusions of law with the authority to enter a final judgment in this case pursuant to Rule 53, SCRCP. Any appeal from any order or judgment issued by the Special Referee shall be to the South Carolina Supreme Court or Court of Appeals as provided by the South Carolina Appellate Court Rules.

The parties in this action also have consented to and hereby tender a Scheduling Order to the Court for the purpose of setting a pretrial discovery and trial schedule in this action. This pretrial Scheduling Order will assist in the efficient management of this action. Now therefore, it is hereby

ORDERED that:

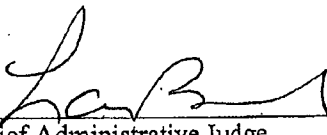
1. Plaintiff shall identify by full name, address, and telephone number each person whom Plaintiff expects to call as an expert witness on or before January 29, 2011, and shall also provide Defendants' counsel with each such expert's resume and detailed report(s).

2. Defendants shall identify by full name, address, and telephone number each person whom each Defendant expects to call as a rebuttal expert by March 15, 2011, and shall also provide Plaintiff's counsel with each such expert's resume and detailed report(s).

3. Plaintiff shall identify by full name, address, and telephone number each person whom Plaintiff expects to call as a rebuttal expert by April 15, 2011, and shall also provide Defendants' counsel with each such expert's resume and detailed report(s).

4. This matter shall be scheduled for trial on or about May 9, 2011, with a final order due no later than thirty (30) days after the trial date.

Dated this 25 day of ~~December~~ ^{January}, 2010.



Chief Administrative Judge
Fifteenth Judicial Circuit

Conway, South Carolina

Jan
December 25, 2010

WE CONSENT:

HAYNSWORTH SINKLER FOYD, P.A.

By: Robert Y. Knowlton
Robert Y. Knowlton

Post Office Box 11889
Columbia, South Carolina 29211
803.779.3080

and

J. Christopher Riddle
Post Office Box 6617
Florence, South Carolina 29502
843.669.3815

Attorneys for Plaintiff

December 16, 2010

WE CONSENT:

THOMPSON & HENRY, P.A.

By: Emma Ruth Brittain
Emma Ruth Brittain

J. Jackson Thomas
Post Office Box 1290
Myrtle Beach, South Carolina 29578
843.692.2628

*Attorneys for Defendants Catherine L.
Mason, Joseph E. Mason, Sr., Kathy St.
Blanchard, and Mason Holding
Company, Inc.*

December 17, 2010

LAW OFFICES OF JOHN M. LEITER, PA

By: John M. Leiter
John M. Leiter

1203 48th Avenue North, Suite 109
Myrtle Beach, South Carolina 29577
843.449.1451

jleiter@48th.com

Attorneys for Defendant Irwin Levine

December 17, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Joseph E. Mason, Jr.,)
Plaintiff,)

vs.)

Catherine L. Mason, Joseph E.)
Mason, Sr., Kathy St. Blanchard,)
Mason Holding Company, Inc.,)
and Irwin Levine,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

CONSENT ORDER FOR REFERRAL
TO SPECIAL REFEREE

MELANIE HUGGINS-WARD
CLERK OF COURT

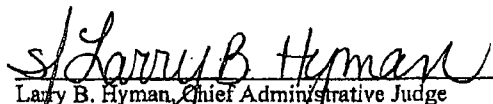
11 APR 13 AM 8:40

FILED
HORRY COUNTY

NOW, THEREFORE, ON JOINT MOTION of counsel for Plaintiff and Defendants, the parties to this action consent and agree to refer this matter to Ralph Stroman, Esq., as Special Referee. A previous Order of Reference in this matter, filed on February 11, 2011, contemplated that the parties would agree on a special referee, which they have now done. The Order of Referenced filed on February 11, 2011 is hereby reaffirmed in all respects.

AND IT IS SO ORDERED.

Dated this ____ day of April, 2011.


Larry B. Hyman, Chief Administrative Judge
Fifteenth Judicial Circuit

Conway, South Carolina

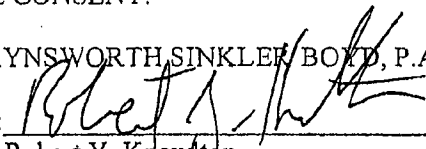
April 8, 2011

I CONSENT:


Ralph P. Stroman

WE CONSENT:

HAYNSWORTH, SINKLER, BOYD, P.A.

By: 

Robert Y. Knowlton
Post Office Box 11889
Columbia, South Carolina 29211
803.779.3080

and

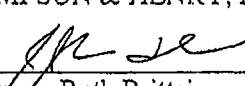
J. Christopher Riddle
Post Office Box 6617
Florence, South Carolina 29502
843.669.3815

Attorneys for Plaintiff

~~March~~
April 23, 2011

WE CONSENT:

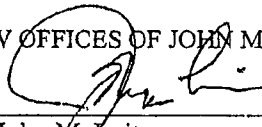
THOMPSON & HENRY, P.A.

By: 

Emma Ruth Brittain
J. Jackson Thomas
Post Office Box 1290
Myrtle Beach, South Carolina 29578
843.692.2628
*Attorneys for Defendants Catherine L.
Mason, Joseph E. Mason, Sr., Kathy St.
Blanchard, and Mason Holding
Company, Inc.*

~~March~~
April 23, 2011

LAW OFFICES OF JOHN M. LEITER, PA

By: 

John M. Leiter
1203 48th Avenue North, Suite 109
Myrtle Beach, South Carolina 29577
843.449.1451
jleiter@48th.com •
Attorneys for Defendant Irwin Levine

~~March~~
April 23, 2011

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-26-6169

Joseph E. Mason, Jr.,

Plaintiff,

vs.

Joseph E. Mason, Sr., Catherine L. Mason,
Kathy St. Blanchard, Mason Holding
Company, Inc., and Irwin Levine,

Defendant.

ORDER

This case came before me on April 22, 2011 for consideration of pending motions. Robert Y. Knowlton appeared as counsel for plaintiff, Joseph E. Mason, Jr.; Emma Ruth Brittain appeared as counsel for defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard, and Mason Holding Company, Inc. ("the Company"); and John M. Leiter and Lee Ann Rice appeared on behalf of defendant Irwin Levine.

Defendants Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and Mason Holding Company, Inc. (collectively "the Mason Defendants") filed a motion to bifurcate dated March 29, 2011. For the reasons set forth herein, the motion to bifurcate is denied.

Defendant Levine filed a motion to dismiss dated February 22, 2010, an amended motion to dismiss dated November 17, 2010, and a motion for summary judgment dated April 15, 2011. For the reasons set forth herein, defendant Levine's motions are denied.¹

¹ Plaintiff's motion to compel discovery responses from defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard, and Mason Holding Company, Inc., dated February 17, 2011 was resolved by the parties and does not require a ruling by this Court.

I. **Mason Defendants' Motion to Bifurcate.**

On March 29, 2011, the Mason Defendants filed a Motion to Bifurcate the trial of Plaintiff's fourth cause of action for relief pursuant to South Carolina Code Section 33-14-300, *et seq.*, from Plaintiff's six other causes of action. For the reasons that follow, the Mason Defendants' Motion to Bifurcate is denied, and all issues and causes of action will be tried together in one action.

Rule 42(b), SCRPC states: "The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim . . . or any separate issue" "Trial judges have discretion as to whether to bifurcate a trial," with explicit consideration given to "the 'separate issue' mandate of Rule 42(b)." *Durham v. Vinson*, 360 S.C. 639, 645 n.2, 602 S.E.2d 760, 763 n.2 (2004).

The Mason Defendants have requested that determination of the Company's value for purposes of relief under S.C. Code Ann. § 33-14-310(d)(4) be bifurcated and, if appropriate, be determined after the determination of whether Plaintiff is entitled to such relief. South Carolina courts regularly try statutory judicial dissolution claims alongside other causes of action. *See Jordan v. Holt*, 362 S.C. 201, 203-04, 608 S.E.2d 129, 130 (2005) (describing how the court held a single bench trial on causes of action for dissolution of an LLC, an accounting, breach of fiduciary duty, civil conspiracy, breach of written and oral contracts, and slander *per se*). The Court concludes that a single trial should be held in the instant action, thereby promoting judicial economy.

I find and conclude that it is in the interest of judicial economy for the Court to try all causes of action in a single proceeding. For these reasons, the Mason Defendants' motion to bifurcate should be denied.

II. Defendant Levine's Motions to Dismiss and for Summary Judgment.

A. Relevant Background.

For purposes of addressing Defendant Levine's motions, the facts and the inferences reasonably drawn from them recited herein are taken in the light most favorable to plaintiff.

Plaintiff filed the original Summons and Complaint in this action against the defendants other than Levine on August 5, 2008. Plaintiff filed an Amended Summons and Complaint on September 23, 2009 that added Levine as a defendant and added an additional cause of action. Plaintiff prepared a Summons to Defendant Levine, which was served on Levine along with the Amended Complaint via personal service on September 29, 2009. A copy of the Affidavit of Service was filed with the Horry County Clerk of Court on October 7, 2009. Levine answered the Amended Complaint on November 23, 2009, and filed a Motion to Dismiss pursuant to Rule 12(b)(6) in February 2010. Levine filed an Amended Motion to Dismiss on November 17, 2010 alleging for the first time that there were deficiencies in the Summons to Levine. Levine filed his motion for summary judgment on April 15, 2011.

Plaintiff alleges that he is no longer employed by the Company and has otherwise been harmed due to wrongful actions of the defendants.

B. Legal Standard.

The standards for a Summons under South Carolina law are contained in Rule 4, S.C. R. Civ. P. "A summons requiring an appearance in less than the statutory time is fatally and jurisdictionally defective." *State Bd. of Med. Examiners of S.C. v. Fenwick Hall, Inc.*, 300 S.C. 274, 387 S.E.2d 458 (1990).

Under South Carolina law, a "Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any

theory of the case.” *Cole Vision Corp. v. Hobbs*, 384 S.C. 283, 680 S.E.2d 923 (Ct. App. 2009). “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its rulings solely on allegations as set forth in the complaint.” *Id.* “The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Tatum v. Med. Univ. of S.C.*, 335 S.C. 499, 517 S.E.2d 706, 708 (Ct. App. 1999).

Summary judgment is warranted when there is no genuine issue of material fact and it appears that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. A court must view the facts and inferences reasonably drawn from them in the light most favorable to the non-moving party. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991).

C. The Summons is proper under South Carolina law, and jurisdiction over Levine has vested in this Court.

Under the South Carolina Rules of Civil Procedure, a Summons “shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, state the name and address of the plaintiff’s attorney . . . , and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.” Rule 4(b), S.C. R. Civ. P. The Summons to Levine fully complies with the Rule.

Levine was not a named defendant in the original Complaint but was added as a defendant in the Amended Complaint filed on September 23, 2009. Consequently, under the Rules of Civil Procedure, Levine had 30 days to answer or otherwise respond to the Amended Complaint. Rule 12(a), S.C. R. Civ. P. The other defendants, who were all defendants in the

original action, had 15 days to answer or otherwise respond to the Amended Complaint. Rule 15(a), S.C. R. Civ. P. A copy of the Summons to Levine was filed with the Horry County Clerk of Court on September 23, 2009, and plaintiff filed a copy of this Summons with the Court. This Summons specifically names Defendant Levine as the recipient and gives the response time as 30 days. Levine was served with a copy of the Summons with the stated 30 day response time, as noted by the process server. A copy of the Summons the process server served on Levine (with the process server's notes) was also filed with the Court.

A Summons with a stated response time of 15 days was also prepared for service on the other defendants. To the extent Defendant Levine also received a copy of this Summons, such receipt is ineffective due to Levine's receipt of a Summons directed specifically to him that gives a response time of 30 days. *See State Bd.*, 300 S.C. 274, 387 S.E.2d 458 (noting that the summons *issued to the defendant* did not give adequate response time and was thus defective). Here, the Summons issued to Defendant Levine complied in every respect with Rule 4, and jurisdiction over Levine has vested in this Court.

D. Plaintiff has properly alleged and has presented sufficient evidence to support a cause of action against Defendant Levine for Aiding and Abetting Breach of Fiduciary Duty.

South Carolina law recognizes a cause of action for aiding and abetting breach of fiduciary duty. The plaintiff must prove: "(1) a breach of a fiduciary duty owed to the plaintiff, (2) the defendant's knowing participation in the breach, and (3) damages." *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Id.*; *see also Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008).

Directors and officers of a corporation owe fiduciary duties to the corporation's shareholders. S.C. Code Ann. §§ 33-8-300 & -420; *see also Clearwater Trust v. Bunting*, 367 S.C. 340, 350, 626 S.E.2d 334, 339 (2006) ("The common law fiduciary duty, first recognized in 1913, owed to shareholders by corporate officers and directors has been codified by §§ 33-8-300 and -420."). The statute provides in pertinent part: "(a) A director shall discharge his duties as a director . . . (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 interests of the corporation and its shareholders." S.C. Code Ann. § 33-8-300(a).²

Here, Plaintiff has sufficiently alleged and presented disputed facts that Defendants Catherine L. Mason, Joseph E. Mason, Sr., and Kathy St. Blanchard, as corporate officers and directors, owed fiduciary duties to the corporation and its shareholders, including Plaintiff. (Am. Comp. ¶¶ 41, 42, 68, 69.) Plaintiff has further sufficiently alleged and presented disputed facts that these defendants breached their fiduciary duties. (*See, e.g.*, Am. Comp. ¶ 44.) Plaintiff has also alleged that Levine knowingly participated in such breaches of fiduciary duties. (Am. Comp. ¶ 71.) Finally, Plaintiff has alleged and sufficiently demonstrated disputed facts that he suffered damages as a result of such breaches of fiduciary duties and Levine's conduct. (Am. Comp. ¶¶ 46, 72.)

Levine also argues that any claim arising as a result of the facts alleged in the Amended Complaint is a claim owned by the Company and, for plaintiff to assert such a claim, Plaintiff must pursue the claim as a shareholder derivative claim pursuant to Rule 23(b)(1), SCRC. I

² The provision for officers is almost identical: "(a) 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 interests of the corporation and its shareholders." S.C. Code Ann. § 33-8-420(a).

disagree.

Plaintiff has alleged a valid claim for breach of fiduciary duty against the Mason Defendants because, in part, he has sufficiently pled and presented disputed facts as to damages to Plaintiff in his individual capacity. Plaintiff has also alleged and presented disputed facts as to harm in the context of a situation giving rise to judicial dissolution remedies. *See Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001) (“A shareholder may maintain an individual action only if his loss is separate and distinct from that of the corporation. . . . An individual action is also allowed if the alleged wrongdoers owe a fiduciary relationship to the stockholder and full relief to the stockholder cannot be had through a recovery by the corporation.”); *Davis v. Hamm*, 300 S.C. 284, 387 S.E.2d 676 (Ct. App. 1989) (Section 33-8-420(a) “imposed on officers of a corporation a duty of care to discharge their duties in good faith, with prudent care, and in the reasonable belief they are acting in the best interest of the corporation and its shareholders. After careful analysis of all authority relating to the 1981 Act and its successor Act, we hold there is no liability to shareholders unless the duty asserted to have been breached flows to the plaintiff . . . in actions [such as those] brought by minority stockholders of close corporations pursuant to . . . Sections 33-14-300 to 33-14-330.”). The defendants contend that any claim arising out of the conduct at issue in this case is owned by the Company. This issue will be resolved at trial.³

³ Levine attempts to claim that the duties owed by officers and directors of a corporation to the corporation and its shareholders are not fiduciary duties, but are rather some other form of duty. The South Carolina Supreme Court, however, has identified these duties as fiduciary duties. *Clearwater Trust v. Bunting*, 367 S.C. 340, 350, 626 S.E.2d 334, 339 (2006) (“The common law fiduciary duty, first recognized in 1913, owed to shareholders by corporate officers and directors has been codified by §§ 33-8-300 and -420.”).

Conclusion

For the reasons set forth herein, I find and conclude that it is in the interest of judicial economy for the Court to try all causes of action in a single proceeding. The Mason Defendants' motion to bifurcate, therefore, should be and is hereby denied.

I further find and conclude that Plaintiff has adequately pled and presented sufficient disputed facts supporting a claim for aiding and abetting a breach of fiduciary duty against Defendant Levine. Further, the discovery and documents submitted to the Court demonstrate the existence of material facts in dispute such that summary judgment is improper. Accordingly, defendant Levine's motions to dismiss and for summary judgment are hereby denied.

IT IS SO ORDERED.


Ralph P. Stroman,
Special Referee

September 26, 2011

Columbia: 1550373 v.1

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,)
Plaintiff,)

vs.)

FINAL ORDER

Catherine L. Mason, Joseph E.)
Mason, Sr., Kathy St. Blanchard,)
Mason Holding Company, Inc.,)
and Irwin Levine,)
Defendants.)

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CLERK OF COURT

This matter comes before me as Special Referee pursuant to Consent Order of Reference signed by the Honorable Larry B. Hyman on the 8th day of April, 2011. Trial was held over a five day period commencing Monday, November 14, 2011, at the Horry County Courthouse in Conway, South Carolina. Plaintiff is represented by Robert Y. Knowlton, Esquire, and Elizabeth H. Black, Esquire, of Haynsworth Sinkler Boyd, P.A. Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc., are represented by Emma Ruth Brittain, Esquire, and J. Jackson Thomas, Esquire, of Thompson & Henry, P.A. Defendant Irwin Levine is represented by John M. Leiter, Esquire and Lee Ann W. Rice, Esquire of the Law Offices of John M. Leiter, P.A.

This case involves the ownership and operation of Mason Holding Company, Inc., by members of the Joseph E. Mason, Sr. family. In his Amended Complaint dated September 23, 2009, the Plaintiff, Joseph E. Mason, Jr. ("Son"), asserts a number of causes of action against his mother, Catherine L. Mason ("Mother"), his father, Joseph E. Mason, Sr. ("Father"), his sister, Kathy St. Blanchard ("Sister"), and Mason Holding Company, Inc. ("Company"), a South

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Carolina corporation wholly owned by the family members. Son also asserts a claim against the Mason family's long time accountant, Irwin Levine ("Accountant"), for allegedly aiding and abetting the other Defendants in alleged breaches of fiduciary duties.

Company operates five (5) stores in Horry and Georgetown counties under the trade name "Mason Tire & Auto Service" ("Mason Tire"). The business of Mason Tire is the sale of automobile and truck tires and the automotive maintenance of both personally owned and commercial vehicles. All of the store locations except one are operated by separate corporations wholly owned by Company. The store location on South Carolina Highway 544 ("the Conway Store") is operated by BCJ Tires, Inc., which is owned fifty-two percent (52%) by Accountant and forty-two percent (42%) by Company.¹

The stock of Company is held thirty percent (30%) by Son, thirty percent (30%) by Sister, twenty percent (20%) by Father and twenty percent (20%) by Mother. The Son was employed as the principal manager of Company until July 30, 2008, when he left its employ. Son commenced this action with the filing of a Summons and Complaint on August 5, 2008. Son's original Complaint did not include a claim against Accountant. The Amended Complaint filed September 23, 2009, added Accountant as a Defendant and a cause of action against Accountant asserting as his sole cause of action against him that Accountant aided and abetted Mother, Father and Sister in alleged breaches of fiduciary duty against Son.

Son's Amended Complaint asserts the following seven causes of action:

1. A first cause of action against Company, Mother, Father and Sister alleging breach of express or implied contract with Son for permanent employment by Company.
2. A second cause of action against Sister, Father and Mother alleging breach of officer/director duties owing to Company and its shareholders (including Son) pursuant to S.C.

¹ The record reflects that Son consented to the acquisition of BCJ stock by Accountant.

Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

3. A third cause of action against Mother, Father and Sister alleging they engaged in a civil conspiracy to deprive Son of his employment by Company and to cause him harm.

4. A fourth cause of action against Company, Mother, Father and Sister asserting that they should be required, pursuant to S.C. Code Ann. §33-14-300 (Rev. 2006), to purchase Son's stock in Company due to alleged illegal, fraudulent, oppressive and unfairly prejudicial actions toward Son and misapplication and wasting of Company assets by Mother, Father, and Sister.

5. A fifth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of Company's general employment policy as promulgated in its Employee Handbook.²

6. A sixth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of public policy.

7. A seventh cause of action by Son against Accountant alleging that Accountant aided and abetted Mother, Father and Sister in violating their officer/director obligations to Company and its shareholders pursuant to S.C. Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

Father, Mother, Sister and Company timely answered Son's Amended Complaint and asserted counterclaims. These Defendants in their Counterclaims allege that Son breached his fiduciary duties to the Company in a number of respects and converted Company assets to his personal use and benefit. These Defendants also asserted several defenses to Son's claims including the defense unclean hands.

² Plaintiff's counsel conceded to the dismissal of this claim upon Defendants' motion for direction of verdict at the conclusion of Son's case.

In support of his claims, Son offered his own testimony, the testimony of Accountant, the testimony of Son's expert Dr. Perry Woodside, the testimony of Son's current Employer/Supervisor Steve Allison, portions of Father's deposition, and 83 exhibits. In opposition to the Son's claims, the Defendants offered the testimony of Father, Mother, Sister, Defendants' expert Sherry Smith, attorney Gene M. Connell, attorney Edward S. Bowers, Jr., Certified Public Accountant Laura S. DuRant, Certified Public Accountant Timothy Duncan, four Company employees (Frankie Fisher, Randy Barringer Mark Myers and John Nottedstad), Bob Kuehn (a former Company employee), Alise Taylor (a tire supplier sales representative) and all portions of Father's deposition not designated by Son. Defendants further offered into evidence 52 exhibits.³

I have carefully considered the testimony of the witnesses over this lengthy trial, the deposition testimony of Father, and the voluminous exhibits proffered by both parties. I have assessed the credibility of each witness testimony, and in that regard I was aided by having the opportunity to observe each witness' demeanor both on the witness stand and otherwise in the courtroom. Having considered all of the foregoing, I have determined the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In or around 1984, Father (who had considerable experience in the tire business in the Miami, Florida area where he lived) decided to go into the tire and auto service business in coastal South Carolina. Father had operated eight retail stores for Goodyear Tire & Rubber. In addition, he was a partner in a truck tire center in the Miami area. When Son and Sister learned of the proposed venture, both asked to be involved. Father required Sister and Son to pay \$10,000.00 each for a ten percent interest in the new entity. Ultimately, Father acquired a

³ Exhibits 21, 26, 27, 43 and 44 were numbered but not introduced.

location in Surfside Beach, South Carolina, and opened Mason Tire & Auto Service, Inc. (the "Surfside Store"). Initial shareholders were Father, Mother, Son, Sister, a Mr. and Mrs. Sanderson and the Sanderson's daughter. Subsequently Mother and Father acquired the Sandersons' interest in the Surfside Store so that the only shareholders were Mother, Father, Son and Sister. The Surfside Location was and is operated on leased land owned by Mother, Father and Mother's Sister, Mrs. Sanderson.⁴

2. Son graduated from the University of Alabama with a Business Administration degree in or about 1983. After graduation from college, Son took a job with Ryder Truck rentals. In 1984, Son moved from the Miami area to Surfside Beach area and became the store manager for the Surfside Store. The capital for the Surfside Store (with the exception of the original \$10,000.00 investment by Son and Sister) was provided by Mother and Father. Prior to moving to the Surfside area in 1989, Father monitored the Surfside Store operations via frequent telephone calls and site visits. Sister also moved to the Surfside area and was employed in the business in bookkeeping/accounting. Sister's husband Oswald St. Blanchard ("Ozzie") became an employee of Mason Tire sometime during 1984.

3. The Surfside Store was successful. In or around 1989, the family decided to expand the Mason Tire business by opening another location in North Myrtle Beach, South Carolina. A separate entity, J&O Tire and Auto Service, Inc., was formed for the North Myrtle Beach operation ("North Myrtle Beach Store"). It was operated on leased land that was owned by Son and Ozzie individually.⁵

4. Continued success led the Company to expand again in or about 1995 with the opening of a Mason Tire location in Pawley's Island, South Carolina (the "Pawley's Island

⁴ Mrs. Sanderson was one of the original shareholders.

⁵ The land is now owned by Son and Sister.

Store"). The Pawley's Island Store was operated by an entity formed and known as M&S Tire Company, Inc. The Pawley's Store is operated on leased land owned by a corporation owned by Father.

5. In 1988, the Company was formed and all of the stock of Mason Tire & Auto Service, Inc., J&O Tire & Auto Service, Inc. and M&S Tire Company, Inc. was transferred to Company.

6. In or about 1989, Father and Mother moved to the Surfside Beach area and began working in the business on a daily basis. Son remained in control of the general operation of the business, serving as its general manager. Father, Sister, and Ozzie were also employed by and active in the business. Mother was also involved, but to a lesser degree.

7. In or about 1999, Company opened an additional location in Myrtle Beach, South Carolina (the "Myrtle Beach Store"). The Myrtle Beach Store was operated by K&J Tire Company, Inc. on land leased from Goodyear Tire & Rubber Company. Company was now the owner of all of the stock in the four Mason Tire locations. All of Company's stock was owned by Mason family members, with Father and Mother owning 40% each and Son and Daughter owning 10% each.

8. Since its formation and through 2006, the Company generally grew and prospered as did the economy in general in coastal Horry and Georgetown counties. During this period, Son managed the Company with input from the other family members. Except for periodic family discord caused by Son, and periods of Son's unexpected and unexplained absences, Son was effective in growing the Company. Father initially held the title of President of the Company. The record is unclear as to precisely when Son was elected President, but the testimony and records indicate that by 2001 Son was operating as Company President.

9. Son's relationship with the other family members was troubled and the trouble bled over into their business relationship. From time to time Son would simply leave the business unattended for extended periods of time without notice. In April 2001, Son left without notice resulting in an emergency meeting of the shareholders to provide for the continued operation of the business. Son ultimately returned to the business. At a meeting on May 21, 2001, (Plaintiff's Exhibit 4) the family's personal problems and the effect on the Company was discussed. All of the family members except Son agreed that family counseling was appropriate. Ultimately, the family did undergo counseling but Son's periodic absences from the business without notice continued. In each instance, primarily as a result of the Father's intervention, the Son would ultimately return and resume his position as President and general manager.

10. At a stockholders' meeting in June of 2001 (Plaintiff's Exhibit 5) Father expressed his desire to be less involved in day to day operations of the business with an eye toward retirement. He expressed concern that while the business was doing well, there was a great deal of "negativity" within the family and that the family members should be able to work together. He stated that if they were unable to work together, he could and would replace any one of them.

11. Over the next two years, and in view of Father's desire for retirement, Father and Son and Accountant, assisted by Company's attorney Edward Kelaher, Esquire ("Attorney Kelaher"), devised a strategy for Mother and Father's exit from the business. Accountant is a public accountant from Miami, Florida. He was a long time accountant and tax preparer for the Company and all of the family members, including Son. He received a yearly fixed retainer and did not receive any additional compensation for how he prepared the tax returns or otherwise personally profit from the work he did for any of the parties. In addition, Accountant was a

friend and trusted advisor to all members of the family on accounting business matters. He prepared Son's personal tax returns through and ending the 2007 tax year.

12. On November 8, 2002, as a result of meetings with Father, Son, and Accountant, Attorney Kelaher forwarded to the shareholders documents which he had prepared in accordance with Father, Son and Accountant's instructions. (Plaintiff's Exhibit 15).

13. Attorney Kelaher termed these documents "unusual" and expressed some concern about some aspects of the documents. The specific documents enclosed with the Kelaher letter were not introduced, but the letter makes reference to three documents:

- a. Gift letter;
- b. Employment Agreement; and
- c. A Pawley's Island property lease

Executed documents fitting that description, dated as of the end of 2002, were introduced as Exhibits 16, 17, and 18. (Hereinafter, Exhibits 16, 17, and 18 are referred to collectively as the "Retirement Documents."). The Retirement Documents, when executed, would have accomplished Father and Mother's goal of exiting from the Company leaving the Company equally owned by Son and Daughter.

14. The Retirement Documents essentially called for the Company to give Father and Mother certain Company employee benefits for "consulting services," and for the Company to pay additional rent on the Pawleys Island Store to Catson, LLC.⁶

15. The gift letter (Plaintiff's Exhibit 17) calls for Mother and Father to give, over time, their shares in the Company to Son and Daughter in equal amounts, anticipating that ultimately, Mother and Father would have effected their exit from the Company and Son and

⁶ Catson, LLC is a limited liability company owned by Father and Mother which owned the land from which the Pawley's Island Store operated.

Daughter would be equal co-owners.

16. Commencing in 2003 benefits and rents were paid and received under the Retirement Documents. Mother and Father "gave" an additional 20% each in the Company's stock to Son and Daughter so that by the end of 2007 Son and Daughter owned 30% each in the Company and Father and Mother owned 20% each in the Company.

17. In 2003 and 2006, Son made significant fraudulent alterations to the Company's inventory. The adjustment to inventory in 2003 was approximately \$440,000.00 and in 2006 approximately \$300,000.00. These increases in inventory amounts filtered down to increases in the costs of goods sold expense. The effect of these fraudulent entries on the Company's income tax returns for 2003 and 2006 was a significant decrease in both the federal and State income tax liabilities. In order to offset the inventory reduction for 2003, Son prepared promissory notes for \$220,000.00 each made payable to himself and his Sister. (Plaintiff's Exhibits 19 and 20). The notes were signed by Son as President and Ozzie as Vice President of Mason Tire & Auto Service, Inc. and witnessed by Mother and Father. In 2006, Son caused a standard journal ticket (Plaintiff's Exhibit 3) to be issued reflecting notes payable to Son and Daughter totaling \$300,000.00 (the same amount as the 2006 journal adjustment). Son proffered promissory notes supporting the journal tickets to Sister for execution, but she refused.

18. All of the parties (including Son) testified that Father, Mother and Sister were unaware that the manufactured notes and inventory adjustments had the effect of understating taxable income, and that the 2003 and 2006 Company tax returns were therefore filed on a false and inaccurate basis. Son testified that he was likewise unaware that the Company returns (which he signed and filed as President of the Company) were false and inaccurate. I do not find Son's testimony in this regard as to his own lack of knowledge to be credible. At least through

the filing of the 2006 return, the Plaintiff was fully in charge of the financial affairs (indeed all affairs) of the Company. Accountant testified that the inventory adjustments and corroborative fictitious notes were part of a plan and scheme put in place by Son to limit purported Company income to levels deemed "acceptable" by Son. Accountant testified he presented Son with the "option" to either the pay the taxes accurately reflected by the Company's books and records or to limit the taxes paid by way of these accounting and reporting artifices. The Son opted to limit the taxes paid by manipulating the parts inventory accounts and reports. Accountant candidly testified he turned "a blind eye" to these practices. While Accountant's conduct in regard to the filing of the tax returns is professionally inappropriate, I find his testimony substantially more credible on this issue than that of Son.

19. In 2006, Son determined that the Company would be well served by opening an additional location between Myrtle Beach and Conway. The other family members were agreeable, so in the Fall of 2006 Company purchased property adjacent to S.C. Highway 544 between Myrtle Beach and Conway for the purpose of constructing a Mason Tire Conway location (the "Conway Store"). The Conway Store was leased for operation to an entity known as BCJ Tires, LLC, ("BCJ Tires"). BCJ Tires, formed by Son, had as its initial members, Son, Daughter and a friend of Son named Brian Stout. While the Company had no ownership interest in the Conway Store operation, it was operated by BCJ Tires under the name Mason Tire & Auto Service. On August 3, 2007, without the knowledge or consent of any member of the Mason family, Son transferred \$93,500.00 from the Company to BCJ Tires to fund its operation. (Defendant's exhibit 55). When Father discovered the circumstances of ownership and funding of BCJ Tires, he required Son and Daughter's interest in BCJ Tires to be transferred to the Company. The BCJ Tires location has been operated at a loss since its inception and the loss has

been sustained by the Company. The Company subsequently acquired the interest of Brian Stout and ultimately sold a 52% interest in BCJ Tires to the Accountant. BCJ Tires is currently owned 52% by Accountant and 48% by Company. It continues to operate at a loss. The timing of the acquisition and construction of the Conway Store facility of Company was unfortunate, as it occurred when the price of real estate was at its zenith. The Company continues to struggle not only with the operating loss for its Conway Store, but also with the mortgage debt for the land and building while its value has declined precipitously in the down market.

20. In December of 2004, Ozzie was horribly injured in a motorcycle accident during a motorcycle "Poker Run" in support of the Toys for Tots program. As a result of injuries sustained in the wreck, Ozzie was rendered a quadriplegic. He retained local attorney Gene M. Connell, Jr., to file a worker's compensation claim against the Company on his behalf. Son testified Father directed him to commit perjury and testify that Ozzie's participation in the event was within the scope of his employment so that Ozzie would receive workers compensation benefits. I do not find Son's testimony in this regard to be credible. The testimony of Father and Daughter was to the effect that Ozzie was indeed acting within the scope of his employment at the time of the injury and participated in the event as a marketing activity on behalf of the Company; testimony was also presented that Ozzie had participated on behalf of the business in the same event in years past. Son signed minutes at the stockholders' meeting in November, 2005 (Plaintiff's Exhibit 21) reflecting a discussion of Ozzie's participation in the event. Attorney Gene Connell, who represented Ozzie in the workers compensation claim, testified that during his representation of Ozzie it did appear Ozzie was acting within the scope of his employment at the time of the accident. Mr. Connell testified that the claim was vigorously contested, that his client prevailed at the initial level but the decision was reversed 2 to 1 at the

Commission level; the Commission's decision was appealed to the Circuit Court and a favorable settlement was reached before a decision was rendered by the Circuit Court. He further testified that he was unaware of any fraud in connection with the claim. Based on the testimony presented, I find no credible evidence to sustain Son's contention either that Ozzie's claim was fraudulent or that Son was asked to falsify his testimony thereabout.

21. In July, 2008, Son called Father into his office and told him that he was going to terminate the Company bookkeeper, Sandra Adams, for allegedly stealing because she had failed to deduct the correct premium for insurance from her paycheck. Father recalls that when Son informed him that he was going to terminate Ms. Adams, that Father posed the question of whether they should allow Sister time to find someone else to fill the position. Son then proceeded to immediately terminate Ms. Adams in Father's presence. When Father returned to the bookkeeping department, he decided to look into the matter further and realized the considerable amount of work that Ms. Adams performed for the Company. When Father realized the significance of the volume of work performed by Ms. Adams in regard to the bookkeeping department, he felt it would be more appropriate to place Ms. Adams on probation and see if they could get the insurance premium issue resolved. Father determined that Ms. Adams performed more work for the Company than he realized and he felt that firing her was an injustice. When Father informed Son of his decision to reinstate Ms. Adams, Son responded: "If you do, I will bury you." I find Father's testimony at trial to be credible. The evidence presented establishes that Father's actions in regard to the reinstatement of Ms. Adams were consistent with the Company's best interests.

22. In August of 2007, Son again left the business without notice and remained absent for virtually the entire month. On or about August 18, 2007, Son offered to purchase all but 5%

of Daughter's 25% interest in the Company for approximately \$625,000.00 or to sell his same interest in the Company for \$987,500.00 (Plaintiff's Exhibit 28). No response was made to this offer.

23. On August 31, 2007, Attorney Wayne Byrd wrote to Mother, Father, and Sister on behalf of Son advising he had been retained by Son to represent his interests "...as an officer, director and minority shareholder of Mason Holding Company, Inc, and its wholly owned subsidiaries." Based upon the information provided to him by Son, Attorney Byrd alleged that Mother, Father and Sister had "...committed illegal fraudulent and oppressive acts and have unduly prejudiced the corporations and [Son's interest therein]." He demanded the alleged unacceptable conduct and practices be stopped and threatened litigation on behalf of Son. (Plaintiff's Exhibit 29).

24. On September 27, 2007, Attorney Byrd, again on behalf of Son, wrote Accountant outlining various alleged financial and tax accounting irregularities. "...which you [Accountant] have devised and fashioned" (Plaintiff's Exhibit 31). The evidence before me is convincing that the activities alleged in Attorney Byrd's September 27, 2007, letter are substantionally accurate; however, the letter fails to recognize that the activities complained of were taken with the full knowledge and consent of Son and at his direction. While Accountant may have indeed had some participation in the reporting of various highly questionable tax practices, it is beyond dispute in my opinion that Son was aware of and actively engaged in and furthered the very practices about which his attorneys' September 17, 2007 letter complains and which form the basis of some of the claims in this action. Shortly after the Byrd letter, the Accountant advised Sister via email that certain of the tax accounting and practices complained of in the Byrd letter should be terminated. (Plaintiff's Exhibit 33). Each of the shareholders was asked by

Accountant to agree to repay the corporation for personal expenses paid by Company. (Plaintiff's Exhibit 38). All stockholders signed the agreement except Son. Attorney Byrd refunded a Company check given him for attorneys' fees of Son, stating he represented Son's interest and not the Company. Son immediately transferred corporate funds from the corporation checking account to his own personal account for reimbursement of Byrd's attorney's fees in the amount of \$17,301.66.

25. On October 24, 2007, a meeting of all shareholders of the Mason family companies was held at Cliff Tall's law office pursuant to notice. The purpose of the meeting as stated in the notice was as follows:

1. Selection of registered agent for Mason Tire and Auto, Inc, to be listed with the South Carolina Secretary of State.
2. Review and ratification of corporate records which have been kept regarding past business.
3. Selection of new accounting firm to assist the business, generally, and to supervise correction of past tax reporting.
4. Election of Officers and Directors

(Plaintiff's Exhibit 40)

26. Prior to the October 24 meeting, Son had returned from his August 2007 hiatus and resumed his role as President and general manager of the Company. At the meeting it was determined that local certified public accountant Timothy Duncan ("Duncan") would be retained by the Company to supervise the correction of the past tax reporting. Father was elected President and Son was elected Vice President. The only change in Son's duties was that he was relieved of cash handling procedures; otherwise, he continued to be in charge of the operation of the Company. He retained the same salary and perquisites including car, cell phone, credit card and insurance. Subsequent to the corporate meeting, Duncan undertook to assist Accountant in

preparation of amended State and Federal tax returns for filing to correct the prior defects in filing. Amended returns were prepared for tax years for 2003 through 2006, and revisions requested by Duncan were made to the amended proposed returns. Duncan determined he was unwilling to sign the amended returns as accountant for the Company and that he preferred they be signed by the Accountant since the Accountant had filed the returns which were being amended. On November 29, 2007, a shareholder meeting was scheduled for December 7, 2007 for the purpose, *inter alia*, of mailing the amended returns. (Plaintiff's Exhibit 48).

By letter dated November 22, 2007, Father informed CPA Duncan that the Company would be using Accountant's firm for the preparation of its 2007 corporate and individual income tax returns. Prior to that date, Son had visited Duncan and requested Duncan's assistance in making inventory adjustments similar to those which had been made in the Company's 2003 and 2006 financial statements which had resulted in the incorrect returns being filed. Duncan expressed amazement that Son was attempting to continue that practice, and determined that he did not want to be involved in the preparation of filing Company returns in any event.

27. During the period when Son was acting as President and general manager of the Company, he engaged in the repeated practice of fabricating invoices for commercial tire "casings"⁷ from fictitious companies. Invoices were created that would indicate the fictitious company had sold (and that the Company had received) casings. Son would then remove cash from the Company's cash register in an amount equal to the invoice price of the casings. The Company's records would then reflect non-existent tire casing inventory and the books would be in balance because of Son's removal of cash in an amount equivalent to the fictitious casing price. Employees of the Company testified that they observed Son remove money from the cash

⁷ A casing is a used commercial tire which has the capability of being recapped for sale.

registered drawer and place it in his pocket, and that the casing invoices in question contained names of nonexistent companies. Son admitted engaging in this practice, but stated he was told by Accountant that it was acceptable so long as he split the cash equally with Sister (which Accountant denied). The Son testified he did in fact split this cash with Sister. I do not find his testimony in that regard to be credible. The other Mason family members were unaware of Son's tire casing scheme until the Fall of 2007.

28. Upon Son's return to the family business after the August hiatus, he continued to experience relationship problems with Father, Mother and Sister, prompting Father to give him a written reprimand on or about November 29, 2007 (Plaintiff's Exhibit 49). By that time, Father had been made aware of the tire casing scheme and the unauthorized distribution of \$93,500.00 of Company money to BCJ Tires. He was also aware of the tax return improprieties as a result of Attorney Byrd's letters. In a separate letter dated November 29, 2007, Father advised Son as follows:

As Vice-President your job duties will remain the same as they have for the past twenty five years. The only exception will be check signing and transferring of funds, you are no longer responsible for those duties. Any journal tickets created by you must have the Presidents signature on them.

You will perform your job duties with accountability and quality job performance in a professional matter to all officers and employees of Mason Tire. This is a quality I expect from all officers of Mason Tire, nothing less will be tolerated.

Again, if you feel you cannot conduct yourself in such a matter as stated before in the letter you received from your mother and myself you will go on a permanent leave of absence until you can prove otherwise.

(Plaintiff's Exhibit 47)

29. In December of 2007, shareholders attended a meeting at the Surfside Store. The meeting was held for the express purpose of signing and mailing the amended returns. All shareholders and Accountant were in attendance. At the meeting, the proposed amended returns

for 2003, 2004, 2005, and 2006 were presented and discussed. (Plaintiff's Exhibits 65-68). After considerable discussion (principally centered around the considerable cost to the Company of filing the amended returns and payment of the taxes required with such filing) Son, with the consent of the other shareholders, determined that the amended returns would not be filed but that the Company would follow the Accountant's suggestion that the prior underpayment of taxes by the Company be handled "another way". The other way devised by Accountant involved the filing of returns artificially overstating taxable income for future years, essentially by reversing the fictitious inventory adjustments made in previous years. Company did, in fact, file State and federal tax returns for subsequent years which overstated income for those years and the Company did pay the tax on the overstated income for those years.

30. Son continued to act as general manager for the Company and as Vice President until July 30, 2008, when he sent Father a letter (authored by Son's attorney) alleging he (Son) had been constructively discharged and providing two weeks notice of his departure from the Company. (Plaintiff's Exhibit 55). Six days later, Son filed his original Summons and Complaint in this action.

31. During the period of time between October of 2007 and Son's termination of employment on July 30, 2008, Son continued to act as general manager of the Company's business and as its Vice President. Other than the financial restrictions imposed on Son as outlined in Father's November 29, 2007, letter (Plaintiff's Exhibit 47), Son's management authority and management practices continued unabated. Numerous Company employees testified they were unaware of any changes in Son's management authority prior to his departure and, further, that Son continued to principally supervise and direct all aspects of the Company's business. Son retained the bulk of the Company's records in his private office under lock and

key until his departure. Son reluctantly gave Father an office key after Father's third request, but directed Father that Sister was not to be given admittance.

32. Following Son's departure, Father and Sister assumed all of Son's management responsibilities for the Company and continued to manage and direct the Company through the date of trial. Since the date of Son's departure and through the date of trial, the Company has been operated largely in the normal course and scope of business. No shareholders or directors meetings have been held pending the litigation. Just prior to trial, Son tendered a written resignation as officer and/or director of Company and any of its subsidiary companies.

33. During the course of litigation, the shareholders, including Son, determined that Laura DuRant, certified public accountant, should be retained by the Company to review the actions taken by the Company to determine if a satisfactory resolution of the Company's liability for the 2003 and 2006 tax returns had been made. Ms. DuRant determined that, in fact, the Company's tax liability for the returns filed in 2003 and 2006 have not been adequately resolved and that Company has a potential tax liability, including potential penalties (including fraud penalties) approaching three-quarters of a million dollars. As a result of Ms. DuRant's opinion as to the continued tax jeopardy of the Company, Company has engaged tax attorney Edward S. Bowers, Jr., to represent the Company. Mr. Bowers testified that he, on behalf of the Company has made voluntary disclosure to the state and federal tax authorities regarding the Company's past tax practices. The Company's total loss exposure as a result of its past tax practices is, as yet, undetermined. Attorney Bowers has suggested that the Company continue to engage Accountant, at least on a limited and temporary basis, pending a resolution of the Company's tax liability with the taxing authorities.

34. After Son's departure from employment and filing of the lawsuit, no payments

were made pursuant to the retirement documents and no stock transferred to either Son or Sister. Father and Sister have undertaken all of Son's previous job responsibilities and have increased their compensation commensurate with their increased responsibility.

35. It is clear from the record before me that the principal source of discord among the family members was the Son. The Son's inability to work harmoniously with the other family members prompted his periodic episodes of abandoning the Company's business without notice, only to be persuaded to return, principally by Father. Son repeatedly belittled and minimized the talents and efforts of other family members of the Company's success. The sales representative for one of Company's suppliers, Alise Taylor, testified as to her discomfort when in her presence, Son attempted to embarrass and humiliate Father regarding his computer skills or lack thereof. Son consistently complained that Sister was overpaid in light of her level of experience and lack of a college education. For his efforts, Son was quite generously rewarded with employee benefits and perquisites. Other family members received benefits and perquisites in a much lesser degree. I find and hold that the compensation and benefits paid to Father, Sister and Mother were not excessive either before or after Son's departure from the business. By comparison, Son was quite handsomely rewarded for his efforts even without taking into consideration any of the non-taxed paid cash he kept by virtue of the casing scheme.

36. On the record before me, I find no basis for the Son's claims that his employment by the Company was wrongfully terminated or that he was constructively discharged. While the record establishes a number of bases for which Son's employment could have justifiably been terminated (i.e., unexplained absences from the job without notice, utilization of Company funds to fund BCJ Tires without consent, and utilization of Company funds to fund personal expenses such as attorneys fees, to name a few), the simple fact is that Son was not terminated or

wrongfully discharged. He quit. Prior to his leaving, Son's compensation was not reduced or diminished in any respect. The limitations placed on Son's access to Company money prior to his quitting were amply justified given his course of conduct in misusing those funds. Any damage which the Son may have sustained by reason of his leaving the employment of the Company is due to and caused by Son's voluntary decision to terminate his employment. Accordingly, I find there is no basis for Son's claim that Company or any of the other Defendants did anything to constructively terminate his employment.

37. I find nothing in the record to support Son's contention that Father, Mother or Sister have conspired for the purpose of injuring Son. There is simply no evidence in the record to establish any conspiracy or design to deprive Plaintiff of his employment with the Company or of the fair value of his stock in the Company, and any rights (including management) incident thereto. If the value of Son's stock has indeed been impaired, Son need not look further than his own actions in filing false and inaccurate tax returns, diverting Company funds through the casing scheme, payment of personal expenses (including attorneys fees) from Company funds and working on an expansion of the Company business to include (for the first time) Company ownership of the land and building from which the Conway Store is operated, and diverting Company funds for operation of a non-company owned entity (BCJ Tires). Additionally Son has not established any special damages arising out of the alleged conspiracy which is required to sustain a claim for civil conspiracy.

38. Son also contends that the Father, Sister and Mother breached the duties owed to a Company and its shareholders by officers and directors pursuant to the South Carolina Business Corporation Act, S.C. Code Ann. § 33-8-300 and § 33-8-420 (Rev. 2006). Son asserts that because of numerous breaches of their statutory duties, the Company, Father, Mother and

Sister should be required to purchase Son's shares at fair market value. The evidence before me does not establish a breach of duty by Father, Mother or Sister. Specifically, Son has failed to establish his allegations that Mother, Father or Sister failed or refused to take appropriate steps in deciding to terminate or not terminate employees; that they failed to properly manage, oversee, safeguard or protect the corporation; that they exposed the corporation to potential liability with regard to a worker's compensation claim; that they wasted corporate assets; that they utilized corporate assets for personal gain; that they failed to properly account; that they deprived Son of his ability to protect his investment or that they filed or authorized the filing of false tax returns on behalf of the Company. I do find that Son filed, on behalf of Company, false tax returns in 2003 and 2006 which he knew substantially understated taxable income. The uncontradicted evidence (including the testimony of Son) is that the Father, Mother and Sister had no knowledge of the falsity of the tax returns prior to receipt of the September 17, 2007, Byrd letter. Son, acting with the knowledge and assistance of Accountant, filed those returns knowing them to be inaccurate. When placed on notice of the tax returns' inaccuracy by the Byrd letter, Mother, Sister, Father and Son all relied on Accountant to take appropriate steps to correct the problem. While the reliance on Accountant ultimately proved to be misplaced, Father, Mother and Sister are no more to blame for their misplaced reliance than is Son. As reason to doubt the Accountant's remedy mounted during the course of litigation, all parties, including agreement by Son, determined to pursue professional accounting advice in the form of an opinion from Laura DuRant. Once Ms. DuRant's opinion was obtained, Father, Mother and Sister made the appropriate decision to retain tax counsel and voluntarily report the tax deficiencies to the taxing authorities.

39. I find nothing in the record to support Son's contention that Father, Mother and

Sister have in any way utilized their position as shareholders and directors of the Company to favor their interest over Son's interest. Son is not being paid by the Company only because he has voluntarily decided not to work. Father and Sister are being paid by the Company because they are working, and I find their compensation to be reasonable. Company has never paid dividends, but has instead utilized its profits for expansion during good economic times and costs and expenses in bad and more challenging economic conditions (such as the commencement of this country's recession in the fall of 2007). Father, Mother and Sister have continued to elect Son to a position as Officer and Director of the companies even with knowledge of Son's actions to the Company's admitted detriment. Simply put, none of the elements of officer or director abuse or of minority shareholder abuse are established on the record before me.

CONCLUSIONS OF LAW

Based on the record before me and the findings of fact hereinbefore set out, I make the following findings and conclusions of law:

1. Son's first cause of action for breach of alleged contract for employment and fifth cause of action for wrongful termination of employment-constructive discharge and sixth cause of action for wrongful termination-violation of public policy must fail because the uncontroverted evidence establishes that the Son voluntarily left employment with the Company and that his leaving was of his own volition and was not cause by constructive discharge or in violation of public policy.

2. Son's third cause of action alleging civil conspiracy to deprive Son of his employment with the Company and to deprive him of the fair value of his stock in the Company for the opportunity to manage the business affairs of the Company must likewise fail for a complete lack of proof, both as to liability and damages.. Son's decision to quit his employment

and his election not to participate as a shareholder, officer or director of the Company or any of its subsidiary corporations were entirely voluntary decisions on his part. Son has not established anything close to special damages that would support a civil conspiracy claim.

3. Son has failed to establish by the greater weight or the preponderance of the evidence that the Defendants Company, Father, Mother or Sister (as alleged in Son's second cause of action) have breached any duty owed to Son by virtue of their status as officers, directors, or (collectively) majority shareholders. The standards of conduct for officers and directors of companies in South Carolina are clearly established by the South Carolina Business Corporations Act, S. C. Code Ann. § 33-8-300 (as to directors) and § 33-8-420 (Rev. 2006) (as to officers). The cited statutes essentially require that a director or officer discharge his duties: (i) in good faith; (ii) with the care an ordinarily prudent person in like position would exercise under similar circumstances; and (iii) in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. I find nothing in the record before me to indicate that Father, Mother or Sister have deviated from the appropriate standard of conduct. The touchstones of good faith and ordinary care do not require perfection. The Court should not interpose its judgment as to the appropriate course of action for the judgment, exercised in good faith and with reasonable care, for that judgment of those rightfully in control of the Company.

4. I find that Father's actions in regard to the reinstatement of Ms. Adams were consistent with Company's best interest and the decision was a valid business judgment within his discretion.

5. Son has failed to establish that Father, Mother and/or Sister breached any fiduciary duty owed to Son.

6. In South Carolina, there is a "general rule that individuals may not sue corporate

directors [under S.C. Code Ann. § 33-8-300 (2006)] or officers [under S.C. Code Ann. § 33-8-420 (2006)] for losses suffered by the corporation.” *Brown v. Stewart*, 348 S.C. 33, 50, 557 S.E.2d 676, 686 (Ct. App. 2001). Instead, the individual must sue the corporation. Contrary to the holding in *Brown v. Stewart*, Son has sued the Father, Mother and Sister under these two statutes.

7. Rather than bringing an action against corporate directors and officers directly, “a Shareholder's suit [should be brought as a] derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs directly, or if their interests were submerged in the corporation whose assets were thus dissipated.” *Id.* at 49, 557 S.E.2d at 684-685.

8. The inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not the Son specifically. Therefore, Son’s suit was improper in that it was not filed as a derivative action.

9. The factors to be considered in whether a majority shareholder’s conduct is oppressive or unfairly prejudicial are enumerated in *Kiriakides v. Atlas Food Systems & Services, Inc.*, 343 S.C. 587, 541 S.E.2d 257 (S.Ct. 2001). The Court in *Kiriakides* notes that the terms “oppressive” and “unfairly prejudicial” are elastic terms meaning they vary with the circumstances permitted in a particular case. I have examined closely the conduct of Mother, Father and Sister in the case before me in determining whether their conduct could be characterized either as “oppressive” or “unfairly prejudicial” to Son. I find nothing in the record before me to indicate any such intent, motivation or result on the part of the majority shareholders; indeed, their treatment of Son could fairly be characterized as benevolent.

10. Having found no evidence to sustain Son's claims for breach of the obligations owing to him by the officers, directors or majority shareholders, Son's claim for relief pursuant to S.C. Code Ann. § 33-14-300 (Rev. 2006) (purchase of his shares) must likewise fail. Son's dissatisfaction with his lack of employment by Company, as well as with diminution of the value of his shares due to significant tax liability and the unfortunate business decision to expand the Company's operation to include ownership of the Conway Store and 48% ownership of its operation are matters that were principally due to and occasioned by the conduct and decisions of Son.

11. During trial, Son asserted the position that while he was the record owner of a 30% interest in Company, he was entitled to an award of an additional 20% interest in the Company (a total ownership of 50%) under the terms of the Retirement Documents. Aside from the fact that such a claim is completely absent from Plaintiff's Amended Complaint, it is clear that the provisions of the Retirement Documents were not complied with, i.e., Father was not able to retire in light of Son's conduct, and additional rent payments to Father for the Pawley's Island Store were ceased. Moreover, under no circumstance could this Court engage in the enforcement of a series of agreements which clearly, on their face, were illegal and unenforceable.

12. I find and conclude that Son is the owner of a 30% interest in the common stock of the Company.

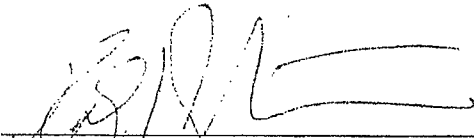
13. I further note that the relief requested by Son under S.C. Code Ann. § 33-14-300 (Rev. 2006) is equitable in nature. Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443, 449 (Ct. App. 2009) ("a shareholder derivative action, as well as an action for stockholder oppression, is one in equity"). It is well established that "he who comes into equity must come with clean hands." Id.

I find that Son's conduct in the matters asserted in this action is such as to clearly prevent him from relying on an action for stockholder oppression or breach of fiduciary duty in this context.

14. I find that the Defendants have established by the preponderance of the evidence that the Company is entitled to, and it is hereby awarded, judgment against Son for the cash converted by Son through his casing scheme amounting to \$11,716.32. The Court further finds that Company is entitled to, and is hereby awarded, judgment against Son for his conversion of Company funds to pay his personal attorney's fees in the amount of \$17,301.66.

15. As to Defendants' claim for damages relating to the filing of false tax returns, I further find that based on the record before me, it cannot be determined at this time with reasonable certainty the amount of damages suffered by Company as a result of the false and inaccurate returns filed by Son. I find that the filing of false returns through December, 2007 (when the decision not to file an amended return was made) caused damage to the Company but the damages claim itself is not ripe for adjudication. This Court find that because the amount is not determinable at this point, and therefore, this claim is not ripe for adjudication, the Company is not foreclosed from bringing a future action for damages based on Plaintiff's filing of false tax returns once they become determinable.

AND IS SO ORDERED.



Honorable Ralph P. Stroman
Special Referee

January 19, 2012

STATE OF SOUTH CAROLINA
HORRY COUNTY

Joseph E. Mason, Jr.

Plaintiff,

vs.

Catherine L. Mason, Joseph E. Mason,
Sr., Kathy St. Blanchard, Mason Holding
Company, Inc., and Irwin Levine,

Defendants.

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 08-CP-26-6169

FINAL ORDER

[Ending Action as to Defendant
Irwin Levine]

12 JAN 20 4:11:54
CLERK OF COURT
HORRY COUNTY

THIS MATTER came before me for trial November 14, 2011 through November 18, 2011. Appearing for the Plaintiff Joseph E. Mason, Jr. was Robert Y. Knowlton, Esq. and Elizabeth H. Black, Esq., of the Richland County Bar. Appearing for the Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard, and Mason Holding Company, Inc. was J. Jackson Thomas, Esq. and Emma Ruth Brittain, Esq., of the Horry County Bar. Appearing for the Defendant Irwin Levine was John M. Leiter, Esq. and Lee Ann W. Rice, Esq., also of the Horry County Bar. Having considered the testimony of the witnesses, having reviewed the pleadings and exhibits and having considered the arguments of counsel, this Court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This action was commenced on August 5, 2008. The Complaint was amended September 9, 2009 to allege a single cause of action against Defendant Irwin

RS
#1

Levine. This Court has jurisdiction over the subject matter and parties to this action.

2. In the Amended Complaint, the Plaintiff, Joseph E. Mason, Jr. ("Plaintiff") seeks damages from Defendant Irwin Levine ("Defendant Levine") for allegedly aiding and abetting other Defendants' breaches of fiduciary duties. Those other Defendants are Joseph E. Mason, Sr., Catherine L. Mason, and Kathy St. Blanchard, who are Plaintiff's father, mother, and sister, respectively ("Family Defendants").

3. Both the Family Defendants and Plaintiff worked for and held shares in Defendant Mason Holding Company, Inc., ("Defendant Company") which is the parent company to five subsidiary companies. Each of those five subsidiaries operates a tire and automotive store location on the Grand Strand, all under the name Mason Tire.

4. The breaches of fiduciary duty that Plaintiff asserts at the hands of the Family Defendants that relate to the Defendant Levine include (1) the filing of incomplete or inadequate tax returns on behalf of the Defendant Company and its subsidiaries; and (2) the non-filing of amended tax returns on behalf of the Defendant Company and its subsidiaries.

5. Plaintiff was the President of the Defendant Company, and oversaw the day to day operations of the Company until he was voted into the position of Vice President.

6. Defendant Levine is a public accountant who was the accountant for the Plaintiff and all Defendants, including the Defendant Company and its subsidiaries. Defendant Levine was Plaintiff's accountant until sometime after filing Plaintiff's 2007 tax returns in the spring of 2008. Defendant Levine currently serves as the accountant for all Defendants, including the Defendant Company and its subsidiaries.

7. Defendant Levine has prepared tax returns on behalf of the Defendant Company for more than twenty (20) years.

8. Plaintiff oversaw the finances of the Defendant Company while he was President of the Defendant Company, up until October 24, 2007.

9. Plaintiff would work with Defendant Levine in preparing tax returns for the Defendant Company, and its subsidiaries.

10. The corporate tax returns filed in 2003 contained inaccurate information. The returns reflected loans from shareholders rather than income to the Defendant Company. The Family Defendants have begun the necessary steps to rectify these inaccuracies with the Internal Revenue Service ("IRS") and State of South Carolina.

11. Plaintiff, who was President of the Defendant Company at the time of the 2003 tax returns' filing, was aware of the inaccuracies contained in the 2003 corporate tax returns. The Plaintiff had overstated the cost of sales. Specifically, Defendant Levine had presented the Plaintiff with the option of either (i) filing accurate tax returns which would have corrected the cost of sales or (ii) by recording the discrepancy (\$440,000.00) as a loan from shareholders. The Plaintiff chose to book the discrepancy as a loan and did so in the year ending 2003.

12. The corporate tax returns filed in 2006 also contained inaccurate information. The Family Defendants have begun the necessary steps to rectify these inaccuracies with the IRS and the State.

13. Plaintiff, who was still the President of the Defendant Company at the time of the 2006 returns' filing, was aware of the inaccuracies contained in the 2006 corporate tax returns. Unknown to Defendant Levine, Plaintiff again made an entry in the books of

the Company that shareholder loans to the Company had been made and the returns were prepared to reflect these loans. Plaintiff also took money from the Defendant Company in various ways at various times during his Presidency and Vice Presidency.

14. In October 2007, Plaintiff, Defendant Levine and the Family Defendants undertook the initial steps to rectify the inaccuracies in the 2003 and 2006 returns by preparing and discussing the filing of amended returns. At a meeting of the Plaintiff, the Family Defendants and Defendant Levine, when Mr. Levine presented the amended returns for signature, the Plaintiff announced that the amended returns would not be filed and the Family Defendants acquiesced.

15. After the decision was made not to file the amended returns, Defendant Levine discussed the possibility of another method of correcting the previous inaccuracies in the 2003 and 2006 tax returns by overstating income in subsequent corporate tax returns. Defendant Levine believed that this overstatement was a practical fix to the previous returns' inaccuracies. The Plaintiff and Family Defendants agreed to this method of correcting the prior returns.

16. Defendant Levine did not receive any additional compensation for how he prepared the tax returns and did not personally profit from any work he did for any of the parties other than his yearly fixed retainer.

17. Plaintiff left the corporation July 31, 2008 and this lawsuit began shortly thereafter.

CONCLUSIONS OF LAW

18. To prove his claim against Defendant Levine for aiding and abetting of a breach of a fiduciary duty, the Plaintiff must establish by a preponderance that the Family

Defendants breached a duty owed to Plaintiff; that Defendant Levine knowingly participated in that breach; and, that Plaintiff is entitled to damages as a result of Defendant Levine's participation. See *Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (2008).

19. Plaintiff has not established that the Family Defendants breached any fiduciary duty owed to Plaintiff. Therefore, Defendant Levine cannot not be found to have knowingly aided and abetted the Family Defendants in a breach of a fiduciary duty owed by them to the Plaintiff.

20. Additional reasons exist for denying the Plaintiff's claim against Defendant Levine aside from the fact that the Plaintiff has failed to make prove the *prima facie* elements of aiding and abetting in the breach of a fiduciary duty. In South Carolina, there is a "general rule that individuals may not sue corporate directors [under S.C. Code Ann. § 33-8-300 (2006)] or officers [under S.C. Code Ann. § 33-8-420 (2006)] for losses suffered by the corporation." *Brown v. Stewart*, 348 S.C. 33, 50, 557 S.E.2d 676, 686 (Ct. App. 2001). Instead, the individual must sue the corporation. Contrary to the holding in *Brown v. Stewart*, Plaintiff has sued the Family Defendants under these two statutes.

21. Rather than bringing an action against corporate directors and officers directly, "a Shareholder's suit [should be brought as a] derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs directly, or if their interests were submerged in the corporation whose assets were thus dissipated." *Id.* at 49, 557

S.E.2d at 684-685.

22. The inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not the Plaintiff specifically. Therefore, Plaintiff's suit was improper in that it was not filed as a derivative action. As a result, Plaintiff does not have standing to pursue the breach of fiduciary claims in the manner he did. If he did not have standing to sue the Family Defendants for breaches of fiduciary duty, he certainly did not have standing to sue Defendant Levine for allegedly aiding and abetting the Family Defendants.

23. Furthermore, "a shareholder's derivative action, as well as an action for stockholder oppression, is one in equity." *Straight v. Goss*, 383 S.C. 180, 192, 678 S.E.2d 443, 449 (Ct.App. 2009). Plaintiff argues his action for breach of fiduciary duty under the South Carolina Business Corporation Act of 1988 is an action for stockholder oppression. However, "he who comes into equity must come with clean hands." *Id.* Plaintiff's unclean hands prevent him from relying on an action for stockholder oppression, or breach of a fiduciary duty in this context.

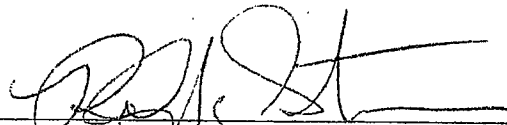
24. "Equity requires that a shareholder derivative action cannot be maintained if the nominal plaintiff has unclean hands in connection with the transactions which are the bases for the litigation or has participated or acquiesced in, or benefitted from the conduct of which he now complains." *Id.* at 208, 678 S.E.2d at 458. Plaintiff benefitted as much as or more than the Family Defendants as a result of the inaccurate tax returns filed with the IRS or State of South Carolina. Plaintiff's own inequitable conduct came directly to bear on the transactions of which Plaintiff now complains. *Id.* Therefore, his equitable claims under the South Carolina Business Corporation Act of 1988 are improper due to Plaintiff's

own involvement in the filing of inaccurate returns.

25. Plaintiff has also failed to establish that he is owed distinct damages as a result of any conduct on behalf of Defendant Levine.

26. Plaintiff has failed to establish that Defendant Levine aided and abetted a breach of a fiduciary duty owed to Plaintiff, and therefore Plaintiff's cause of action against Defendant Levine for aiding and abetting the Family Defendants in their alleged breaches of fiduciary duties is DENIED and the same is herewith DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.



Ralph P. Stroman, Special Referee,
Fifteenth Judicial Circuit

Conway, South Carolina

Dated: Jan 19, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2008-CP-26-6169

Joseph E. Mason, Jr.,

Plaintiff,

vs.

Joseph E. Mason, Sr., Catherine L. Mason,
Kathy St. Blanchard, Mason Holding
Company, Inc., and Irwin Levine,

Defendants.

**PLAINTIFF'S MOTION TO ALTER
OR AMEND PURSUANT TO
RULE 59(e), SCRPC**

12 JAN 30 PM 1:00
CLERK OF COURT

Plaintiff hereby respectfully requests that the Court alter or amend its Final Order filed on January 20, 2012, pursuant to Rule 59(e), SCRPC. Plaintiff specifically moves the Court to alter or amend the Order to delete or revise Finding of Fact number 18 on pages 9-10 and Conclusion of Law number 15 on page 26 so as either to dismiss any counterclaim against Plaintiff with regard to tax obligations of Mason Holding Company, Inc. or to make clear that no finding or conclusion set forth in the Order will be binding with regard to any future claim for such taxes against Plaintiff. The grounds of this motion are that Defendants did not previously request during trial or in any pre-trial filings the relief set forth in the Order with regard to these taxes, Defendants failed to introduce evidence that supports such a claim, the Order fails to consider or rule on any applicable defenses of Plaintiff, and it would be inappropriate to make partial findings or conclusions that would be binding with regard to any future litigation of such a claim.

HAYNSWORTH SINKLER BOYD, P.A.

By Elizabeth H. Black
Robert Y. Knowlton
Elizabeth H. Black
P.O. Box 11889
Columbia, SC 29211-1889
803 779-3080

Attorneys for Plaintiff

January 27, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO: 2008-CP-26-6169
Joseph E. Mason, Jr.,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S MOTION
vs.	)	PURSUANT TO RULE 59(e) S.C.R.C.P.
	)	
Catherine L. Mason, Joseph E.	)	
Mason, Sr., Kathy St. Blanchard,	)	
Mason Holding Company, Inc.,	)	
and Irwin Levine,	)	
	)	
Defendants.	)	

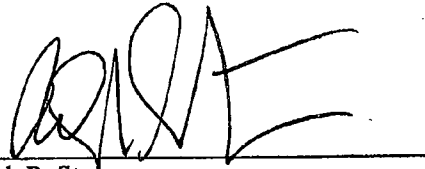
This matter comes before me on Plaintiff's Motion to Alter or Amend pursuant to Rule 59(e) S.C.R.C.P., my Final Order filed in the case on January 20, 2012. Plaintiff specifically moves the Court to alter or amend the Final Order to delete or revise Finding of Fact number 18 on pages 9 and 10 and Conclusion of Law number 15 on page 26 so as

"...to dismiss any counterclaim against Plaintiff with regard to tax obligations of Mason Holding Company, Inc. or to make clear that no finding or conclusion set forth in the Order will be binding with regard to any future claim for such taxes against Plaintiff."

In ruling on Plaintiff's Motion, I have reviewed the case file, Plaintiff's Motion, my Final Order, and a Brief in Opposition filed on behalf of Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc. In addition, I have had the benefit of the argument of able counsel.

After review, I am of the opinion that Finding of Fact number 18 and Conclusion of Law number 15 in the Final Order are entirely consistent with issues made out by the pleadings, the evidence presented at trial, and the applicable law. Plaintiff's Motion to Alter or Amend is, accordingly, denied.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Stroman', written over a horizontal line.

Ralph P. Stroman
Special Referee

April 30, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,
Plaintiff,

vs.

Catherine L. Mason, Joseph E.
Mason, Sr., Kathy St. Blanchard,
Mason Holding Company, Inc.,
and Irwin Levine,

Defendants.

CERTIFICATE OF SERVICE

PERSONALLY APPEARED BEFORE ME, Kimberly W. Nobles, who first being first duly sworn deposes and says:

1. That she is a legal assistant for the attorney representing Defendants Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard and Mason Holding Company, Inc.;
2. That the following documents were this date served upon the Plaintiff's counsel:

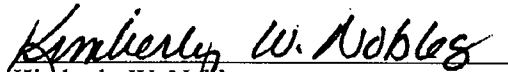
a. Order Denying Plaintiff's Motion Pursuant to Rule 59(e) S.C.R.C.P.

by placing copies of the same in the United States Mail, postage prepaid, and sent to the last known address as follows:

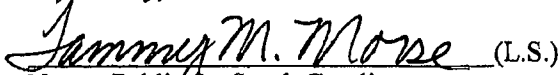
Robert Y. Knowlton, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211
ATTORNEY FOR PLAINTIFF

John M. Leiter, Esquire
Lee Ann W. Rice, Esquire
Law Offices of John M. Leiter
Post Office Box 7516
Myrtle Beach, South Carolina 29572
ATTORNEY FOR DEFENDANT LEVINE

This 2nd day of May, 2012.


Kimberly W. Nobles

SWORN TO BEFORE ME this 2nd
day of May, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 7-17-2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2008-CP-26-6169

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SC Court of Appeals

Joseph E. Mason, Jr.,

Appellant,

v.

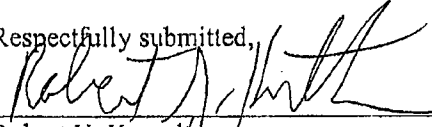
Joseph E. Mason, Sr., Catherine L. Mason,
Kathy St. Blanchard, and Mason Holding
Company, Inc.,

Respondents.

NOTICE OF APPEAL

Appellant Joseph E. Mason, Jr. appeals the Final Order of the Honorable Ralph P. Stroman, Special Referee, dated January 19, 2012, and the subsequent order dated April 30, 2012 denying Appellant's timely post-trial motion. Counsel for Joseph E. Mason, Jr. received written notice of the entry of the denial of the post-trial motion on June 1, 2012. Copies of the two orders are attached to this notice as Exhibits A and B, respectively.

Respectfully submitted,


Robert Y. Knowlton
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd floor (29201)
Post Office Box 11889
Columbia, South Carolina 29211-1889
803.779.3080

Attorneys for Appellant

June 4, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Joseph E. Mason, Jr.,)

Plaintiff,)

vs.)

Catherine L. Mason, Joseph E.
Mason, Sr., Kathy St. Blanchard,
Mason Holding Company, Inc.,
and Irwin Levine,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

FINAL ORDER

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This matter comes before me as Special Referee pursuant to Consent Order of Reference signed by the Honorable Larry B. Hyman on the 8th day of April, 2011. Trial was held over a five day period commencing Monday, November 14, 2011, at the Horry County Courthouse in Conway, South Carolina. Plaintiff is represented by Robert Y. Knowlton, Esquire, and Elizabeth H. Black, Esquire, of Haynsworth Sinkler Boyd, P.A. Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc., are represented by Emma Ruth Brittain, Esquire, and J. Jackson Thomas, Esquire, of Thompson & Henry, P.A. Defendant Irwin Levine is represented by John M. Leiter, Esquire and Lee Ann W. Rice, Esquire of the Law Offices of John M. Leiter, P.A.

This case involves the ownership and operation of Mason Holding Company, Inc., by members of the Joseph E. Mason, Sr. family. In his Amended Complaint dated September 23, 2009, the Plaintiff, Joseph E. Mason, Jr. ("Son"), asserts a number of causes of action against his mother, Catherine L. Mason ("Mother"), his father, Joseph E. Mason, Sr. ("Father"), his sister, Kathy St. Blanchard ("Sister"), and Mason Holding Company, Inc. ("Company"), a South

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Carolina corporation wholly owned by the family members. Son also asserts a claim against the Mason family's long time accountant, Irwin Levine ("Accountant"), for allegedly aiding and abetting the other Defendants in alleged breaches of fiduciary duties.

Company operates five (5) stores in Horry and Georgetown counties under the trade name "Mason Tire & Auto Service" ("Mason Tire"). The business of Mason Tire is the sale of automobile and truck tires and the automotive maintenance of both personally owned and commercial vehicles. All of the store locations except one are operated by separate corporations wholly owned by Company. The store location on South Carolina Highway 544 ("the Conway Store") is operated by BCJ Tires, Inc., which is owned fifty-two percent (52%) by Accountant and forty-two percent (42%) by Company.¹

The stock of Company is held thirty percent (30%) by Son, thirty percent (30%) by Sister, twenty percent (20%) by Father and twenty percent (20%) by Mother. The Son was employed as the principal manager of Company until July 30, 2008, when he left its employ. Son commenced this action with the filing of a Summons and Complaint on August 5, 2008. Son's original Complaint did not include a claim against Accountant. The Amended Complaint filed September 23, 2009, added Accountant as a Defendant and a cause of action against Accountant asserting as his sole cause of action against him that Accountant aided and abetted Mother, Father and Sister in alleged breaches of fiduciary duty against Son.

Son's Amended Complaint asserts the following seven causes of action:

1. A first cause of action against Company, Mother, Father and Sister alleging breach of express or implied contract with Son for permanent employment by Company.
2. A second cause of action against Sister, Father and Mother alleging breach of officer/director duties owing to Company and its shareholders (including Son) pursuant to S.C.

¹ The record reflects that Son consented to the acquisition of BCJ stock by Accountant.

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Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

3. A third cause of action against Mother, Father and Sister alleging they engaged in a civil conspiracy to deprive Son of his employment by Company and to cause him harm.

4. A fourth cause of action against Company, Mother, Father and Sister asserting that they should be required, pursuant to S.C. Code Ann. §33-14-300 (Rev. 2006), to purchase Son's stock in Company due to alleged illegal, fraudulent, oppressive and unfairly prejudicial actions toward Son and misapplication and wasting of Company assets by Mother, Father, and Sister.

5. A fifth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of Company's general employment policy as promulgated in its Employee Handbook.²

6. A sixth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of public policy.

7. A seventh cause of action by Son against Accountant alleging that Accountant aided and abetted Mother, Father and Sister in violating their officer/director obligations to Company and its shareholders pursuant to S.C. Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

Father, Mother, Sister and Company timely answered Son's Amended Complaint and asserted counterclaims. These Defendants in their Counterclaims allege that Son breached his fiduciary duties to the Company in a number of respects and converted Company assets to his personal use and benefit. These Defendants also asserted several defenses to Son's claims including the defense unclean hands.

² Plaintiff's counsel conceded to the dismissal of this claim upon Defendants' motion for direction of verdict at the conclusion of Son's case.

In support of his claims, Son offered his own testimony, the testimony of Accountant, the testimony of Son's expert Dr. Perry Woodside, the testimony of Son's current Employer/Supervisor Steve Allison, portions of Father's deposition, and 83 exhibits. In opposition to the Son's claims, the Defendants offered the testimony of Father, Mother, Sister, Defendants' expert Sherry Smith, attorney Gene M. Connell, attorney Edward S. Bowers, Jr., Certified Public Accountant Laura S. DuRant, Certified Public Accountant Timothy Duncan, four Company employees (Frankie Fisher, Randy Barringer Mark Myers and John Nottedstad), Bob Kuehn (a former Company employee), Alise Taylor (a tire supplier sales representative) and all portions of Father's deposition not designated by Son. Defendants further offered into evidence 52 exhibits.³

I have carefully considered the testimony of the witnesses over this lengthy trial, the deposition testimony of Father, and the voluminous exhibits proffered by both parties. I have assessed the credibility of each witness testimony, and in that regard I was aided by having the opportunity to observe each witness' demeanor both on the witness stand and otherwise in the courtroom. Having considered all of the foregoing, I have determined the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In or around 1984, Father (who had considerable experience in the tire business in the Miami, Florida area where he lived) decided to go into the tire and auto service business in coastal South Carolina. Father had operated eight retail stores for Goodyear Tire & Rubber. In addition, he was a partner in a truck tire center in the Miami area. When Son and Sister learned of the proposed venture, both asked to be involved. Father required Sister and Son to pay \$10,000.00 each for a ten percent interest in the new entity. Ultimately, Father acquired a

³ Exhibits 21, 26, 27, 43 and 44 were numbered but not introduced.

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location in Surfside Beach, South Carolina, and opened Mason Tire & Auto Service, Inc. (the "Surfside Store"). Initial shareholders were Father, Mother, Son, Sister, a Mr. and Mrs. Sanderson and the Sanderson's daughter. Subsequently Mother and Father acquired the Sandersons' interest in the Surfside Store so that the only shareholders were Mother, Father, Son and Sister. The Surfside Location was and is operated on leased land owned by Mother, Father and Mother's Sister, Mrs. Sanderson.⁴

2. Son graduated from the University of Alabama with a Business Administration degree in or about 1983. After graduation from college, Son took a job with Ryder Truck rentals. In 1984, Son moved from the Miami area to Surfside Beach area and became the store manager for the Surfside Store. The capital for the Surfside Store (with the exception of the original \$10,000.00 investment by Son and Sister) was provided by Mother and Father. Prior to moving to the Surfside area in 1989, Father monitored the Surfside Store operations via frequent telephone calls and site visits. Sister also moved to the Surfside area and was employed in the business in bookkeeping/accounting. Sister's husband Oswald St. Blanchard ("Ozzie") became an employee of Mason Tire sometime during 1984.

3. The Surfside Store was successful. In or around 1989, the family decided to expand the Mason Tire business by opening another location in North Myrtle Beach, South Carolina. A separate entity, J&O Tire and Auto Service, Inc., was formed for the North Myrtle Beach operation ("North Myrtle Beach Store"). It was operated on leased land that was owned by Son and Ozzie individually.⁵

4. Continued success led the Company to expand again in or about 1995 with the opening of a Mason Tire location in Pawley's Island, South Carolina (the "Pawley's Island

⁴ Mrs. Sanderson was one of the original shareholders.

⁵ The land is now owned by Son and Sister.

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Store"). The Pawley's Island Store was operated by an entity formed and known as M&S Tire Company, Inc. The Pawley's Store is operated on leased land owned by a corporation owned by Father.

5. In 1988, the Company was formed and all of the stock of Mason Tire & Auto Service, Inc., J&O Tire & Auto Service, Inc. and M&S Tire Company, Inc. was transferred to Company.

6. In or about 1989, Father and Mother moved to the Surfside Beach area and began working in the business on a daily basis. Son remained in control of the general operation of the business, serving as its general manager. Father, Sister, and Ozzie were also employed by and active in the business. Mother was also involved, but to a lesser degree.

7. In or about 1999, Company opened an additional location in Myrtle Beach, South Carolina (the "Myrtle Beach Store"). The Myrtle Beach Store was operated by K&J Tire Company, Inc. on land leased from Goodyear Tire & Rubber Company. Company was now the owner of all of the stock in the four Mason Tire locations. All of Company's stock was owned by Mason family members, with Father and Mother owning 40% each and Son and Daughter owning 10% each.

8. Since its formation and through 2006, the Company generally grew and prospered as did the economy in general in coastal Horry and Georgetown counties. During this period, Son managed the Company with input from the other family members. Except for periodic family discord caused by Son, and periods of Son's unexpected and unexplained absences, Son was effective in growing the Company. Father initially held the title of President of the Company. The record is unclear as to precisely when Son was elected President, but the testimony and records indicate that by 2001 Son was operating as Company President.

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9. Son's relationship with the other family members was troubled and the trouble bled over into their business relationship. From time to time Son would simply leave the business unattended for extended periods of time without notice. In April 2001, Son left without notice resulting in an emergency meeting of the shareholders to provide for the continued operation of the business. Son ultimately returned to the business. At a meeting on May 21, 2001, (Plaintiff's Exhibit 4) the family's personal problems and the effect on the Company was discussed. All of the family members except Son agreed that family counseling was appropriate. Ultimately, the family did undergo counseling but Son's periodic absences from the business without notice continued. In each instance, primarily as a result of the Father's intervention, the Son would ultimately return and resume his position as President and general manager.

10. At a stockholders' meeting in June of 2001 (Plaintiff's Exhibit 5) Father expressed his desire to be less involved in day to day operations of the business with an eye toward retirement. He expressed concern that while the business was doing well, there was a great deal of "negativity" within the family and that the family members should be able to work together. He stated that if they were unable to work together, he could and would replace any one of them.

11. Over the next two years, and in view of Father's desire for retirement, Father and Son and Accountant, assisted by Company's attorney Edward Kelahe, Esquire ("Attorney Kelahe"), devised a strategy for Mother and Father's exit from the business. Accountant is a public accountant from Miami, Florida. He was a long time accountant and tax preparer for the Company and all of the family members, including Son. He received a yearly fixed retainer and did not receive any additional compensation for how he prepared the tax returns or otherwise personally profit from the work he did for any of the parties. In addition, Accountant was a

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friend and trusted advisor to all members of the family on accounting business matters. He prepared Son's personal tax returns through and ending the 2007 tax year.

12. On November 8, 2002, as a result of meetings with Father, Son, and Accountant, Attorney Kelaher forwarded to the shareholders documents which he had prepared in accordance with Father, Son and Accountant's instructions. (Plaintiff's Exhibit 15).

13. Attorney Kelaher termed these documents "unusual" and expressed some concern about some aspects of the documents. The specific documents enclosed with the Kelaher letter were not introduced, but the letter makes reference to three documents:

- a. Gift letter;
- b. Employment Agreement; and
- c. A Pawley's Island property lease

Executed documents fitting that description, dated as of the end of 2002, were introduced as Exhibits 16, 17, and 18. (Hereinafter, Exhibits 16, 17, and 18 are referred to collectively as the "Retirement Documents."). The Retirement Documents, when executed, would have accomplished Father and Mother's goal of exiting from the Company leaving the Company equally owned by Son and Daughter.

14. The Retirement Documents essentially called for the Company to give Father and Mother certain Company employee benefits for "consulting services," and for the Company to pay additional rent on the Pawleys Island Store to Catson, LLC.⁶

15. The gift letter (Plaintiff's Exhibit 17) calls for Mother and Father to give, over time, their shares in the Company to Son and Daughter in equal amounts, anticipating that ultimately, Mother and Father would have effected their exit from the Company and Son and

⁶ Catson, LLC is a limited liability company owned by Father and Mother which owned the land from which the Pawley's Island Store operated.

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Daughter would be equal co-owners.

16. Commencing in 2003, benefits and rents were paid and received under the Retirement Documents. Mother and Father "gave" an additional 20% each in the Company's stock to Son and Daughter so that by the end of 2007 Son and Daughter owned 30% each in the Company and Father and Mother owned 20% each in the Company.

17. In 2003 and 2006, Son made significant fraudulent alterations to the Company's inventory. The adjustment to inventory in 2003 was approximately \$440,000.00 and in 2006 approximately \$300,000.00. These increases in inventory amounts filtered down to increases in the costs of goods sold expense. The effect of these fraudulent entries on the Company's income tax returns for 2003 and 2006 was a significant decrease in both the federal and State income tax liabilities. In order to offset the inventory reduction for 2003, Son prepared promissory notes for \$220,000.00 each made payable to himself and his Sister. (Plaintiff's Exhibits 19 and 20). The notes were signed by Son as President and Ozzie as Vice President of Mason Tire & Auto Service, Inc. and witnessed by Mother and Father. In 2006, Son caused a standard journal ticket (Plaintiff's Exhibit 3) to be issued reflecting notes payable to Son and Daughter totaling \$300,000.00 (the same amount as the 2006 journal adjustment). Son proffered promissory notes supporting the journal tickets to Sister for execution, but she refused.

18. All of the parties (including Son) testified that Father, Mother and Sister were unaware that the manufactured notes and inventory adjustments had the effect of understating taxable income, and that the 2003 and 2006 Company tax returns were therefore filed on a false and inaccurate basis. Son testified that he was likewise unaware that the Company returns (which he signed and filed as President of the Company) were false and inaccurate. I do not find Son's testimony in this regard as to his own lack of knowledge to be credible. At least through

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the filing of the 2006 return, the Plaintiff was fully in charge of the financial affairs (indeed all affairs) of the Company. Accountant testified that the inventory adjustments and corroborative fictitious notes were part of a plan and scheme put in place by Son to limit purported Company income to levels deemed "acceptable" by Son. Accountant testified he presented Son with the "option" to either pay the taxes accurately reflected by the Company's books and records or to limit the taxes paid by way of these accounting and reporting artifices. The Son opted to limit the taxes paid by manipulating the parts inventory accounts and reports. Accountant candidly testified he turned "a blind eye" to these practices. While Accountant's conduct in regard to the filing of the tax returns is professionally inappropriate, I find his testimony substantially more credible on this issue than that of Son.

19. In 2006, Son determined that the Company would be well served by opening an additional location between Myrtle Beach and Conway. The other family members were agreeable, so in the Fall of 2006 Company purchased property adjacent to S.C. Highway 544 between Myrtle Beach and Conway for the purpose of constructing a Mason Tire Conway location (the "Conway Store"). The Conway Store was leased for operation to an entity known as BCJ Tires, LLC, ("BCJ Tires"). BCJ Tires, formed by Son, had as its initial members, Son, Daughter and a friend of Son named Brian Stout. While the Company had no ownership interest in the Conway Store operation, it was operated by BCJ Tires under the name Mason Tire & Auto Service. On August 3, 2007, without the knowledge or consent of any member of the Mason family, Son transferred \$93,500.00 from the Company to BCJ Tires to fund its operation. (Defendant's exhibit 55). When Father discovered the circumstances of ownership and funding of BCJ Tires, he required Son and Daughter's interest in BCJ Tires to be transferred to the Company. The BCJ Tires location has been operated at a loss since its inception and the loss has

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been sustained by the Company. The Company subsequently acquired the interest of Brian Stout and ultimately sold a 52% interest in BCJ Tires to the Accountant. BCJ Tires is currently owned 52% by Accountant and 48% by Company. It continues to operate at a loss. The timing of the acquisition and construction of the Conway Store facility of Company was unfortunate, as it occurred when the price of real estate was at its zenith. The Company continues to struggle not only with the operating loss for its Conway Store, but also with the mortgage debt for the land and building while its value has declined precipitously in the down market.

20. In December of 2004, Ozzie was horribly injured in a motorcycle accident during a motorcycle "Poker Run" in support of the Toys for Tots program. As a result of injuries sustained in the wreck, Ozzie was rendered a quadriplegic. He retained local attorney Gene M. Connell, Jr., to file a worker's compensation claim against the Company on his behalf. Son testified Father directed him to commit perjury and testify that Ozzie's participation in the event was within the scope of his employment so that Ozzie would receive workers compensation benefits. I do not find Son's testimony in this regard to be credible. The testimony of Father and Daughter was to the effect that Ozzie was indeed acting within the scope of his employment at the time of the injury and participated in the event as a marketing activity on behalf of the Company; testimony was also presented that Ozzie had participated on behalf of the business in the same event in years past. Son signed minutes at the stockholders' meeting in November, 2005 (Plaintiff's Exhibit 21) reflecting a discussion of Ozzie's participation in the event. Attorney Gene Connell, who represented Ozzie in the workers compensation claim, testified that during his representation of Ozzie it did appear Ozzie was acting within the scope of his employment at the time of the accident. Mr. Connell testified that the claim was vigorously contested, that his client prevailed at the initial level but the decision was reversed 2 to 1 at the

Commission level; the Commission's decision was appealed to the Circuit Court and a favorable settlement was reached before a decision was rendered by the Circuit Court. He further testified that he was unaware of any fraud in connection with the claim. Based on the testimony presented, I find no credible evidence to sustain Son's contention either that Ozzie's claim was fraudulent or that Son was asked to falsify his testimony thereabout.

21. In July, 2008, Son called Father into his office and told him that he was going to terminate the Company bookkeeper, Sandra Adams, for allegedly stealing because she had failed to deduct the correct premium for insurance from her paycheck. Father recalls that when Son informed him that he was going to terminate Ms. Adams, that Father posed the question of whether they should allow Sister time to find someone else to fill the position. Son then proceeded to immediately terminate Ms. Adams in Father's presence. When Father returned to the bookkeeping department, he decided to look into the matter further and realized the considerable amount of work that Ms. Adams performed for the Company. When Father realized the significance of the volume of work performed by Ms. Adams in regard to the bookkeeping department, he felt it would be more appropriate to place Ms. Adams on probation and see if they could get the insurance premium issue resolved. Father determined that Ms. Adams performed more work for the Company than he realized and he felt that firing her was an injustice. When Father informed Son of his decision to reinstate Ms. Adams, Son responded: "If you do, I will bury you." I find Father's testimony at trial to be credible. The evidence presented establishes that Father's actions in regard to the reinstatement of Ms. Adams were consistent with the Company's best interests.

22. In August of 2007, Son again left the business without notice and remained absent for virtually the entire month. On or about August 18, 2007, Son offered to purchase all but 5%

of Daughter's 25% interest in the Company for approximately \$625,000.00 or to sell his same interest in the Company for \$987,500.00 (Plaintiff's Exhibit 28). No response was made to this offer.

23. On August 31, 2007, Attorney Wayne Byrd wrote to Mother, Father, and Sister on behalf of Son advising he had been retained by Son to represent his interests "...as an officer, director and minority shareholder of Mason Holding Company, Inc, and its wholly owned subsidiaries." Based upon the information provided to him by Son, Attorney Byrd alleged that Mother, Father and Sister had "...committed illegal fraudulent and oppressive acts and have unduly prejudiced the corporations and [Son's interest therein]." He demanded the alleged unacceptable conduct and practices be stopped and threatened litigation on behalf of Son. (Plaintiff's Exhibit 29).

24. On September 27, 2007, Attorney Byrd, again on behalf of Son, wrote Accountant outlining various alleged financial and tax accounting irregularities. "...which you [Accountant] have devised and fashioned" (Plaintiff's Exhibit 31). The evidence before me is convincing that the activities alleged in Attorney Byrd's September 27, 2007, letter are substantially accurate; however, the letter fails to recognize that the activities complained of were taken with the full knowledge and consent of Son and at his direction. While Accountant may have indeed had some participation in the reporting of various highly questionable tax practices, it is beyond dispute in my opinion that Son was aware of and actively engaged in and furthered the very practices about which his attorneys' September 17, 2007 letter complains and which form the basis of some of the claims in this action. Shortly after the Byrd letter, the Accountant advised Sister via email that certain of the tax accounting and practices complained of in the Byrd letter should be terminated. (Plaintiff's Exhibit 33). Each of the shareholders was asked by

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Accountant to agree to repay the corporation for personal expenses paid by Company. (Plaintiff's Exhibit 38). All stockholders signed the agreement except Son. Attorney Byrd refunded a Company check given him for attorneys' fees of Son, stating he represented Son's interest and not the Company. Son immediately transferred corporate funds from the corporation checking account to his own personal account for reimbursement of Byrd's attorney's fees in the amount of \$17,301.66.

25. On October 24, 2007, a meeting of all shareholders of the Mason family companies was held at Cliff Tall's law office pursuant to notice. The purpose of the meeting as stated in the notice was as follows:

1. Selection of registered agent for Mason Tire and Auto, Inc, to be listed with the South Carolina Secretary of State.
2. Review and ratification of corporate records which have been kept regarding past business.
3. Selection of new accounting firm to assist the business, generally, and to supervise correction of past tax reporting.
4. Election of Officers and Directors

(Plaintiff's Exhibit 40)

26. Prior to the October 24 meeting, Son had returned from his August 2007 hiatus and resumed his role as President and general manager of the Company. At the meeting it was determined that local certified public accountant Timothy Duncan ("Duncan") would be retained by the Company to supervise the correction of the past tax reporting. Father was elected President and Son was elected Vice President. The only change in Son's duties was that he was relieved of cash handling procedures; otherwise, he continued to be in charge of the operation of the Company. He retained the same salary and perquisites including car, cell phone, credit card and insurance. Subsequent to the corporate meeting, Duncan undertook to assist Accountant in

preparation of amended State and Federal tax returns for filing to correct the prior defects in filing. Amended returns were prepared for tax years for 2003 through 2006, and revisions requested by Duncan were made to the amended proposed returns. Duncan determined he was unwilling to sign the amended returns as accountant for the Company and that he preferred they be signed by the Accountant since the Accountant had filed the returns which were being amended. On November 29, 2007, a shareholder meeting was scheduled for December 7, 2007 for the purpose, *inter alia*, of mailing the amended returns. (Plaintiff's Exhibit 48).

By letter dated November 22, 2007, Father informed CPA Duncan that the Company would be using Accountant's firm for the preparation of its 2007 corporate and individual income tax returns. Prior to that date, Son had visited Duncan and requested Duncan's assistance in making inventory adjustments similar to those which had been made in the Company's 2003 and 2006 financial statements which had resulted in the incorrect returns being filed. Duncan expressed amazement that Son was attempting to continue that practice, and determined that he did not want to be involved in the preparation of filing Company returns in any event.

27. During the period when Son was acting as President and general manager of the Company, he engaged in the repeated practice of fabricating invoices for commercial tire "casings"⁷ from fictitious companies. Invoices were created that would indicate the fictitious company had sold (and that the Company had received) casings. Son would then remove cash from the Company's cash register in an amount equal to the invoice price of the casings. The Company's records would then reflect non-existent tire casing inventory and the books would be in balance because of Son's removal of cash in an amount equivalent to the fictitious casing price. Employees of the Company testified that they observed Son remove money from the cash

⁷ A casing is a used commercial tire which has the capability of being recapped for sale.

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registered drawer and place it in his pocket, and that the casing invoices in question contained names of nonexistent companies. Son admitted engaging in this practice, but stated he was told by Accountant that it was acceptable so long as he split the cash equally with Sister (which Accountant denied). The Son testified he did in fact split this cash with Sister. I do not find his testimony in that regard to be credible. The other Mason family members were unaware of Son's tire casing scheme until the Fall of 2007.

28. Upon Son's return to the family business after the August hiatus, he continued to experience relationship problems with Father, Mother and Sister, prompting Father to give him a written reprimand on or about November 29, 2007 (Plaintiff's Exhibit 49). By that time, Father had been made aware of the tire casing scheme and the unauthorized distribution of \$93,500.00 of Company money to BCJ Tires. He was also aware of the tax return improprieties as a result of Attorney Byrd's letters. In a separate letter dated November 29, 2007, Father advised Son as follows:

As Vice-President your job duties will remain the same as they have for the past twenty five years. The only exception will be check signing and transferring of funds, you are no longer responsible for those duties. Any journal tickets created by you must have the Presidents signature on them.

You will perform your job duties with accountability and quality job performance in a professional matter to all officers and employees of Mason Tire. This is a quality I expect from all officers of Mason Tire, nothing less will be tolerated.

Again, if you feel you cannot conduct yourself in such a matter as stated before in the letter you received from your mother and myself you will go on a permanent leave of absence until you can prove otherwise.

(Plaintiff's Exhibit 47)

29. In December of 2007, shareholders attended a meeting at the Surfside Store. The meeting was held for the express purpose of signing and mailing the amended returns. All shareholders and Accountant were in attendance. At the meeting, the proposed amended returns

for 2003, 2004, 2005, and 2006 were presented and discussed. (Plaintiff's Exhibits 65-68). After considerable discussion (principally centered around the considerable cost to the Company of filing the amended returns and payment of the taxes required with such filing) Son, with the consent of the other shareholders, determined that the amended returns would not be filed but that the Company would follow the Accountant's suggestion that the prior underpayment of taxes by the Company be handled "another way". The other way devised by Accountant involved the filing of returns artificially overstating taxable income for future years, essentially by reversing the fictitious inventory adjustments made in previous years. Company did, in fact, file State and federal tax returns for subsequent years which overstated income for those years and the Company did pay the tax on the overstated income for those years.

30. Son continued to act as general manager for the Company and as Vice President until July 30, 2008, when he sent Father a letter (authored by Son's attorney) alleging he (Son) had been constructively discharged and providing two weeks notice of his departure from the Company. (Plaintiff's Exhibit 55). Six days later, Son filed his original Summons and Complaint in this action.

31. During the period of time between October of 2007 and Son's termination of employment on July 30, 2008, Son continued to act as general manager of the Company's business and as its Vice President. Other than the financial restrictions imposed on Son as outlined in Father's November 29, 2007, letter (Plaintiff's Exhibit 47), Son's management authority and management practices continued unabated. Numerous Company employees testified they were unaware of any changes in Son's management authority prior to his departure and, further, that Son continued to principally supervise and direct all aspects of the Company's business. Son retained the bulk of the Company's records in his private office under lock and

key until his departure. Son reluctantly gave Father an office key after Father's third request, but directed Father that Sister was not to be given admittance.

32. Following Son's departure, Father and Sister assumed all of Son's management responsibilities for the Company and continued to manage and direct the Company through the date of trial. Since the date of Son's departure and through the date of trial, the Company has been operated largely in the normal course and scope of business. No shareholders or directors meetings have been held pending the litigation. Just prior to trial, Son tendered a written resignation as officer and/or director of Company and any of its subsidiary companies.

33. During the course of litigation, the shareholders, including Son, determined that Laura DuRant, certified public accountant, should be retained by the Company to review the actions taken by the Company to determine if a satisfactory resolution of the Company's liability for the 2003 and 2006 tax returns had been made. Ms. DuRant determined that, in fact, the Company's tax liability for the returns filed in 2003 and 2006 have not been adequately resolved and that Company has a potential tax liability, including potential penalties (including fraud penalties) approaching three-quarters of a million dollars. As a result of Ms. DuRant's opinion as to the continued tax jeopardy of the Company, Company has engaged tax attorney Edward S. Bowers, Jr., to represent the Company. Mr. Bowers testified that he, on behalf of the Company has made voluntary disclosure to the state and federal tax authorities regarding the Company's past tax practices. The Company's total loss exposure as a result of its past tax practices is, as yet, undetermined. Attorney Bowers has suggested that the Company continue to engage Accountant, at least on a limited and temporary basis, pending a resolution of the Company's tax liability with the taxing authorities.

34. After Son's departure from employment and filing of the lawsuit, no payments

were made pursuant to the retirement documents and no stock transferred to either Son or Sister. Father and Sister have undertaken all of Son's previous job responsibilities and have increased their compensation commensurate with their increased responsibility.

35. It is clear from the record before me that the principal source of discord among the family members was the Son. The Son's inability to work harmoniously with the other family members prompted his periodic episodes of abandoning the Company's business without notice, only to be persuaded to return, principally by Father. Son repeatedly belittled and minimized the talents and efforts of other family members of the Company's success. The sales representative for one of Company's suppliers, Alise Taylor, testified as to her discomfort when in her presence, Son attempted to embarrass and humiliate Father regarding his computer skills or lack thereof. Son consistently complained that Sister was overpaid in light of her level of experience and lack of a college education. For his efforts, Son was quite generously rewarded with employee benefits and perquisites. Other family members received benefits and perquisites in a much lesser degree. I find and hold that the compensation and benefits paid to Father, Sister and Mother were not excessive either before or after Son's departure from the business. By comparison, Son was quite handsomely rewarded for his efforts even without taking into consideration any of the non-taxed paid cash he kept by virtue of the casing scheme.

36. On the record before me, I find no basis for the Son's claims that his employment by the Company was wrongfully terminated or that he was constructively discharged. While the record establishes a number of bases for which Son's employment could have justifiably been terminated (i.e., unexplained absences from the job without notice, utilization of Company funds to fund BCJ Tires without consent, and utilization of Company funds to fund personal expenses such as attorneys fees, to name a few), the simple fact is that Son was not terminated or

wrongfully discharged. He quit. Prior to his leaving, Son's compensation was not reduced or diminished in any respect. The limitations placed on Son's access to Company money prior to his quitting were amply justified given his course of conduct in misusing those funds. Any damage which the Son may have sustained by reason of his leaving the employment of the Company is due to and caused by Son's voluntary decision to terminate his employment. Accordingly, I find there is no basis for Son's claim that Company or any of the other Defendants did anything to constructively terminate his employment.

37. I find nothing in the record to support Son's contention that Father, Mother or Sister have conspired for the purpose of injuring Son. There is simply no evidence in the record to establish any conspiracy or design to deprive Plaintiff of his employment with the Company or of the fair value of his stock in the Company, and any rights (including management) incident thereto. If the value of Son's stock has indeed been impaired, Son need not look further than his own actions in filing false and inaccurate tax returns, diverting Company funds through the casing scheme, payment of personal expenses (including attorneys fees) from Company funds and working on an expansion of the Company business to include (for the first time) Company ownership of the land and building from which the Conway Store is operated, and diverting Company funds for operation of a non-company owned entity (BCJ Tires). Additionally Son has not established any special damages arising out of the alleged conspiracy which is required to sustain a claim for civil conspiracy.

38. Son also contends that the Father, Sister and Mother breached the duties owed to a Company and its shareholders by officers and directors pursuant to the South Carolina Business Corporation Act, S.C. Code Ann. § 33-8-300 and § 33-8-420 (Rev. 2006). Son asserts that because of numerous breaches of their statutory duties, the Company, Father, Mother and

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Sister should be required to purchase Son's shares at fair market value. The evidence before me does not establish a breach of duty by Father, Mother or Sister. Specifically, Son has failed to establish his allegations that Mother, Father or Sister failed or refused to take appropriate steps in deciding to terminate or not terminate employees; that they failed to properly manage, oversee, safeguard or protect the corporation; that they exposed the corporation to potential liability with regard to a worker's compensation claim; that they wasted corporate assets; that they utilized corporate assets for personal gain; that they failed to properly account; that they deprived Son of his ability to protect his investment or that they filed or authorized the filing of false tax returns on behalf of the Company. I do find that Son filed, on behalf of Company, false tax returns in 2003 and 2006 which he knew substantially understated taxable income. The uncontradicted evidence (including the testimony of Son) is that the Father, Mother and Sister had no knowledge of the falsity of the tax returns prior to receipt of the September 17, 2007, Byrd letter. Son, acting with the knowledge and assistance of Accountant, filed those returns knowing them to be inaccurate. When placed on notice of the tax returns' inaccuracy by the Byrd letter, Mother, Sister, Father and Son all relied on Accountant to take appropriate steps to correct the problem. While the reliance on Accountant ultimately proved to be misplaced, Father, Mother and Sister are no more to blame for their misplaced reliance than is Son. As reason to doubt the Accountant's remedy mounted during the course of litigation, all parties, including agreement by Son, determined to pursue professional accounting advice in the form of an opinion from Laura DuRant. Once Ms. DuRant's opinion was obtained, Father, Mother and Sister made the appropriate decision to retain tax counsel and voluntarily report the tax deficiencies to the taxing authorities.

39. I find nothing in the record to support Son's contention that Father, Mother and

Sister have in any way utilized their position as shareholders and directors of the Company to favor their interest over Son's interest. Son is not being paid by the Company only because he has voluntarily decided not to work. Father and Sister are being paid by the Company because they are working, and I find their compensation to be reasonable. Company has never paid dividends, but has instead utilized its profits for expansion during good economic times and costs and expenses in bad and more challenging economic conditions (such as the commencement of this country's recession in the fall of 2007). Father, Mother and Sister have continued to elect Son to a position as Officer and Director of the companies even with knowledge of Son's actions to the Company's admitted detriment. Simply put, none of the elements of officer or director abuse or of minority shareholder abuse are established on the record before me.

CONCLUSIONS OF LAW

Based on the record before me and the findings of fact hereinbefore set out, I make the following findings and conclusions of law:

1. Son's first cause of action for breach of alleged contract for employment and fifth cause of action for wrongful termination of employment-constructive discharge and sixth cause of action for wrongful termination-violation of public policy must fail because the uncontroverted evidence establishes that the Son voluntarily left employment with the Company and that his leaving was of his own volition and was not caused by constructive discharge or in violation of public policy.

2. Son's third cause of action alleging civil conspiracy to deprive Son of his employment with the Company and to deprive him of the fair value of his stock in the Company for the opportunity to manage the business affairs of the Company must likewise fail for a complete lack of proof, both as to liability and damages. Son's decision to quit his employment

and his election not to participate as a shareholder, officer or director of the Company or any of its subsidiary corporations were entirely voluntary decisions on his part. Son has not established anything close to special damages that would support a civil conspiracy claim.

3. Son has failed to establish by the greater weight or the preponderance of the evidence that the Defendants Company, Father, Mother or Sister (as alleged in Son's second cause of action) have breached any duty owed to Son by virtue of their status as officers, directors, or (collectively) majority shareholders. The standards of conduct for officers and directors of companies in South Carolina are clearly established by the South Carolina Business Corporations Act, S. C. Code Ann. § 33-8-300 (as to directors) and § 33-8-420 (Rev. 2006) (as to officers). The cited statutes essentially require that a director or officer discharge his duties: (i) in good faith; (ii) with the care an ordinarily prudent person in like position would exercise under similar circumstances; and (iii) in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. I find nothing in the record before me to indicate that Father, Mother or Sister have deviated from the appropriate standard of conduct. The touchstones of good faith and ordinary care do not require perfection. The Court should not interpose its judgment as to the appropriate course of action for the judgment, exercised in good faith and with reasonable care, for that judgment of those rightfully in control of the Company.

4. I find that Father's actions in regard to the reinstatement of Ms. Adams were consistent with Company's best interest and the decision was a valid business judgment within his discretion.

5. Son has failed to establish that Father, Mother and/or Sister breached any fiduciary duty owed to Son.

6. In South Carolina, there is a "general rule that individuals may not sue corporate

directors [under S.C. Code Ann. § 33-8-300 (2006)] or officers [under S.C. Code Ann. § 33-8-420 (2006)] for losses suffered by the corporation." *Brown v. Stewart*, 348 S.C. 33, 50, 557 S.E.2d 676, 686 (Ct. App. 2001). Instead, the individual must sue the corporation. Contrary to the holding in *Brown v. Stewart*, Son has sued the Father, Mother and Sister under these two statutes.

7. Rather than bringing an action against corporate directors and officers directly, "a Shareholder's suit [should be brought as a] derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs directly, or if their interests were submerged in the corporation whose assets were thus dissipated." *Id.* at 49, 557 S.E.2d at 684-685.

8. The inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not the Son specifically. Therefore, Son's suit was improper in that it was not filed as a derivative action.

9. The factors to be considered in whether a majority shareholder's conduct is oppressive or unfairly prejudicial are enumerated in Kiriakides v. Atlas Food Systems & Services, Inc., 343 S.C. 587, 541 S.E.2d 257 (S.Ct. 2001). The Court in Kiriakides notes that the terms "oppressive" and "unfairly prejudicial" are elastic terms meaning they vary with the circumstances permitted in a particular case. I have examined closely the conduct of Mother, Father and Sister in the case before me in determining whether their conduct could be characterized either as "oppressive" or "unfairly prejudicial" to Son. I find nothing in the record before me to indicate any such intent, motivation or result on the part of the majority shareholders; indeed, their treatment of Son could fairly be characterized as benevolent.

10. Having found no evidence to sustain Son's claims for breach of the obligations owing to him by the officers, directors or majority shareholders, Son's claim for relief pursuant to S.C. Code Ann. § 33-14-300 (Rev. 2006) (purchase of his shares) must likewise fail. Son's dissatisfaction with his lack of employment by Company, as well as with diminution of the value of his shares due to significant tax liability and the unfortunate business decision to expand the Company's operation to include ownership of the Conway Store and 48% ownership of its operation are matters that were principally due to and occasioned by the conduct and decisions of Son.

11. During trial, Son asserted the position that while he was the record owner of a 30% interest in Company, he was entitled to an award of an additional 20% interest in the Company (a total ownership of 50%) under the terms of the Retirement Documents. Aside from the fact that such a claim is completely absent from Plaintiff's Amended Complaint, it is clear that the provisions of the Retirement Documents were not complied with, i.e., Father was not able to retire in light of Son's conduct, and additional rent payments to Father for the Pawley's Island Store were ceased. Moreover, under no circumstance could this Court engage in the enforcement of a series of agreements which clearly, on their face, were illegal and unenforceable.

12. I find and conclude that Son is the owner of a 30% interest in the common stock of the Company.

13. I further note that the relief requested by Son under S.C. Code Ann. § 33-14-300 (Rev. 2006) is equitable in nature. Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443, 449 (Ct. App. 2009) ("a shareholder derivative action, as well as an action for stockholder oppression, is one in equity"). It is well established that "he who comes into equity must come with clean hands." Id.

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I find that Son's conduct in the matters asserted in this action is such as to clearly prevent him from relying on an action for stockholder oppression or breach of fiduciary duty in this context.

14. I find that the Defendants have established by the preponderance of the evidence that the Company is entitled to, and it is hereby awarded, judgment against Son for the cash converted by Son through his casing scheme amounting to \$11,716.32. The Court further finds that Company is entitled to, and is hereby awarded, judgment against Son for his conversion of Company funds to pay his personal attorney's fees in the amount of \$17,301.66.

15. As to Defendants' claim for damages relating to the filing of false tax returns, I further find that based on the record before me, it cannot be determined at this time with reasonable certainty the amount of damages suffered by Company as a result of the false and inaccurate returns filed by Son. I find that the filing of false returns through December, 2007 (when the decision not to file an amended return was made) caused damage to the Company but the damages claim itself is not ripe for adjudication. This Court find that because the amount is not determinable at this point, and therefore, this claim is not ripe for adjudication, the Company is not foreclosed from bringing a future action for damages based on Plaintiff's filing of false tax returns once they become determinable.

AND IS SO ORDERED.



Honorable Ralph P. Stroman
Special Referee

January 18, 2012

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO: 2008-CP-26-6169
Joseph E. Mason, Jr.,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S MOTION
vs.	)	PURSUANT TO RULE 59(e) S.C.R.C.P.
	)	
Catherine L. Mason, Joseph E.	)	
Mason, Sr., Kathy St. Blanchard,	)	
Mason Holding Company, Inc.,	)	
and Irwin Levine,	)	
	)	
Defendants.	)	

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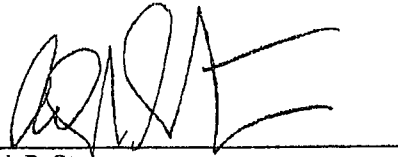
This matter comes before me on Plaintiff's Motion to Alter or Amend pursuant to Rule 59(e) S.C.R.C.P., my Final Order filed in the case on January 20, 2012. Plaintiff specifically moves the Court to alter or amend the Final Order to delete or revise Finding of Fact number 18 on pages 9 and 10 and Conclusion of Law number 15 on page 26 so as

"...to dismiss any counterclaim against Plaintiff with regard to tax obligations of Mason Holding Company, Inc. or to make clear that no finding or conclusion set forth in the Order will be binding with regard to any future claim for such taxes against Plaintiff."

In ruling on Plaintiff's Motion, I have reviewed the case file, Plaintiff's Motion, my Final Order, and a Brief in Opposition filed on behalf of Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc. In addition, I have had the benefit of the argument of able counsel.

After review, I am of the opinion that Finding of Fact number 18 and Conclusion of Law number 15 in the Final Order are entirely consistent with issues made out by the pleadings, the evidence presented at trial, and the applicable law. Plaintiff's Motion to Alter or Amend is, accordingly, denied.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Stroman', written over a horizontal line.

Ralph P. Stroman
Special Referee

April 30, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2008-CP-26-6169

RECEIVED

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SC Court of Appeals

Joseph E. Mason, Jr.,

Appellant,

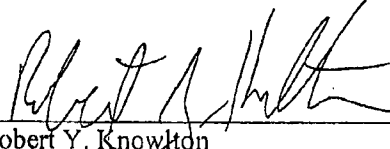
v.

Joseph E. Mason, Sr., Catherine L. Mason,
Kathy St. Blanchard, and Mason Holding
Company, Inc.,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it on June 4, 2012, addressed to the attorneys of record for Respondents: Emma Ruth Brittain, Esq. and J. Jackson Thomas, Esq., Thompson & Henry, P.A., Post Office Box 1290, Myrtle Beach, South Carolina 29578; and John M. Leiter, Esq., Law Offices of John M. Leiter, P.A., 1203 48th Avenue North, Suite 109, Myrtle Beach, South Carolina 29577.



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Attorneys for Appellant

June 4, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2008-CP-26-6169

RECEIVED

JUN 11 2012

Court of Appeals

Joseph E. Mason, Jr.,

Appellant,

v.

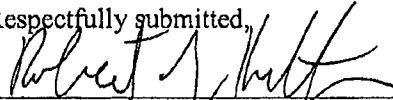
Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, and Mason Holding
Company, Inc., and Irwin Levine,

Respondents.

AMENDED
NOTICE OF APPEAL

Appellant Joseph E. Mason, Jr. appeals the Final Order of the Honorable Ralph P. Stroman, Special Referee, dated January 19, 2012, and the subsequent order dated April 30, 2012 denying Appellant's timely post-trial motion. Counsel for Joseph E. Mason, Jr. received written notice of the entry of the denial of the post-trial motion on June 1, 2012. Copies of the two orders are attached to this notice as Exhibits A and B, respectively.

Respectfully submitted,


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June 8, 2012

Attorneys for Appellant

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

COPIES
MAILED

Joseph E. Mason, Jr.,
Plaintiff,

vs.

FINAL ORDER

Catherine L. Mason, Joseph E.
Mason, Sr., Kathy St. Blanchard,
Mason Holding Company, Inc.,
and Irwin Levine,
Defendants.

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This matter comes before me as Special Referee pursuant to Consent Order of Reference signed by the Honorable Larry B. Hyman on the 8th day of April, 2011. Trial was held over a five day period commencing Monday, November 14, 2011, at the Horry County Courthouse in Conway, South Carolina. Plaintiff is represented by Robert Y. Knowlton, Esquire, and Elizabeth H. Black, Esquire, of Haynsworth Sinkler Boyd, P.A. Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc., are represented by Emma Ruth Brittain, Esquire, and J. Jackson Thomas, Esquire, of Thompson & Henry, P.A. Defendant Irwin Levine is represented by John M. Leiter, Esquire and Lee Ann W. Rice, Esquire of the Law Offices of John M. Leiter, P.A.

This case involves the ownership and operation of Mason Holding Company, Inc., by members of the Joseph E. Mason, Sr. family. In his Amended Complaint dated September 23, 2009, the Plaintiff, Joseph E. Mason, Jr. ("Son"), asserts a number of causes of action against his mother, Catherine L. Mason ("Mother"), his father, Joseph E. Mason, Sr. ("Father"), his sister, Kathy St. Blanchard ("Sister"), and Mason Holding Company, Inc. ("Company"), a South

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Carolina corporation wholly owned by the family members. Son also asserts a claim against the Mason family's long time accountant, Irwin Levine ("Accountant"), for allegedly aiding and abetting the other Defendants in alleged breaches of fiduciary duties.

Company operates five (5) stores in Horry and Georgetown counties under the trade name "Mason Tire & Auto Service" ("Mason Tire"). The business of Mason Tire is the sale of automobile and truck tires and the automotive maintenance of both personally owned and commercial vehicles. All of the store locations except one are operated by separate corporations wholly owned by Company. The store location on South Carolina Highway 544 ("the Conway Store") is operated by BCJ Tires, Inc., which is owned fifty-two percent (52%) by Accountant and forty-two percent (42%) by Company.¹

The stock of Company is held thirty percent (30%) by Son, thirty percent (30%) by Sister, twenty percent (20%) by Father and twenty percent (20%) by Mother. The Son was employed as the principal manager of Company until July 30, 2008, when he left its employ. Son commenced this action with the filing of a Summons and Complaint on August 5, 2008. Son's original Complaint did not include a claim against Accountant. The Amended Complaint filed September 23, 2009, added Accountant as a Defendant and a cause of action against Accountant asserting as his sole cause of action against him that Accountant aided and abetted Mother, Father and Sister in alleged breaches of fiduciary duty against Son.

Son's Amended Complaint asserts the following seven causes of action:

1. A first cause of action against Company, Mother, Father and Sister alleging breach of express or implied contract with Son for permanent employment by Company.
2. A second cause of action against Sister, Father and Mother alleging breach of officer/director duties owing to Company and its shareholders (including Son) pursuant to S.C.

¹ The record reflects that Son consented to the acquisition of BCJ stock by Accountant.

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Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

3. A third cause of action against Mother, Father and Sister alleging they engaged in a civil conspiracy to deprive Son of his employment by Company and to cause him harm.

4. A fourth cause of action against Company, Mother, Father and Sister asserting that they should be required, pursuant to S.C. Code Ann. §33-14-300 (Rev. 2006), to purchase Son's stock in Company due to alleged illegal, fraudulent, oppressive and unfairly prejudicial actions toward Son and misapplication and wasting of Company assets by Mother, Father, and Sister.

5. A fifth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of Company's general employment policy as promulgated in its Employee Handbook.²

6. A sixth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of public policy.

7. A seventh cause of action by Son against Accountant alleging that Accountant aided and abetted Mother, Father and Sister in violating their officer/director obligations to Company and its shareholders pursuant to S.C. Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

Father, Mother, Sister and Company timely answered Son's Amended Complaint and asserted counterclaims. These Defendants in their Counterclaims allege that Son breached his fiduciary duties to the Company in a number of respects and converted Company assets to his personal use and benefit. These Defendants also asserted several defenses to Son's claims including the defense unclean hands.

² Plaintiff's counsel conceded to the dismissal of this claim upon Defendants' motion for direction of verdict at the conclusion of Son's case.

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In support of his claims, Son offered his own testimony, the testimony of Accountant, the testimony of Son's expert Dr. Perry Woodside, the testimony of Son's current Employer/Supervisor Steve Allison, portions of Father's deposition, and 83 exhibits. In opposition to the Son's claims, the Defendants offered the testimony of Father, Mother, Sister, Defendants' expert Sherry Smith, attorney Gene M. Connell, attorney Edward S. Bowers, Jr., Certified Public Accountant Laura S. DuRant, Certified Public Accountant Timothy Duncan, four Company employees (Frankie Fisher, Randy Barringer Mark Myers and John Nottedstad), Bob Kuehn (a former Company employee), Alise Taylor (a tire supplier sales representative) and all portions of Father's deposition not designated by Son. Defendants further offered into evidence 52 exhibits.³

I have carefully considered the testimony of the witnesses over this lengthy trial, the deposition testimony of Father, and the voluminous exhibits proffered by both parties. I have assessed the credibility of each witness testimony, and in that regard I was aided by having the opportunity to observe each witness' demeanor both on the witness stand and otherwise in the courtroom. Having considered all of the foregoing, I have determined the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. In or around 1984, Father (who had considerable experience in the tire business in the Miami, Florida area where he lived) decided to go into the tire and auto service business in coastal South Carolina. Father had operated eight retail stores for Goodyear Tire & Rubber. In addition, he was a partner in a truck tire center in the Miami area. When Son and Sister learned of the proposed venture, both asked to be involved. Father required Sister and Son to pay \$10,000.00 each for a ten percent interest in the new entity. Ultimately, Father acquired a

³ Exhibits 21, 26, 27, 43 and 44 were numbered but not introduced.

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location in Surfside Beach, South Carolina, and opened Mason Tire & Auto Service, Inc. (the "Surfside Store"). Initial shareholders were Father, Mother, Son, Sister, a Mr. and Mrs. Sanderson and the Sanderson's daughter. Subsequently Mother and Father acquired the Sandersons' interest in the Surfside Store so that the only shareholders were Mother, Father, Son and Sister. The Surfside Location was and is operated on leased land owned by Mother, Father and Mother's Sister, Mrs. Sanderson.⁴

2. Son graduated from the University of Alabama with a Business Administration degree in or about 1983. After graduation from college, Son took a job with Ryder Truck rentals. In 1984, Son moved from the Miami area to Surfside Beach area and became the store manager for the Surfside Store. The capital for the Surfside Store (with the exception of the original \$10,000.00 investment by Son and Sister) was provided by Mother and Father. Prior to moving to the Surfside area in 1989, Father monitored the Surfside Store operations via frequent telephone calls and site visits. Sister also moved to the Surfside area and was employed in the business in bookkeeping/accounting. Sister's husband Oswald St. Blanchard ("Ozzie") became an employee of Mason Tire sometime during 1984.

3. The Surfside Store was successful. In or around 1989, the family decided to expand the Mason Tire business by opening another location in North Myrtle Beach, South Carolina. A separate entity, J&O Tire and Auto Service, Inc., was formed for the North Myrtle Beach operation ("North Myrtle Beach Store"). It was operated on leased land that was owned by Son and Ozzie individually.⁵

4. Continued success led the Company to expand again in or about 1995 with the opening of a Mason Tire location in Pawley's Island, South Carolina (the "Pawley's Island

⁴ Mrs. Sanderson was one of the original shareholders.

⁵ The land is now owned by Son and Sister.

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Store"). The Pawley's Island Store was operated by an entity formed and known as M&S Tire Company, Inc. The Pawley's Store is operated on leased land owned by a corporation owned by Father.

5. In 1988, the Company was formed and all of the stock of Mason Tire & Auto Service, Inc., J&O Tire & Auto Service, Inc. and M&S Tire Company, Inc. was transferred to Company.

6. In or about 1989, Father and Mother moved to the Surfside Beach area and began working in the business on a daily basis. Son remained in control of the general operation of the business, serving as its general manager. Father, Sister, and Ozzie were also employed by and active in the business. Mother was also involved, but to a lesser degree.

7. In or about 1999, Company opened an additional location in Myrtle Beach, South Carolina (the "Myrtle Beach Store"). The Myrtle Beach Store was operated by K&J Tire Company, Inc. on land leased from Goodyear Tire & Rubber Company. Company was now the owner of all of the stock in the four Mason Tire locations. All of Company's stock was owned by Mason family members, with Father and Mother owning 40% each and Son and Daughter owning 10% each.

8. Since its formation and through 2006, the Company generally grew and prospered as did the economy in general in coastal Horry and Georgetown counties. During this period, Son managed the Company with input from the other family members. Except for periodic family discord caused by Son, and periods of Son's unexpected and unexplained absences, Son was effective in growing the Company. Father initially held the title of President of the Company. The record is unclear as to precisely when Son was elected President, but the testimony and records indicate that by 2001 Son was operating as Company President.

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9. Son's relationship with the other family members was troubled and the trouble bled over into their business relationship. From time to time Son would simply leave the business unattended for extended periods of time without notice. In April 2001, Son left without notice resulting in an emergency meeting of the shareholders to provide for the continued operation of the business. Son ultimately returned to the business. At a meeting on May 21, 2001, (Plaintiff's Exhibit 4) the family's personal problems and the effect on the Company was discussed. All of the family members except Son agreed that family counseling was appropriate. Ultimately, the family did undergo counseling but Son's periodic absences from the business without notice continued. In each instance, primarily as a result of the Father's intervention, the Son would ultimately return and resume his position as President and general manager.

10. At a stockholders' meeting in June of 2001 (Plaintiff's Exhibit 5) Father expressed his desire to be less involved in day to day operations of the business with an eye toward retirement. He expressed concern that while the business was doing well, there was a great deal of "negativity" within the family and that the family members should be able to work together. He stated that if they were unable to work together, he could and would replace any one of them.

11. Over the next two years, and in view of Father's desire for retirement, Father and Son and Accountant, assisted by Company's attorney Edward Kelaher, Esquire ("Attorney Kelaher"), devised a strategy for Mother and Father's exit from the business. Accountant is a public accountant from Miami, Florida. He was a long time accountant and tax preparer for the Company and all of the family members, including Son. He received a yearly fixed retainer and did not receive any additional compensation for how he prepared the tax returns or otherwise personally profit from the work he did for any of the parties. In addition, Accountant was a

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friend and trusted advisor to all members of the family on accounting business matters. He prepared Son's personal tax returns through and ending the 2007 tax year.

12. On November 8, 2002, as a result of meetings with Father, Son, and Accountant, Attorney Kelaher forwarded to the shareholders documents which he had prepared in accordance with Father, Son and Accountant's instructions. (Plaintiff's Exhibit 15).

13. Attorney Kelaher termed these documents "unusual" and expressed some concern about some aspects of the documents. The specific documents enclosed with the Kelaher letter were not introduced, but the letter makes reference to three documents:

- a. Gift letter;
- b. Employment Agreement; and
- c. A Pawley's Island property lease

Executed documents fitting that description, dated as of the end of 2002, were introduced as Exhibits 16, 17, and 18. (Hereinafter, Exhibits 16, 17, and 18 are referred to collectively as the "Retirement Documents."). The Retirement Documents, when executed, would have accomplished Father and Mother's goal of exiting from the Company leaving the Company equally owned by Son and Daughter.

14. The Retirement Documents essentially called for the Company to give Father and Mother certain Company employee benefits for "consulting services," and for the Company to pay additional rent on the Pawleys Island Store to Catson, LLC.⁶

15. The gift letter (Plaintiff's Exhibit 17) calls for Mother and Father to give, over time, their shares in the Company to Son and Daughter in equal amounts, anticipating that ultimately, Mother and Father would have effected their exit from the Company and Son and

⁶ Catson, LLC is a limited liability company owned by Father and Mother which owned the land from which the Pawley's Island Store operated.

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Daughter would be equal co-owners.

16. Commencing in 2003 benefits and rents were paid and received under the Retirement Documents. Mother and Father "gave" an additional 20% each in the Company's stock to Son and Daughter so that by the end of 2007 Son and Daughter owned 30% each in the Company and Father and Mother owned 20% each in the Company.

17. In 2003 and 2006, Son made significant fraudulent alterations to the Company's inventory. The adjustment to inventory in 2003 was approximately \$440,000.00 and in 2006 approximately \$300,000.00. These increases in inventory amounts filtered down to increases in the costs of goods sold expense. The effect of these fraudulent entries on the Company's income tax returns for 2003 and 2006 was a significant decrease in both the federal and State income tax liabilities. In order to offset the inventory reduction for 2003, Son prepared promissory notes for \$220,000.00 each made payable to himself and his Sister. (Plaintiff's Exhibits 19 and 20). The notes were signed by Son as President and Ozzie as Vice President of Mason Tire & Auto Service, Inc. and witnessed by Mother and Father. In 2006, Son caused a standard journal ticket (Plaintiff's Exhibit 3) to be issued reflecting notes payable to Son and Daughter totaling \$300,000.00 (the same amount as the 2006 journal adjustment). Son proffered promissory notes supporting the journal tickets to Sister for execution, but she refused.

18. All of the parties (including Son) testified that Father, Mother and Sister were unaware that the manufactured notes and inventory adjustments had the effect of understating taxable income, and that the 2003 and 2006 Company tax returns were therefore filed on a false and inaccurate basis. Son testified that he was likewise unaware that the Company returns (which he signed and filed as President of the Company) were false and inaccurate. I do not find Son's testimony in this regard as to his own lack of knowledge to be credible. At least through

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the filing of the 2006 return, the Plaintiff was fully in charge of the financial affairs (indeed all affairs) of the Company. Accountant testified that the inventory adjustments and corroborative fictitious notes were part of a plan and scheme put in place by Son to limit purported Company income to levels deemed "acceptable" by Son. Accountant testified he presented Son with the "option" to either the pay the taxes accurately reflected by the Company's books and records or to limit the taxes paid by way of these accounting and reporting artifices. The Son opted to limit the taxes paid by manipulating the parts inventory accounts and reports. Accountant candidly testified he turned "a blind eye" to these practices. While Accountant's conduct in regard to the filing of the tax returns is professionally inappropriate, I find his testimony substantially more credible on this issue than that of Son.

19. In 2006, Son determined that the Company would be well served by opening an additional location between Myrtle Beach and Conway. The other family members were agreeable, so in the Fall of 2006 Company purchased property adjacent to S.C. Highway 544 between Myrtle Beach and Conway for the purpose of constructing a Mason Tire Conway location (the "Conway Store"). The Conway Store was leased for operation to an entity known as BCJ Tires, LLC, ("BCJ Tires"). BCJ Tires, formed by Son, had as its initial members, Son, Daughter and a friend of Son named Brian Stout. While the Company had no ownership interest in the Conway Store operation, it was operated by BCJ Tires under the name Mason Tire & Auto Service. On August 3, 2007, without the knowledge or consent of any member of the Mason family, Son transferred \$93,500.00 from the Company to BCJ Tires to fund its operation. (Defendant's exhibit 55). When Father discovered the circumstances of ownership and funding of BCJ Tires, he required Son and Daughter's interest in BCJ Tires to be transferred to the Company. The BCJ Tires location has been operated at a loss since its inception and the loss has

been sustained by the Company. The Company subsequently acquired the interest of Brian Stout and ultimately sold a 52% interest in BCJ Tires to the Accountant. BCJ Tires is currently owned 52% by Accountant and 48% by Company. It continues to operate at a loss. The timing of the acquisition and construction of the Conway Store facility of Company was unfortunate, as it occurred when the price of real estate was at its zenith. The Company continues to struggle not only with the operating loss for its Conway Store, but also with the mortgage debt for the land and building while its value has declined precipitously in the down market.

20. In December of 2004, Ozzie was horribly injured in a motorcycle accident during a motorcycle "Poker Run" in support of the Toys for Tots program. As a result of injuries sustained in the wreck, Ozzie was rendered a quadriplegic. He retained local attorney Gene M. Connell, Jr., to file a worker's compensation claim against the Company on his behalf. Son testified Father directed him to commit perjury and testify that Ozzie's participation in the event was within the scope of his employment so that Ozzie would receive workers compensation benefits. I do not find Son's testimony in this regard to be credible. The testimony of Father and Daughter was to the effect that Ozzie was indeed acting within the scope of his employment at the time of the injury and participated in the event as a marketing activity on behalf of the Company; testimony was also presented that Ozzie had participated on behalf of the business in the same event in years past. Son signed minutes at the stockholders' meeting in November, 2005 (Plaintiff's Exhibit 21) reflecting a discussion of Ozzie's participation in the event. Attorney Gene Connell, who represented Ozzie in the workers compensation claim, testified that during his representation of Ozzie it did appear Ozzie was acting within the scope of his employment at the time of the accident. Mr. Connell testified that the claim was vigorously contested, that his client prevailed at the initial level but the decision was reversed 2 to 1 at the

Commission level; the Commission's decision was appealed to the Circuit Court and a favorable settlement was reached before a decision was rendered by the Circuit Court. He further testified that he was unaware of any fraud in connection with the claim. Based on the testimony presented, I find no credible evidence to sustain Son's contention either that Ozzie's claim was fraudulent or that Son was asked to falsify his testimony thereabout.

21. In July, 2008, Son called Father into his office and told him that he was going to terminate the Company bookkeeper, Sandra Adams, for allegedly stealing because she had failed to deduct the correct premium for insurance from her paycheck. Father recalls that when Son informed him that he was going to terminate Ms. Adams, that Father posed the question of whether they should allow Sister time to find someone else to fill the position. Son then proceeded to immediately terminate Ms. Adams in Father's presence. When Father returned to the bookkeeping department, he decided to look into the matter further and realized the considerable amount of work that Ms. Adams performed for the Company. When Father realized the significance of the volume of work performed by Ms. Adams in regard to the bookkeeping department, he felt it would be more appropriate to place Ms. Adams on probation and see if they could get the insurance premium issue resolved. Father determined that Ms. Adams performed more work for the Company than he realized and he felt that firing her was an injustice. When Father informed Son of his decision to reinstate Ms. Adams, Son responded: "If you do, I will bury you." I find Father's testimony at trial to be credible. The evidence presented establishes that Father's actions in regard to the reinstatement of Ms. Adams were consistent with the Company's best interests.

22. In August of 2007, Son again left the business without notice and remained absent for virtually the entire month. On or about August 18, 2007, Son offered to purchase all but 5%

of Daughter's 25% interest in the Company for approximately \$625,000.00 or to sell his same interest in the Company for \$987,500.00 (Plaintiff's Exhibit 28). No response was made to this offer.

23. On August 31, 2007, Attorney Wayne Byrd wrote to Mother, Father, and Sister on behalf of Son advising he had been retained by Son to represent his interests "...as an officer, director and minority shareholder of Mason Holding Company, Inc, and its wholly owned subsidiaries." Based upon the information provided to him by Son, Attorney Byrd alleged that Mother, Father and Sister had "...committed illegal fraudulent and oppressive acts and have unduly prejudiced the corporations and [Son's interest therein]." He demanded the alleged unacceptable conduct and practices be stopped and threatened litigation on behalf of Son. (Plaintiff's Exhibit 29).

24. On September 27, 2007, Attorney Byrd, again on behalf of Son, wrote Accountant outlining various alleged financial and tax accounting irregularities. "...which you [Accountant] have devised and fashioned" (Plaintiff's Exhibit 31). The evidence before me is convincing that the activities alleged in Attorney Byrd's September 27, 2007, letter are substantionally accurate; however, the letter fails to recognize that the activities complained of were taken with the full knowledge and consent of Son and at his direction. While Accountant may have indeed had some participation in the reporting of various highly questionable tax practices, it is beyond dispute in my opinion that Son was aware of and actively engaged in and furthered the very practices about which his attorneys' September 17, 2007 letter complains and which form the basis of some of the claims in this action. Shortly after the Byrd letter, the Accountant advised Sister via email that certain of the tax accounting and practices complained of in the Byrd letter should be terminated. (Plaintiff's Exhibit 33). Each of the shareholders was asked by

Accountant to agree to repay the corporation for personal expenses paid by Company. (Plaintiff's Exhibit 38). All stockholders signed the agreement except Son. Attorney Byrd refunded a Company check given him for attorneys' fees of Son, stating he represented Son's interest and not the Company. Son immediately transferred corporate funds from the corporation checking account to his own personal account for reimbursement of Byrd's attorney's fees in the amount of \$17,301.66.

25. On October 24, 2007, a meeting of all shareholders of the Mason family companies was held at Cliff Tall's law office pursuant to notice. The purpose of the meeting as stated in the notice was as follows:

1. Selection of registered agent for Mason Tire and Auto, Inc, to be listed with the South Carolina Secretary of State.
2. Review and ratification of corporate records which have been kept regarding past business.
3. Selection of new accounting firm to assist the business, generally, and to supervise correction of past tax reporting.
4. Election of Officers and Directors

(Plaintiff's Exhibit 40)

26. Prior to the October 24 meeting, Son had returned from his August 2007 hiatus and resumed his role as President and general manager of the Company. At the meeting it was determined that local certified public accountant Timothy Duncan ("Duncan") would be retained by the Company to supervise the correction of the past tax reporting. Father was elected President and Son was elected Vice President. The only change in Son's duties was that he was relieved of cash handling procedures; otherwise, he continued to be in charge of the operation of the Company. He retained the same salary and perquisites including car, cell phone, credit card and insurance. Subsequent to the corporate meeting, Duncan undertook to assist Accountant in

preparation of amended State and Federal tax returns for filing to correct the prior defects in filing. Amended returns were prepared for tax years for 2003 through 2006, and revisions requested by Duncan were made to the amended proposed returns. Duncan determined he was unwilling to sign the amended returns as accountant for the Company and that he preferred they be signed by the Accountant since the Accountant had filed the returns which were being amended. On November 29, 2007, a shareholder meeting was scheduled for December 7, 2007 for the purpose, *inter alia*, of mailing the amended returns. (Plaintiff's Exhibit 48).

By letter dated November 22, 2007, Father informed CPA Duncan that the Company would be using Accountant's firm for the preparation of its 2007 corporate and individual income tax returns. Prior to that date, Son had visited Duncan and requested Duncan's assistance in making inventory adjustments similar to those which had been made in the Company's 2003 and 2006 financial statements which had resulted in the incorrect returns being filed. Duncan expressed amazement that Son was attempting to continue that practice, and determined that he did not want to be involved in the preparation of filing Company returns in any event.

27. During the period when Son was acting as President and general manager of the Company, he engaged in the repeated practice of fabricating invoices for commercial tire "casings" from fictitious companies. Invoices were created that would indicate the fictitious company had sold (and that the Company had received) casings. Son would then remove cash from the Company's cash register in an amount equal to the invoice price of the casings. The Company's records would then reflect non-existent tire casing inventory and the books would be in balance because of Son's removal of cash in an amount equivalent to the fictitious casing price. Employees of the Company testified that they observed Son remove money from the cash

¹ A casing is a used commercial tire which has the capability of being recapped for sale.

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registered drawer and place it in his pocket, and that the casing invoices in question contained names of nonexistent companies. Son admitted engaging in this practice, but stated he was told by Accountant that it was acceptable so long as he split the cash equally with Sister (which Accountant denied). The Son testified he did in fact split this cash with Sister. I do not find his testimony in that regard to be credible. The other Mason family members were unaware of Son's tire casing scheme until the Fall of 2007.

28. Upon Son's return to the family business after the August hiatus, he continued to experience relationship problems with Father, Mother and Sister, prompting Father to give him a written reprimand on or about November 29, 2007 (Plaintiff's Exhibit 49). By that time, Father had been made aware of the tire casing scheme and the unauthorized distribution of \$93,500.00 of Company money to BCJ Tires. He was also aware of the tax return improprieties as a result of Attorney Byrd's letters. In a separate letter dated November 29, 2007, Father advised Son as follows:

As Vice-President your job duties will remain the same as they have for the past twenty five years. The only exception will be check signing and transferring of funds, you are no longer responsible for those duties. Any journal tickets created by you must have the Presidents signature on them.

You will perform your job duties with accountability and quality job performance in a professional matter to all officers and employees of Mason Tire. This is a quality I expect from all officers of Mason Tire, nothing less will be tolerated.

Again, if you feel you cannot conduct yourself in such a matter as stated before in the letter you received from your mother and myself you will go on a permanent leave of absence until you can prove otherwise.

(Plaintiff's Exhibit 47)

29. In December of 2007, shareholders attended a meeting at the Surfside Store. The meeting was held for the express purpose of signing and mailing the amended returns. All shareholders and Accountant were in attendance. At the meeting, the proposed amended returns

for 2003, 2004, 2005, and 2006 were presented and discussed. (Plaintiff's Exhibits 65-68). After considerable discussion (principally centered around the considerable cost to the Company of filing the amended returns and payment of the taxes required with such filing) Son, with the consent of the other shareholders, determined that the amended returns would not be filed but that the Company would follow the Accountant's suggestion that the prior underpayment of taxes by the Company be handled "another way". The other way devised by Accountant involved the filing of returns artificially overstating taxable income for future years, essentially by reversing the fictitious inventory adjustments made in previous years. Company did, in fact, file State and federal tax returns for subsequent years which overstated income for those years and the Company did pay the tax on the overstated income for those years.

30. Son continued to act as general manager for the Company and as Vice President until July 30, 2008, when he sent Father a letter (authored by Son's attorney) alleging he (Son) had been constructively discharged and providing two weeks notice of his departure from the Company. (Plaintiff's Exhibit 55). Six days later, Son filed his original Summons and Complaint in this action.

31. During the period of time between October of 2007 and Son's termination of employment on July 30, 2008, Son continued to act as general manager of the Company's business and as its Vice President. Other than the financial restrictions imposed on Son as outlined in Father's November 29, 2007, letter (Plaintiff's Exhibit 47), Son's management authority and management practices continued unabated. Numerous Company employees testified they were unaware of any changes in Son's management authority prior to his departure and, further, that Son continued to principally supervise and direct all aspects of the Company's business. Son retained the bulk of the Company's records in his private office under lock and

key until his departure. Son reluctantly gave Father an office key after Father's third request, but directed Father that Sister was not to be given admittance.

32. Following Son's departure, Father and Sister assumed all of Son's management responsibilities for the Company and continued to manage and direct the Company through the date of trial. Since the date of Son's departure and through the date of trial, the Company has been operated largely in the normal course and scope of business. No shareholders or directors meetings have been held pending the litigation. Just prior to trial, Son tendered a written resignation as officer and/or director of Company and any of its subsidiary companies.

33. During the course of litigation, the shareholders, including Son, determined that Laura DuRant, certified public accountant, should be retained by the Company to review the actions taken by the Company to determine if a satisfactory resolution of the Company's liability for the 2003 and 2006 tax returns had been made. Ms. DuRant determined that, in fact, the Company's tax liability for the returns filed in 2003 and 2006 have not been adequately resolved and that Company has a potential tax liability, including potential penalties (including fraud penalties) approaching three-quarters of a million dollars. As a result of Ms. DuRant's opinion as to the continued tax jeopardy of the Company, Company has engaged tax attorney Edward S. Bowers, Jr., to represent the Company. Mr. Bowers testified that he, on behalf of the Company has made voluntary disclosure to the state and federal tax authorities regarding the Company's past tax practices. The Company's total loss exposure as a result of its past tax practices is, as yet, undetermined. Attorney Bowers has suggested that the Company continue to engage Accountant, at least on a limited and temporary basis, pending a resolution of the Company's tax liability with the taxing authorities.

34. After Son's departure from employment and filing of the lawsuit, no payments

were made pursuant to the retirement documents and no stock transferred to either Son or Sister. Father and Sister have undertaken all of Son's previous job responsibilities and have increased their compensation commensurate with their increased responsibility.

35. It is clear from the record before me that the principal source of discord among the family members was the Son. The Son's inability to work harmoniously with the other family members prompted his periodic episodes of abandoning the Company's business without notice, only to be persuaded to return, principally by Father. Son repeatedly belittled and minimized the talents and efforts of other family members of the Company's success. The sales representative for one of Company's suppliers, Alise Taylor, testified as to her discomfort when in her presence, Son attempted to embarrass and humiliate Father regarding his computer skills or lack thereof. Son consistently complained that Sister was overpaid in light of her level of experience and lack of a college education. For his efforts, Son was quite generously rewarded with employee benefits and perquisites. Other family members received benefits and perquisites in a much lesser degree. I find and hold that the compensation and benefits paid to Father, Sister and Mother were not excessive either before or after Son's departure from the business. By comparison, Son was quite handsomely rewarded for his efforts even without taking into consideration any of the non-taxed paid cash he kept by virtue of the casing scheme.

36. On the record before me, I find no basis for the Son's claims that his employment by the Company was wrongfully terminated or that he was constructively discharged. While the record establishes a number of bases for which Son's employment could have justifiably been terminated (i.e., unexplained absences from the job without notice, utilization of Company funds to fund BCJ Tires without consent, and utilization of Company funds to fund personal expenses such as attorneys fees, to name a few), the simple fact is that Son was not terminated or

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wrongfully discharged. He quit. Prior to his leaving, Son's compensation was not reduced or diminished in any respect. The limitations placed on Son's access to Company money prior to his quitting were amply justified given his course of conduct in misusing those funds. Any damage which the Son may have sustained by reason of his leaving the employment of the Company is due to and caused by Son's voluntary decision to terminate his employment. Accordingly, I find there is no basis for Son's claim that Company or any of the other Defendants did anything to constructively terminate his employment.

37. I find nothing in the record to support Son's contention that Father, Mother or Sister have conspired for the purpose of injuring Son. There is simply no evidence in the record to establish any conspiracy or design to deprive Plaintiff of his employment with the Company or of the fair value of his stock in the Company, and any rights (including management) incident thereto. If the value of Son's stock has indeed been impaired, Son need not look further than his own actions in filing false and inaccurate tax returns, diverting Company funds through the casing scheme, payment of personal expenses (including attorneys fees) from Company funds and working on an expansion of the Company business to include (for the first time) Company ownership of the land and building from which the Conway Store is operated, and diverting Company funds for operation of a non-company owned entity (BCJ Tires). Additionally Son has not established any special damages arising out of the alleged conspiracy which is required to sustain a claim for civil conspiracy.

38. Son also contends that the Father, Sister and Mother breached the duties owed to a Company and its shareholders by officers and directors pursuant to the South Carolina Business Corporation Act, S.C. Code Ann. § 33-8-300 and § 33-8-420 (Rev. 2006). Son asserts that because of numerous breaches of their statutory duties, the Company, Father, Mother and

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Sister should be required to purchase Son's shares at fair market value. The evidence before me does not establish a breach of duty by Father, Mother or Sister. Specifically, Son has failed to establish his allegations that Mother, Father or Sister failed or refused to take appropriate steps in deciding to terminate or not terminate employees; that they failed to properly manage, oversee, safeguard or protect the corporation; that they exposed the corporation to potential liability with regard to a worker's compensation claim; that they wasted corporate assets; that they utilized corporate assets for personal gain; that they failed to properly account; that they deprived Son of his ability to protect his investment or that they filed or authorized the filing of false tax returns on behalf of the Company. I do find that Son filed, on behalf of Company, false tax returns in 2003 and 2006 which he knew substantially understated taxable income. The uncontradicted evidence (including the testimony of Son) is that the Father, Mother and Sister had no knowledge of the falsity of the tax returns prior to receipt of the September 17, 2007, Byrd letter. Son, acting with the knowledge and assistance of Accountant, filed those returns knowing them to be inaccurate. When placed on notice of the tax returns' inaccuracy by the Byrd letter, Mother, Sister, Father and Son all relied on Accountant to take appropriate steps to correct the problem. While the reliance on Accountant ultimately proved to be misplaced, Father, Mother and Sister are no more to blame for their misplaced reliance than is Son. As reason to doubt the Accountant's remedy mounted during the course of litigation, all parties, including agreement by Son, determined to pursue professional accounting advice in the form of an opinion from Laura DuRant. Once Ms. DuRant's opinion was obtained, Father, Mother and Sister made the appropriate decision to retain tax counsel and voluntarily report the tax deficiencies to the taxing authorities.

39. I find nothing in the record to support Son's contention that Father, Mother and

Sister have in any way utilized their position as shareholders and directors of the Company to favor their interest over Son's interest. Son is not being paid by the Company only because he has voluntarily decided not to work. Father and Sister are being paid by the Company because they are working, and I find their compensation to be reasonable. Company has never paid dividends, but has instead utilized its profits for expansion during good economic times and costs and expenses in bad and more challenging economic conditions (such as the commencement of this country's recession in the fall of 2007). Father, Mother and Sister have continued to elect Son to a position as Officer and Director of the companies even with knowledge of Son's actions to the Company's admitted detriment. Simply put, none of the elements of officer or director abuse or of minority shareholder abuse are established on the record before me.

CONCLUSIONS OF LAW

Based on the record before me and the findings of fact hereinbefore set out, I make the following findings and conclusions of law:

1. Son's first cause of action for breach of alleged contract for employment and fifth cause of action for wrongful termination of employment-constructive discharge and sixth cause of action for wrongful termination-violation of public policy must fail because the uncontroverted evidence establishes that the Son voluntarily left employment with the Company and that his leaving was of his own volition and was not cause by constructive discharge or in violation of public policy.

2. Son's third cause of action alleging civil conspiracy to deprive Son of his employment with the Company and to deprive him of the fair value of his stock in the Company for the opportunity to manage the business affairs of the Company must likewise fail for a complete lack of proof, both as to liability and damages.. Son's decision to quit his employment

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and his election not to participate as a shareholder, officer or director of the Company or any of its subsidiary corporations were entirely voluntary decisions on his part. Son has not established anything close to special damages that would support a civil conspiracy claim.

3. Son has failed to establish by the greater weight or the preponderance of the evidence that the Defendants Company, Father, Mother or Sister (as alleged in Son's second cause of action) have breached any duty owed to Son by virtue of their status as officers, directors, or (collectively) majority shareholders. The standards of conduct for officers and directors of companies in South Carolina are clearly established by the South Carolina Business Corporations Act, S. C. Code Ann. § 33-8-300 (as to directors) and § 33-8-420 (Rev. 2006) (as to officers). The cited statutes essentially require that a director or officer discharge his duties: (i) in good faith; (ii) with the care an ordinarily prudent person in like position would exercise under similar circumstances; and (iii) in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. I find nothing in the record before me to indicate that Father, Mother or Sister have deviated from the appropriate standard of conduct. The touchstones of good faith and ordinary care do not require perfection. The Court should not interpose its judgment as to the appropriate course of action for the judgment, exercised in good faith and with reasonable care, for that judgment of those rightfully in control of the Company.

4. I find that Father's actions in regard to the reinstatement of Ms. Adams were consistent with Company's best interest and the decision was a valid business judgment within his discretion.

5. Son has failed to establish that Father, Mother and/or Sister breached any fiduciary duty owed to Son.

6. In South Carolina, there is a "general rule that individuals may not sue corporate

directors [under S.C. Code Ann. § 33-8-300 (2006)] or officers [under S.C. Code Ann. § 33-8-420 (2006)] for losses suffered by the corporation." *Brown v. Stewart*, 348 S.C. 33, 50, 557 S.E.2d 676, 686 (Ct. App. 2001). Instead, the individual must sue the corporation. Contrary to the holding in *Brown v. Stewart*, Son has sued the Father, Mother and Sister under these two statutes.

7. Rather than bringing an action against corporate directors and officers directly, "a Shareholder's suit [should be brought as a] derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs directly, or if their interests were submerged in the corporation whose assets were thus dissipated." *Id.* at 49, 557 S.E.2d at 684-685.

8. The inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not the Son specifically. Therefore, Son's suit was improper in that it was not filed as a derivative action.

9. The factors to be considered in whether a majority shareholder's conduct is oppressive or unfairly prejudicial are enumerated in Kiriakides v. Atlas Food Systems & Services, Inc., 343 S.C. 587, 541 S.E.2d 257 (S.Ct. 2001). The Court in Kiriakides notes that the terms "oppressive" and "unfairly prejudicial" are elastic terms meaning they vary with the circumstances permitted in a particular case. I have examined closely the conduct of Mother, Father and Sister in the case before me in determining whether their conduct could be characterized either as "oppressive" or "unfairly prejudicial" to Son. I find nothing in the record before me to indicate any such intent, motivation or result on the part of the majority shareholders; indeed, their treatment of Son could fairly be characterized as benevolent.

10. Having found no evidence to sustain Son's claims for breach of the obligations owing to him by the officers, directors or majority shareholders, Son's claim for relief pursuant to S.C. Code Ann. § 33-14-300 (Rev. 2006) (purchase of his shares) must likewise fail. Son's dissatisfaction with his lack of employment by Company, as well as with diminution of the value of his shares due to significant tax liability and the unfortunate business decision to expand the Company's operation to include ownership of the Conway Store and 48% ownership of its operation are matters that were principally due to and occasioned by the conduct and decisions of Son.

11. During trial, Son asserted the position that while he was the record owner of a 30% interest in Company, he was entitled to an award of an additional 20% interest in the Company (a total ownership of 50%) under the terms of the Retirement Documents. Aside from the fact that such a claim is completely absent from Plaintiff's Amended Complaint, it is clear that the provisions of the Retirement Documents were not complied with, i.e., Father was not able to retire in light of Son's conduct, and additional rent payments to Father for the Pawley's Island Store were ceased. Moreover, under no circumstance could this Court engage in the enforcement of a series of agreements which clearly, on their face, were illegal and unenforceable.

12. I find and conclude that Son is the owner of a 30% interest in the common stock of the Company.

13. I further note that the relief requested by Son under S.C. Code Ann. § 33-14-300 (Rev. 2006) is equitable in nature. Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443, 449 (Ct. App. 2009) ("a shareholder derivative action, as well as an action for stockholder oppression, is one in equity"). It is well established that "he who comes into equity must come with clean hands." Id.

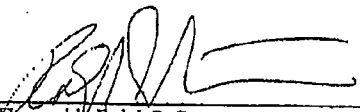
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I find that Son's conduct in the matters asserted in this action is such as to clearly prevent him from relying on an action for stockholder oppression or breach of fiduciary duty in this context.

14. I find that the Defendants have established by the preponderance of the evidence that the Company is entitled to, and it is hereby awarded, judgment against Son for the cash converted by Son through his casing scheme amounting to \$11,716.32. The Court further finds that Company is entitled to, and is hereby awarded, judgment against Son for his conversion of Company funds to pay his personal attorney's fees in the amount of \$17,301.66.

15. As to Defendants' claim for damages relating to the filing of false tax returns, I further find that based on the record before me, it cannot be determined at this time with reasonable certainty the amount of damages suffered by Company as a result of the false and inaccurate returns filed by Son. I find that the filing of false returns through December, 2007 (when the decision not to file an amended return was made) caused damage to the Company but the damages claim itself is not ripe for adjudication. This Court find that because the amount is not determinable at this point, and therefore, this claim is not ripe for adjudication, the Company is not foreclosed from bringing a future action for damages based on Plaintiff's filing of false tax returns once they become determinable.

AND IS SO ORDERED.


Honorable Ralph P. Stroman
Special Referee

January 19, 2012

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	CIVIL ACTION NO: 2008-CP-26-6169
Joseph E. Mason, Jr.,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S MOTION
vs.	)	PURSUANT TO RULE 59(e) S.C.R.C.P.
	)	
Catherine L. Mason, Joseph E.	)	
Mason, Sr., Kathy St. Blanchard,	)	
Mason Holding Company, Inc.,	)	
and Irwin Levine,	)	
	)	
Defendants.	)	

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This matter comes before me on Plaintiff's Motion to Alter or Amend pursuant to Rule 59(e) S.C.R.C.P., my Final Order filed in the case on January 20, 2012. Plaintiff specifically moves the Court to alter or amend the Final Order to delete or revise Finding of Fact number 18 on pages 9 and 10 and Conclusion of Law number 15 on page 26 so as

"...to dismiss any counterclaim against Plaintiff with regard to tax obligations of Mason Holding Company, Inc. or to make clear that no finding or conclusion set forth in the Order will be binding with regard to any future claim for such taxes against Plaintiff."

In ruling on Plaintiff's Motion, I have reviewed the case file, Plaintiff's Motion, my Final Order, and a Brief in Opposition filed on behalf of Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc. In addition, I have had the benefit of the argument of able counsel.

After review, I am of the opinion that Finding of Fact number 18 and Conclusion of Law number 15 in the Final Order are entirely consistent with issues made out by the pleadings, the evidence presented at trial, and the applicable law. Plaintiff's Motion to Alter or Amend is, accordingly, denied.

AND IT IS SO ORDERED.



Ralph P. Stroman
Special Referee

April 30, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2008-CP-26-6169

Joseph E. Mason, Jr.,

Appellant,

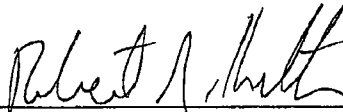
v.

Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, and Mason Holding
Company, Inc., and Irwin Levine,

Respondents.

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal by depositing a copy of it on June 8, 2012, addressed to the attorneys of record for Respondents: Emma Ruth Brittain, Esq. and J. Jackson Thomas, Esq., Thomas & Brittain, P.A., Post Office Box 1290, Myrtle Beach, South Carolina 29578; and John M. Leiter, Esq., Law Offices of John M. Leiter, P.A., 1203 48th Avenue North, Suite 109, Myrtle Beach, South Carolina 29577.



Robert Y. Knowlton
SC Bar No. 3589

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SC Bar No. 3589

June 8, 2012

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2008-CP-26-6169

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SC Court of Appeals

Joseph E. Mason, Jr.,

Appellant,

v.

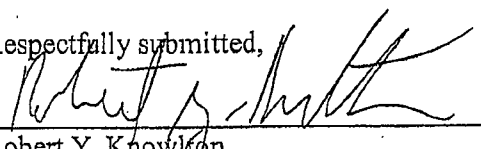
Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, and Mason Holding
Company, Inc., and Irwin Levine,

Respondents.

**SECOND AMENDED
NOTICE OF APPEAL**

Appellant Joseph E. Mason, Jr. appeals the Final Orders of the Honorable Ralph P. Stroman, Special Referee, dated January 19, 2012, and the subsequent order dated April 30, 2012 denying Appellant's timely post-trial motion. Counsel for Joseph E. Mason, Jr. received written notice of the entry of the denial of the post-trial motion on June 1, 2012. Copies of the three orders are attached to this notice as Exhibits A, B, and C respectively.

Respectfully submitted,


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July 19, 2012

Attorneys for Appellant

EXHIBIT A

COPIES
MAILED

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,
Plaintiff,

vs.

Catherine L. Mason, Joseph E.
Mason, Sr., Kathy St. Blanchard,
Mason Holding Company, Inc.,
and Irwin Levine,

Defendants.

FINAL ORDER

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This matter comes before me as Special Referee pursuant to Consent Order of Reference signed by the Honorable Larry B. Hyman on the 8th day of April, 2011. Trial was held over a five day period commencing Monday, November 14, 2011, at the Horry County Courthouse in Conway, South Carolina. Plaintiff is represented by Robert Y. Knowlton, Esquire, and Elizabeth H. Black, Esquire, of Haynsworth Sinkler Boyd, P.A. Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc., are represented by Emma Ruth Brittain, Esquire, and J. Jackson Thomas, Esquire, of Thompson & Henry, P.A. Defendant Irwin Levine is represented by John M. Leiter, Esquire and Lee Ann W. Rice, Esquire of the Law Offices of John M. Leiter, P.A.

This case involves the ownership and operation of Mason Holding Company, Inc., by members of the Joseph E. Mason, Sr. family. In his Amended Complaint dated September 23, 2009, the Plaintiff, Joseph E. Mason, Jr. ("Son"), asserts a number of causes of action against his mother, Catherine L. Mason ("Mother"), his father, Joseph E. Mason, Sr. ("Father"), his sister, Kathy St. Blanchard ("Sister"), and Mason Holding Company, Inc. ("Company"), a South

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Carolina corporation wholly owned by the family members. Son also asserts a claim against the Mason family's long time accountant, Irwin Levine ("Accountant"), for allegedly aiding and abetting the other Defendants in alleged breaches of fiduciary duties.

Company operates five (5) stores in Horry and Georgetown counties under the trade name "Mason Tire & Auto Service" ("Mason Tire"). The business of Mason Tire is the sale of automobile and truck tires and the automotive maintenance of both personally owned and commercial vehicles. All of the store locations except one are operated by separate corporations wholly owned by Company. The store location on South Carolina Highway 544 ("the Conway Store") is operated by BCJ Tires, Inc., which is owned fifty-two percent (52%) by Accountant and forty-two percent (42%) by Company.¹

The stock of Company is held thirty percent (30%) by Son, thirty percent (30%) by Sister, twenty percent (20%) by Father and twenty percent (20%) by Mother. The Son was employed as the principal manager of Company until July 30, 2008, when he left its employ. Son commenced this action with the filing of a Summons and Complaint on August 5, 2008. Son's original Complaint did not include a claim against Accountant. The Amended Complaint filed September 23, 2009, added Accountant as a Defendant and a cause of action against Accountant asserting as his sole cause of action against him that Accountant aided and abetted Mother, Father and Sister in alleged breaches of fiduciary duty against Son.

Son's Amended Complaint asserts the following seven causes of action:

1. A first cause of action against Company, Mother, Father and Sister alleging breach of express or implied contract with Son for permanent employment by Company.
2. A second cause of action against Sister, Father and Mother alleging breach of officer/director duties owing to Company and its shareholders (including Son) pursuant to S.C.

¹ The record reflects that Son consented to the acquisition of BCJ stock by Accountant.

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Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

3. A third cause of action against Mother, Father and Sister alleging they engaged in a civil conspiracy to deprive Son of his employment by Company and to cause him harm.

4. A fourth cause of action against Company, Mother, Father and Sister asserting that they should be required, pursuant to S.C. Code Ann. §33-14-300 (Rev. 2006), to purchase Son's stock in Company due to alleged illegal, fraudulent, oppressive and unfairly prejudicial actions toward Son and misapplication and wasting of Company assets by Mother, Father, and Sister.

5. A fifth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of Company's general employment policy as promulgated in its Employee Handbook.²

6. A sixth cause of action against Company, Mother, Father and Sister alleging Son was constructively discharged from his employment with Company in violation of public policy.

7. A seventh cause of action by Son against Accountant alleging that Accountant aided and abetted Mother, Father and Sister in violating their officer/director obligations to Company and its shareholders pursuant to S.C. Code Ann. §33-8-300 and §33-8-420 (Rev. 2006).

Father, Mother, Sister and Company timely answered Son's Amended Complaint and asserted counterclaims. These Defendants in their Counterclaims allege that Son breached his fiduciary duties to the Company in a number of respects and converted Company assets to his personal use and benefit. These Defendants also asserted several defenses to Son's claims including the defense unclean hands.

² Plaintiff's counsel conceded to the dismissal of this claim upon Defendants' motion for direction of verdict at the conclusion of Son's case.

In support of his claims, Son offered his own testimony, the testimony of Accountant, the testimony of Son's expert Dr. Perry Woodside, the testimony of Son's current Employer/Supervisor Steve Allison, portions of Father's deposition, and 83 exhibits. In opposition to the Son's claims, the Defendants offered the testimony of Father, Mother, Sister, Defendants' expert Sherry Smith, attorney Gene M. Connell, attorney Edward S. Bowers, Jr., Certified Public Accountant Laura S. DuRant, Certified Public Accountant Timothy Duncan, four Company employees (Frankie Fisher, Randy Barringer Mark Myers and John Nottedstad), Bob Kuehn (a former Company employee), Alise Taylor (a tire supplier sales representative) and all portions of Father's deposition not designated by Son. Defendants further offered into evidence 52 exhibits.³

I have carefully considered the testimony of the witnesses over this lengthy trial, the deposition testimony of Father, and the voluminous exhibits proffered by both parties. I have assessed the credibility of each witness testimony, and in that regard I was aided by having the opportunity to observe each witness' demeanor both on the witness stand and otherwise in the courtroom. Having considered all of the foregoing, I have determined the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In or around 1984, Father (who had considerable experience in the tire business in the Miami, Florida area where he lived) decided to go into the tire and auto service business in coastal South Carolina. Father had operated eight retail stores for Goodyear Tire & Rubber. In addition, he was a partner in a truck tire center in the Miami area. When Son and Sister learned of the proposed venture, both asked to be involved. Father required Sister and Son to pay \$10,000.00 each for a ten percent interest in the new entity. Ultimately, Father acquired a

³ Exhibits 21, 26, 27, 43 and 44 were numbered but not introduced.

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location in Surfside Beach, South Carolina, and opened Mason Tire & Auto Service, Inc. (the "Surfside Store"). Initial shareholders were Father, Mother, Son, Sister, a Mr. and Mrs. Sanderson and the Sanderson's daughter. Subsequently Mother and Father acquired the Sandersons' interest in the Surfside Store so that the only shareholders were Mother, Father, Son and Sister. The Surfside Location was and is operated on leased land owned by Mother, Father and Mother's Sister, Mrs. Sanderson.⁴

2. Son graduated from the University of Alabama with a Business Administration degree in or about 1983. After graduation from college, Son took a job with Ryder Truck rentals. In 1984, Son moved from the Miami area to Surfside Beach area and became the store manager for the Surfside Store. The capital for the Surfside Store (with the exception of the original \$10,000.00 investment by Son and Sister) was provided by Mother and Father. Prior to moving to the Surfside area in 1989, Father monitored the Surfside Store operations via frequent telephone calls and site visits. Sister also moved to the Surfside area and was employed in the business in bookkeeping/accounting. Sister's husband Oswald St. Blanchard ("Ozzie") became an employee of Mason Tire sometime during 1984.

3. The Surfside Store was successful. In or around 1989, the family decided to expand the Mason Tire business by opening another location in North Myrtle Beach, South Carolina. A separate entity, J&O Tire and Auto Service, Inc., was formed for the North Myrtle Beach operation ("North Myrtle Beach Store"). It was operated on leased land that was owned by Son and Ozzie individually.⁵

4. Continued success led the Company to expand again in or about 1995 with the opening of a Mason Tire location in Pawley's Island, South Carolina (the "Pawley's Island

⁴ Mrs. Sanderson was one of the original shareholders.

⁵ The land is now owned by Son and Sister.

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Store"). The Pawley's Island Store was operated by an entity formed and known as M&S Tire Company, Inc. The Pawley's Store is operated on leased land owned by a corporation owned by Father.

5. In 1988, the Company was formed and all of the stock of Mason Tire & Auto Service, Inc., J&O Tire & Auto Service, Inc. and M&S Tire Company, Inc. was transferred to Company.

6. In or about 1989, Father and Mother moved to the Surfside Beach area and began working in the business on a daily basis. Son remained in control of the general operation of the business, serving as its general manager. Father, Sister, and Ozzie were also employed by and active in the business. Mother was also involved, but to a lesser degree.

7. In or about 1999, Company opened an additional location in Myrtle Beach, South Carolina (the "Myrtle Beach Store"). The Myrtle Beach Store was operated by K&J Tire Company, Inc. on land leased from Goodyear Tire & Rubber Company. Company was now the owner of all of the stock in the four Mason Tire locations. All of Company's stock was owned by Mason family members, with Father and Mother owning 40% each and Son and Daughter owning 10% each.

8. Since its formation and through 2006, the Company generally grew and prospered as did the economy in general in coastal Horry and Georgetown counties. During this period, Son managed the Company with input from the other family members. Except for periodic family discord caused by Son, and periods of Son's unexpected and unexplained absences, Son was effective in growing the Company. Father initially held the title of President of the Company. The record is unclear as to precisely when Son was elected President, but the testimony and records indicate that by 2001 Son was operating as Company President.

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9. Son's relationship with the other family members was troubled and the trouble bled over into their business relationship. From time to time Son would simply leave the business unattended for extended periods of time without notice. In April 2001, Son left without notice resulting in an emergency meeting of the shareholders to provide for the continued operation of the business. Son ultimately returned to the business. At a meeting on May 21, 2001, (Plaintiff's Exhibit 4) the family's personal problems and the effect on the Company was discussed. All of the family members except Son agreed that family counseling was appropriate. Ultimately, the family did undergo counseling but Son's periodic absences from the business without notice continued. In each instance, primarily as a result of the Father's intervention, the Son would ultimately return and resume his position as President and general manager.

10. At a stockholders' meeting in June of 2001 (Plaintiff's Exhibit 5) Father expressed his desire to be less involved in day to day operations of the business with an eye toward retirement. He expressed concern that while the business was doing well, there was a great deal of "negativity" within the family and that the family members should be able to work together. He stated that if they were unable to work together, he could and would replace any one of them.

11. Over the next two years, and in view of Father's desire for retirement, Father and Son and Accountant, assisted by Company's attorney Edward Kelaher, Esquire ("Attorney Kelaher"), devised a strategy for Mother and Father's exit from the business. Accountant is a public accountant from Miami, Florida. He was a long time accountant and tax preparer for the Company and all of the family members, including Son. He received a yearly fixed retainer and did not receive any additional compensation for how he prepared the tax returns or otherwise personally profit from the work he did for any of the parties. In addition, Accountant was a

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friend and trusted advisor to all members of the family on accounting business matters. He prepared Son's personal tax returns through and ending the 2007 tax year.

12. On November 8, 2002, as a result of meetings with Father, Son, and Accountant, Attorney Kelaher forwarded to the shareholders documents which he had prepared in accordance with Father, Son and Accountant's instructions. (Plaintiff's Exhibit 15).

13. Attorney Kelaher termed these documents "unusual" and expressed some concern about some aspects of the documents. The specific documents enclosed with the Kelaher letter were not introduced, but the letter makes reference to three documents:

- a. Gift letter;
- b. Employment Agreement; and
- c. A Pawley's Island property lease

Executed documents fitting that description, dated as of the end of 2002, were introduced as Exhibits 16, 17, and 18. (Hereinafter, Exhibits 16, 17, and 18 are referred to collectively as the "Retirement Documents."). The Retirement Documents, when executed, would have accomplished Father and Mother's goal of exiting from the Company leaving the Company equally owned by Son and Daughter.

14. The Retirement Documents essentially called for the Company to give Father and Mother certain Company employee benefits for "consulting services," and for the Company to pay additional rent on the Pawleys Island Store to Catson, LLC.⁶

15. The gift letter (Plaintiff's Exhibit 17) calls for Mother and Father to give, over time, their shares in the Company to Son and Daughter in equal amounts, anticipating that ultimately, Mother and Father would have effected their exit from the Company and Son and

⁶ Catson, LLC is a limited liability company owned by Father and Mother which owned the land from which the Pawley's Island Store operated.

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Daughter would be equal co-owners.

16. Commencing in 2003 benefits and rents were paid and received under the Retirement Documents. Mother and Father "gave" an additional 20% each in the Company's stock to Son and Daughter so that by the end of 2007 Son and Daughter owned 30% each in the Company and Father and Mother owned 20% each in the Company.

17. In 2003 and 2006, Son made significant fraudulent alterations to the Company's inventory. The adjustment to inventory in 2003 was approximately \$440,000.00 and in 2006 approximately \$300,000.00. These increases in inventory amounts filtered down to increases in the costs of goods sold expense. The effect of these fraudulent entries on the Company's income tax returns for 2003 and 2006 was a significant decrease in both the federal and State income tax liabilities. In order to offset the inventory reduction for 2003, Son prepared promissory notes for \$220,000.00 each made payable to himself and his Sister. (Plaintiff's Exhibits 19 and 20). The notes were signed by Son as President and Ozzie as Vice President of Mason Tire & Auto Service, Inc. and witnessed by Mother and Father. In 2006, Son caused a standard journal ticket (Plaintiff's Exhibit 3) to be issued reflecting notes payable to Son and Daughter totaling \$300,000.00 (the same amount as the 2006 journal adjustment). Son proffered promissory notes supporting the journal tickets to Sister for execution, but she refused.

18. All of the parties (including Son) testified that Father, Mother and Sister were unaware that the manufactured notes and inventory adjustments had the effect of understating taxable income, and that the 2003 and 2006 Company tax returns were therefore filed on a false and inaccurate basis. Son testified that he was likewise unaware that the Company returns (which he signed and filed as President of the Company) were false and inaccurate. I do not find Son's testimony in this regard as to his own lack of knowledge to be credible. At least through

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the filing of the 2006 return, the Plaintiff was fully in charge of the financial affairs (indeed all affairs) of the Company. Accountant testified that the inventory adjustments and corroborative fictitious notes were part of a plan and scheme put in place by Son to limit purported Company income to levels deemed "acceptable" by Son. Accountant testified he presented Son with the "option" to either the pay the taxes accurately reflected by the Company's books and records or to limit the taxes paid by way of these accounting and reporting artifices. The Son opted to limit the taxes paid by manipulating the parts inventory accounts and reports. Accountant candidly testified he turned "a blind eye" to these practices. While Accountant's conduct in regard to the filing of the tax returns is professionally inappropriate, I find his testimony substantially more credible on this issue than that of Son.

19. In 2006, Son determined that the Company would be well served by opening an additional location between Myrtle Beach and Conway. The other family members were agreeable, so in the Fall of 2006 Company purchased property adjacent to S.C. Highway 544 between Myrtle Beach and Conway for the purpose of constructing a Mason Tire Conway location (the "Conway Store"). The Conway Store was leased for operation to an entity known as BCJ Tires, LLC, ("BCJ Tires"). BCJ Tires, formed by Son, had as its initial members, Son, Daughter and a friend of Son named Brian Stout. While the Company had no ownership interest in the Conway Store operation, it was operated by BCJ Tires under the name Mason Tire & Auto Service. On August 3, 2007, without the knowledge or consent of any member of the Mason family, Son transferred \$93,500.00 from the Company to BCJ Tires to fund its operation. (Defendant's exhibit 55). When Father discovered the circumstances of ownership and funding of BCJ Tires, he required Son and Daughter's interest in BCJ Tires to be transferred to the Company. The BCJ Tires location has been operated at a loss since its inception and the loss has

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been sustained by the Company. The Company subsequently acquired the interest of Brian Stout and ultimately sold a 52% interest in BCJ Tires to the Accountant. BCJ Tires is currently owned 52% by Accountant and 48% by Company. It continues to operate at a loss. The timing of the acquisition and construction of the Conway Store facility of Company was unfortunate, as it occurred when the price of real estate was at its zenith. The Company continues to struggle not only with the operating loss for its Conway Store, but also with the mortgage debt for the land and building while its value has declined precipitously in the down market.

20. In December of 2004, Ozzie was horribly injured in a motorcycle accident during a motorcycle "Poker Run" in support of the Toys for Tots program. As a result of injuries sustained in the wreck, Ozzie was rendered a quadriplegic. He retained local attorney Gene M. Connell, Jr., to file a worker's compensation claim against the Company on his behalf. Son testified Father directed him to commit perjury and testify that Ozzie's participation in the event was within the scope of his employment so that Ozzie would receive workers compensation benefits. I do not find Son's testimony in this regard to be credible. The testimony of Father and Daughter was to the effect that Ozzie was indeed acting within the scope of his employment at the time of the injury and participated in the event as a marketing activity on behalf of the Company; testimony was also presented that Ozzie had participated on behalf of the business in the same event in years past. Son signed minutes at the stockholders' meeting in November, 2005 (Plaintiff's Exhibit 21) reflecting a discussion of Ozzie's participation in the event. Attorney Gene Connell, who represented Ozzie in the workers compensation claim, testified that during his representation of Ozzie it did appear Ozzie was acting within the scope of his employment at the time of the accident. Mr. Connell testified that the claim was vigorously contested, that his client prevailed at the initial level but the decision was reversed 2 to 1 at the

Commission level; the Commission's decision was appealed to the Circuit Court and a favorable settlement was reached before a decision was rendered by the Circuit Court. He further testified that he was unaware of any fraud in connection with the claim. Based on the testimony presented, I find no credible evidence to sustain Son's contention either that Ozzie's claim was fraudulent or that Son was asked to falsify his testimony thereabout.

21. In July, 2008, Son called Father into his office and told him that he was going to terminate the Company bookkeeper, Sandra Adams, for allegedly stealing because she had failed to deduct the correct premium for insurance from her paycheck. Father recalls that when Son informed him that he was going to terminate Ms. Adams, that Father posed the question of whether they should allow Sister time to find someone else to fill the position. Son then proceeded to immediately terminate Ms. Adams in Father's presence. When Father returned to the bookkeeping department, he decided to look into the matter further and realized the considerable amount of work that Ms. Adams performed for the Company. When Father realized the significance of the volume of work performed by Ms. Adams in regard to the bookkeeping department, he felt it would be more appropriate to place Ms. Adams on probation and see if they could get the insurance premium issue resolved. Father determined that Ms. Adams performed more work for the Company than he realized and he felt that firing her was an injustice. When Father informed Son of his decision to reinstate Ms. Adams, Son responded: "If you do, I will bury you." I find Father's testimony at trial to be credible. The evidence presented establishes that Father's actions in regard to the reinstatement of Ms. Adams were consistent with the Company's best interests.

22. In August of 2007, Son again left the business without notice and remained absent for virtually the entire month. On or about August 18, 2007, Son offered to purchase all but 5%

of Daughter's 25% interest in the Company for approximately \$625,000.00 or to sell his same interest in the Company for \$987,500.00 (Plaintiff's Exhibit 28). No response was made to this offer.

23. On August 31, 2007, Attorney Wayne Byrd wrote to Mother, Father, and Sister on behalf of Son advising he had been retained by Son to represent his interests "...as an officer, director and minority shareholder of Mason Holding Company, Inc, and its wholly owned subsidiaries." Based upon the information provided to him by Son, Attorney Byrd alleged that Mother, Father and Sister had "...committed illegal fraudulent and oppressive acts and have unduly prejudiced the corporations and [Son's interest therein]." He demanded the alleged unacceptable conduct and practices be stopped and threatened litigation on behalf of Son. (Plaintiff's Exhibit 29).

24. On September 27, 2007, Attorney Byrd, again on behalf of Son, wrote Accountant outlining various alleged financial and tax accounting irregularities. "...which you [Accountant] have devised and fashioned" (Plaintiff's Exhibit 31). The evidence before me is convincing that the activities alleged in Attorney Byrd's September 27, 2007, letter are substantionally accurate; however, the letter fails to recognize that the activities complained of were taken with the full knowledge and consent of Son and at his direction. While Accountant may have indeed had some participation in the reporting of various highly questionable tax practices, it is beyond dispute in my opinion that Son was aware of and actively engaged in and furthered the very practices about which his attorneys' September 17, 2007 letter complains and which form the basis of some of the claims in this action. Shortly after the Byrd letter, the Accountant advised Sister via email that certain of the tax accounting and practices complained of in the Byrd letter should be terminated. (Plaintiff's Exhibit 33). Each of the shareholders was asked by

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Accountant to agree to repay the corporation for personal expenses paid by Company. (Plaintiff's Exhibit 38). All stockholders signed the agreement except Son. Attorney Byrd refunded a Company check given him for attorneys' fees of Son, stating he represented Son's interest and not the Company. Son immediately transferred corporate funds from the corporation checking account to his own personal account for reimbursement of Byrd's attorney's fees in the amount of \$17,301.66.

25. On October 24, 2007, a meeting of all shareholders of the Mason family companies was held at Cliff Tall's law office pursuant to notice. The purpose of the meeting as stated in the notice was as follows:

1. Selection of registered agent for Mason Tire and Auto, Inc, to be listed with the South Carolina Secretary of State.
2. Review and ratification of corporate records which have been kept regarding past business.
3. Selection of new accounting firm to assist the business, generally, and to supervise correction of past tax reporting.
4. Election of Officers and Directors

(Plaintiff's Exhibit 40)

26. Prior to the October 24 meeting, Son had returned from his August 2007 hiatus and resumed his role as President and general manager of the Company. At the meeting it was determined that local certified public accountant Timothy Duncan ("Duncan") would be retained by the Company to supervise the correction of the past tax reporting. Father was elected President and Son was elected Vice President. The only change in Son's duties was that he was relieved of cash handling procedures; otherwise, he continued to be in charge of the operation of the Company. He retained the same salary and perquisites including car, cell phone, credit card and insurance. Subsequent to the corporate meeting, Duncan undertook to assist Accountant in

preparation of amended State and Federal tax returns for filing to correct the prior defects in filing. Amended returns were prepared for tax years for 2003 through 2006, and revisions requested by Duncan were made to the amended proposed returns. Duncan determined he was unwilling to sign the amended returns as accountant for the Company and that he preferred they be signed by the Accountant since the Accountant had filed the returns which were being amended. On November 29, 2007, a shareholder meeting was scheduled for December 7, 2007 for the purpose, *inter alia*, of mailing the amended returns. (Plaintiff's Exhibit 48).

By letter dated November 22, 2007, Father informed CPA Duncan that the Company would be using Accountant's firm for the preparation of its 2007 corporate and individual income tax returns. Prior to that date, Son had visited Duncan and requested Duncan's assistance in making inventory adjustments similar to those which had been made in the Company's 2003 and 2006 financial statements which had resulted in the incorrect returns being filed. Duncan expressed amazement that Son was attempting to continue that practice, and determined that he did not want to be involved in the preparation of filing Company returns in any event.

27. During the period when Son was acting as President and general manager of the Company, he engaged in the repeated practice of fabricating invoices for commercial tire "casings"⁷ from fictitious companies. Invoices were created that would indicate the fictitious company had sold (and that the Company had received) casings. Son would then remove cash from the Company's cash register in an amount equal to the invoice price of the casings. The Company's records would then reflect non-existent tire casing inventory and the books would be in balance because of Son's removal of cash in an amount equivalent to the fictitious casing price. Employees of the Company testified that they observed Son remove money from the cash

⁷ A casing is a used commercial tire which has the capability of being recapped for sale.

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registered drawer and place it in his pocket, and that the casing invoices in question contained names of nonexistent companies. Son admitted engaging in this practice, but stated he was told by Accountant that it was acceptable so long as he split the cash equally with Sister (which Accountant denied). The Son testified he did in fact split this cash with Sister. I do not find his testimony in that regard to be credible. The other Mason family members were unaware of Son's tire casing scheme until the Fall of 2007.

28. Upon Son's return to the family business after the August hiatus, he continued to experience relationship problems with Father, Mother and Sister, prompting Father to give him a written reprimand on or about November 29, 2007 (Plaintiff's Exhibit 49). By that time, Father had been made aware of the tire casing scheme and the unauthorized distribution of \$93,500.00 of Company money to BCJ Tires. He was also aware of the tax return improprieties as a result of Attorney Byrd's letters. In a separate letter dated November 29, 2007, Father advised Son as follows:

As Vice-President your job duties will remain the same as they have for the past twenty five years. The only exception will be check signing and transferring of funds, you are no longer responsible for those duties. Any journal tickets created by you must have the Presidents signature on them.

You will perform your job duties with accountability and quality job performance in a professional matter to all officers and employees of Mason Tire. This is a quality I expect from all officers of Mason Tire, nothing less will be tolerated.

Again, if you feel you cannot conduct yourself in such a matter as stated before in the letter you received from your mother and myself you will go on a permanent leave of absence until you can prove otherwise.

(Plaintiff's Exhibit 47)

29. In December of 2007, shareholders attended a meeting at the Surfside Store. The meeting was held for the express purpose of signing and mailing the amended returns. All shareholders and Accountant were in attendance. At the meeting, the proposed amended returns

for 2003, 2004, 2005, and 2006 were presented and discussed. (Plaintiff's Exhibits 65-68). After considerable discussion (principally centered around the considerable cost to the Company of filing the amended returns and payment of the taxes required with such filing) Son, with the consent of the other shareholders, determined that the amended returns would not be filed but that the Company would follow the Accountant's suggestion that the prior underpayment of taxes by the Company be handled "another way". The other way devised by Accountant involved the filing of returns artificially overstating taxable income for future years, essentially by reversing the fictitious inventory adjustments made in previous years. Company did, in fact, file State and federal tax returns for subsequent years which overstated income for those years and the Company did pay the tax on the overstated income for those years.

30. Son continued to act as general manager for the Company and as Vice President until July 30, 2008, when he sent Father a letter (authored by Son's attorney) alleging he (Son) had been constructively discharged and providing two weeks notice of his departure from the Company. (Plaintiff's Exhibit 55). Six days later, Son filed his original Summons and Complaint in this action.

31. During the period of time between October of 2007 and Son's termination of employment on July 30, 2008, Son continued to act as general manager of the Company's business and as its Vice President. Other than the financial restrictions imposed on Son as outlined in Father's November 29, 2007, letter (Plaintiff's Exhibit 47), Son's management authority and management practices continued unabated. Numerous Company employees testified they were unaware of any changes in Son's management authority prior to his departure and, further, that Son continued to principally supervise and direct all aspects of the Company's business. Son retained the bulk of the Company's records in his private office under lock and

key until his departure. Son reluctantly gave Father an office key after Father's third request, but directed Father that Sister was not to be given admittance.

32. Following Son's departure, Father and Sister assumed all of Son's management responsibilities for the Company and continued to manage and direct the Company through the date of trial. Since the date of Son's departure and through the date of trial, the Company has been operated largely in the normal course and scope of business. No shareholders or directors meetings have been held pending the litigation. Just prior to trial, Son tendered a written resignation as officer and/or director of Company and any of its subsidiary companies.

33. During the course of litigation, the shareholders, including Son, determined that Laura DuRant, certified public accountant, should be retained by the Company to review the actions taken by the Company to determine if a satisfactory resolution of the Company's liability for the 2003 and 2006 tax returns had been made. Ms. DuRant determined that, in fact, the Company's tax liability for the returns filed in 2003 and 2006 have not been adequately resolved and that Company has a potential tax liability, including potential penalties (including fraud penalties) approaching three-quarters of a million dollars. As a result of Ms. DuRant's opining as to the continued tax jeopardy of the Company, Company has engaged tax attorney Edward S. Bowers, Jr., to represent the Company. Mr. Bowers testified that he, on behalf of the Company has made voluntary disclosure to the state and federal tax authorities regarding the Company's past tax practices. The Company's total loss exposure as a result of its past tax practices is, as yet, undetermined. Attorney Bowers has suggested that the Company continue to engage Accountant, at least on a limited and temporary basis, pending a resolution of the Company's tax liability with the taxing authorities.

34. After Son's departure from employment and filing of the lawsuit, no payments

were made pursuant to the retirement documents and no stock transferred to either Son or Sister. Father and Sister have undertaken all of Son's previous job responsibilities and have increased their compensation commensurate with their increased responsibility.

35. It is clear from the record before me that the principal source of discord among the family members was the Son. The Son's inability to work harmoniously with the other family members prompted his periodic episodes of abandoning the Company's business without notice, only to be persuaded to return, principally by Father. Son repeatedly belittled and minimized the talents and efforts of other family members of the Company's success. The sales representative for one of Company's suppliers, Alise Taylor, testified as to her discomfort when in her presence, Son attempted to embarrass and humiliate Father regarding his computer skills or lack thereof. Son consistently complained that Sister was overpaid in light of her level of experience and lack of a college education. For his efforts, Son was quite generously rewarded with employee benefits and perquisites. Other family members received benefits and perquisites in a much lesser degree. I find and hold that the compensation and benefits paid to Father, Sister and Mother were not excessive either before or after Son's departure from the business. By comparison, Son was quite handsomely rewarded for his efforts even without taking into consideration any of the non-taxed paid cash he kept by virtue of the casing scheme.

36. On the record before me, I find no basis for the Son's claims that his employment by the Company was wrongfully terminated or that he was constructively discharged. While the record establishes a number of bases for which Son's employment could have justifiably been terminated (i.e., unexplained absences from the job without notice, utilization of Company funds to fund BCJ Tires without consent, and utilization of Company funds to fund personal expenses such as attorneys fees, to name a few), the simple fact is that Son was not terminated or

wrongfully discharged. He quit. Prior to his leaving, Son's compensation was not reduced or diminished in any respect. The limitations placed on Son's access to Company money prior to his quitting were amply justified given his course of conduct in misusing those funds. Any damage which the Son may have sustained by reason of his leaving the employment of the Company is due to and caused by Son's voluntary decision to terminate his employment. Accordingly, I find there is no basis for Son's claim that Company or any of the other Defendants did anything to constructively terminate his employment.

37. I find nothing in the record to support Son's contention that Father, Mother or Sister have conspired for the purpose of injuring Son. There is simply no evidence in the record to establish any conspiracy or design to deprive Plaintiff of his employment with the Company or of the fair value of his stock in the Company, and any rights (including management) incident thereto. If the value of Son's stock has indeed been impaired, Son need not look further than his own actions in filing false and inaccurate tax returns, diverting Company funds through the casing scheme, payment of personal expenses (including attorneys fees) from Company funds and working on an expansion of the Company business to include (for the first time) Company ownership of the land and building from which the Conway Store is operated, and diverting Company funds for operation of a non-company owned entity (BCJ Tires). Additionally Son has not established any special damages arising out of the alleged conspiracy which is required to sustain a claim for civil conspiracy.

38. Son also contends that the Father, Sister and Mother breached the duties owed to a Company and its shareholders by officers and directors pursuant to the South Carolina Business Corporation Act, S.C. Code Ann. § 33-8-300 and § 33-8-420 (Rev. 2006). Son asserts that because of numerous breaches of their statutory duties, the Company, Father, Mother and

Sister should be required to purchase Son's shares at fair market value. The evidence before me does not establish a breach of duty by Father, Mother or Sister. Specifically, Son has failed to establish his allegations that Mother, Father or Sister failed or refused to take appropriate steps in deciding to terminate or not terminate employees; that they failed to properly manage, oversee, safeguard or protect the corporation; that they exposed the corporation to potential liability with regard to a worker's compensation claim; that they wasted corporate assets; that they utilized corporate assets for personal gain; that they failed to properly account; that they deprived Son of his ability to protect his investment or that they filed or authorized the filing of false tax returns on behalf of the Company. I do find that Son filed, on behalf of Company, false tax returns in 2003 and 2006 which he knew substantially understated taxable income. The uncontradicted evidence (including the testimony of Son) is that the Father, Mother and Sister had no knowledge of the falsity of the tax returns prior to receipt of the September 17, 2007, Byrd letter. Son, acting with the knowledge and assistance of Accountant, filed those returns knowing them to be inaccurate. When placed on notice of the tax returns' inaccuracy by the Byrd letter, Mother, Sister, Father and Son all relied on Accountant to take appropriate steps to correct the problem. While the reliance on Accountant ultimately proved to be misplaced, Father, Mother and Sister are no more to blame for their misplaced reliance than is Son. As reason to doubt the Accountant's remedy mounted during the course of litigation, all parties, including agreement by Son, determined to pursue professional accounting advice in the form of an opinion from Laura DuRant. Once Ms. DuRant's opinion was obtained, Father, Mother and Sister made the appropriate decision to retain tax counsel and voluntarily report the tax deficiencies to the taxing authorities.

39. I find nothing in the record to support Son's contention that Father, Mother and

Sister have in any way utilized their position as shareholders and directors of the Company to favor their interest over Son's interest. Son is not being paid by the Company only because he has voluntarily decided not to work. Father and Sister are being paid by the Company because they are working, and I find their compensation to be reasonable. Company has never paid dividends, but has instead utilized its profits for expansion during good economic times and costs and expenses in bad and more challenging economic conditions (such as the commencement of this country's recession in the fall of 2007). Father, Mother and Sister have continued to elect Son to a position as Officer and Director of the companies even with knowledge of Son's actions to the Company's admitted detriment. Simply put, none of the elements of officer or director abuse or of minority shareholder abuse are established on the record before me.

CONCLUSIONS OF LAW

Based on the record before me and the findings of fact hereinbefore set out, I make the following findings and conclusions of law:

1. Son's first cause of action for breach of alleged contract for employment and fifth cause of action for wrongful termination of employment-constructive discharge and sixth cause of action for wrongful termination-violation of public policy must fail because the uncontroverted evidence establishes that the Son voluntarily left employment with the Company and that his leaving was of his own volition and was not cause by constructive discharge or in violation of public policy.

2. Son's third cause of action alleging civil conspiracy to deprive Son of his employment with the Company and to deprive him of the fair value of his stock in the Company for the opportunity to manage the business affairs of the Company must likewise fail for a complete lack of proof, both as to liability and damages.. Son's decision to quit his employment

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and his election not to participate as a shareholder, officer or director of the Company or any of its subsidiary corporations were entirely voluntary decisions on his part. Son has not established anything close to special damages that would support a civil conspiracy claim.

3. Son has failed to establish by the greater weight or the preponderance of the evidence that the Defendants Company, Father, Mother or Sister (as alleged in Son's second cause of action) have breached any duty owed to Son by virtue of their status as officers, directors, or (collectively) majority shareholders. The standards of conduct for officers and directors of companies in South Carolina are clearly established by the South Carolina Business Corporations Act, S. C. Code Ann. § 33-8-300 (as to directors) and § 33-8-420 (Rev. 2006) (as to officers). The cited statutes essentially require that a director or officer discharge his duties: (i) in good faith; (ii) with the care an ordinarily prudent person in like position would exercise under similar circumstances; and (iii) in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. I find nothing in the record before me to indicate that Father, Mother or Sister have deviated from the appropriate standard of conduct. The touchstones of good faith and ordinary care do not require perfection. The Court should not interpose its judgment as to the appropriate course of action for the judgment, exercised in good faith and with reasonable care, for that judgment of those rightfully in control of the Company.

4. I find that Father's actions in regard to the reinstatement of Ms. Adams were consistent with Company's best interest and the decision was a valid business judgment within his discretion.

5. Son has failed to establish that Father, Mother and/or Sister breached any fiduciary duty owed to Son.

6. In South Carolina, there is a "general rule that individuals may not sue corporate

directors [under S.C. Code Ann. § 33-8-300 (2006)] or officers [under S.C. Code Ann. § 33-8-420 (2006)] for losses suffered by the corporation." *Brown v. Stewart*, 348 S.C. 33, 50, 557 S.E.2d 676, 686 (Ct. App. 2001). Instead, the individual must sue the corporation. Contrary to the holding in *Brown v. Stewart*, Son has sued the Father, Mother and Sister under these two statutes.

7. Rather than bringing an action against corporate directors and officers directly, "a Shareholder's suit [should be brought as a] derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs directly, or if their interests were submerged in the corporation whose assets were thus dissipated." *Id.* at 49, 557 S.E.2d at 684-685.

8. The inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not the Son specifically. Therefore, Son's suit was improper in that it was not filed as a derivative action.

9. The factors to be considered in whether a majority shareholder's conduct is oppressive or unfairly prejudicial are enumerated in Kiriakides v. Atlas Food Systems & Services, Inc., 343 S.C. 587, 541 S.E.2d 257 (S.Ct. 2001). The Court in Kiriakides notes that the terms "oppressive" and "unfairly prejudicial" are elastic terms meaning they vary with the circumstances permitted in a particular case. I have examined closely the conduct of Mother, Father and Sister in the case before me in determining whether their conduct could be characterized either as "oppressive" or "unfairly prejudicial" to Son. I find nothing in the record before me to indicate any such intent, motivation or result on the part of the majority shareholders; indeed, their treatment of Son could fairly be characterized as benevolent.

10. Having found no evidence to sustain Son's claims for breach of the obligations owing to him by the officers, directors or majority shareholders, Son's claim for relief pursuant to S.C. Code Ann. § 33-14-300 (Rev. 2006) (purchase of his shares) must likewise fail. Son's dissatisfaction with his lack of employment by Company, as well as with diminution of the value of his shares due to significant tax liability and the unfortunate business decision to expand the Company's operation to include ownership of the Conway Store and 48% ownership of its operation are matters that were principally due to and occasioned by the conduct and decisions of Son.

11. During trial, Son asserted the position that while he was the record owner of a 30% interest in Company, he was entitled to an award of an additional 20% interest in the Company (a total ownership of 50%) under the terms of the Retirement Documents. Aside from the fact that such a claim is completely absent from Plaintiff's Amended Complaint, it is clear that the provisions of the Retirement Documents were not complied with, i.e., Father was not able to retire in light of Son's conduct, and additional rent payments to Father for the Pawley's Island Store were ceased. Moreover, under no circumstance could this Court engage in the enforcement of a series of agreements which clearly, on their face, were illegal and unenforceable.

12. I find and conclude that Son is the owner of a 30% interest in the common stock of the Company.

13. I further note that the relief requested by Son under S.C. Code Ann. § 33-14-300 (Rev. 2006) is equitable in nature. Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443, 449 (Ct. App. 2009) ("a shareholder derivative action, as well as an action for stockholder oppression, is one in equity"). It is well established that "he who comes into equity must come with clean hands." Id.

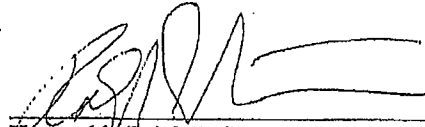
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I find that Son's conduct in the matters asserted in this action is such as to clearly prevent him from relying on an action for stockholder oppression or breach of fiduciary duty in this context.

14. I find that the Defendants have established by the preponderance of the evidence that the Company is entitled to, and it is hereby awarded, judgment against Son for the cash converted by Son through his casing scheme amounting to \$11,716.32. The Court further finds that Company is entitled to, and is hereby awarded, judgment against Son for his conversion of Company funds to pay his personal attorney's fees in the amount of \$17,301.66.

15. As to Defendants' claim for damages relating to the filing of false tax returns, I further find that based on the record before me, it cannot be determined at this time with reasonable certainty the amount of damages suffered by Company as a result of the false and inaccurate returns filed by Son. I find that the filing of false returns through December, 2007 (when the decision not to file an amended return was made) caused damage to the Company but the damages claim itself is not ripe for adjudication. This Court find that because the amount is not determinable at this point, and therefore, this claim is not ripe for adjudication, the Company is not foreclosed from bringing a future action for damages based on Plaintiff's filing of false tax returns once they become determinable.

AND IS SO ORDERED.



Honorable Ralph P. Stroman
Special Referee

January 18, 2012

EXHIBIT B

STATE OF SOUTH CAROLINA
HORRY COUNTY

Joseph E. Mason, Jr.

Plaintiff,

vs.

Catherine L. Mason, Joseph E. Mason,
Sr., Kathy St. Blanchard, Mason Holding
Company, Inc., and Irwin Levine,

Defendants.

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 08-CP-26-6169

FINAL ORDER

[Ending Action as to Defendant
Irwin Levine]

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CLERK OF COURT

THIS MATTER came before me for trial November 14, 2011 through November 18, 2011. Appearing for the Plaintiff Joseph E. Mason, Jr. was Robert Y. Knowlton, Esq. and Elizabeth H. Black, Esq., of the Richland County Bar. Appearing for the Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard, and Mason Holding Company, Inc. was J. Jackson Thomas, Esq. and Emma Ruth Brittain, Esq., of the Horry County Bar. Appearing for the Defendant Irwin Levine was John M. Leiter, Esq. and Lee Ann W. Rice, Esq., also of the Horry County Bar. Having considered the testimony of the witnesses, having reviewed the pleadings and exhibits and having considered the arguments of counsel, this Court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This action was commenced on August 5, 2008. The Complaint was amended September 9, 2009 to allege a single cause of action against Defendant Irwin

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Levine. This Court has jurisdiction over the subject matter and parties to this action.

2. In the Amended Complaint, the Plaintiff, Joseph E. Mason, Jr. ("Plaintiff") seeks damages from Defendant Irwin Levine ("Defendant Levine") for allegedly aiding and abetting other Defendants' breaches of fiduciary duties. Those other Defendants are Joseph E. Mason, Sr., Catherine L. Mason, and Kathy St. Blanchard, who are Plaintiff's father, mother, and sister, respectively ("Family Defendants").

3. Both the Family Defendants and Plaintiff worked for and held shares in Defendant Mason Holding Company, Inc., ("Defendant Company") which is the parent company to five subsidiary companies. Each of those five subsidiaries operates a tire and automotive store location on the Grand Strand, all under the name Mason Tire.

4. The breaches of fiduciary duty that Plaintiff asserts at the hands of the Family Defendants that relate to the Defendant Levine include (1) the filing of incomplete or inadequate tax returns on behalf of the Defendant Company and its subsidiaries; and (2) the non-filing of amended tax returns on behalf of the Defendant Company and its subsidiaries.

5. Plaintiff was the President of the Defendant Company, and oversaw the day to day operations of the Company until he was voted into the position of Vice President.

6. Defendant Levine is a public accountant who was the accountant for the Plaintiff and all Defendants, including the Defendant Company and its subsidiaries. Defendant Levine was Plaintiff's accountant until sometime after filing Plaintiff's 2007 tax returns in the spring of 2008. Defendant Levine currently serves as the accountant for all Defendants, including the Defendant Company and its subsidiaries.

7. Defendant Levine has prepared tax returns on behalf of the Defendant Company for more than twenty (20) years.

8. Plaintiff oversaw the finances of the Defendant Company while he was President of the Defendant Company, up until October 24, 2007.

9. Plaintiff would work with Defendant Levine in preparing tax returns for the Defendant Company, and its subsidiaries.

10. The corporate tax returns filed in 2003 contained inaccurate information. The returns reflected loans from shareholders rather than income to the Defendant Company. The Family Defendants have begun the necessary steps to rectify these inaccuracies with the Internal Revenue Service ("IRS") and State of South Carolina.

11. Plaintiff, who was President of the Defendant Company at the time of the 2003 tax returns' filing, was aware of the inaccuracies contained in the 2003 corporate tax returns. The Plaintiff had overstated the cost of sales. Specifically, Defendant Levine had presented the Plaintiff with the option of either (I) filing accurate tax returns which would have corrected the cost of sales or (II) by recording the discrepancy (\$440,000.00) as a loan from shareholders. The Plaintiff chose to book the discrepancy as a loan and did so in the year ending 2003.

12. The corporate tax returns filed in 2006 also contained inaccurate information. The Family Defendants have begun the necessary steps to rectify these inaccuracies with the IRS and the State.

13. Plaintiff, who was still the President of the Defendant Company at the time of the 2006 returns' filing, was aware of the inaccuracies contained in the 2006 corporate tax returns. Unknown to Defendant Levine, Plaintiff again made an entry in the books of

the Company that shareholder loans to the Company had been made and the returns were prepared to reflect these loans. Plaintiff also took money from the Defendant Company in various ways at various times during his Presidency and Vice Presidency.

14. In October 2007, Plaintiff, Defendant Levine and the Family Defendants undertook the initial steps to rectify the inaccuracies in the 2003 and 2006 returns by preparing and discussing the filing of amended returns. At a meeting of the Plaintiff, the Family Defendants and Defendant Levine, when Mr. Levine presented the amended returns for signature, the Plaintiff announced that the amended returns would not be filed and the Family Defendants acquiesced.

15. After the decision was made not to file the amended returns, Defendant Levine discussed the possibility of another method of correcting the previous inaccuracies in the 2003 and 2006 tax returns by overstating income in subsequent corporate tax returns. Defendant Levine believed that this overstatement was a practical fix to the previous returns' inaccuracies. The Plaintiff and Family Defendants agreed to this method of correcting the prior returns.

16. Defendant Levine did not receive any additional compensation for how he prepared the tax returns and did not personally profit from any work he did for any of the parties other than his yearly fixed retainer.

17. Plaintiff left the corporation July 31, 2008 and this lawsuit began shortly thereafter.

CONCLUSIONS OF LAW

18. To prove his claim against Defendant Levine for aiding and abetting of a breach of a fiduciary duty, the Plaintiff must establish by a preponderance that the Family

Defendants breached a duty owed to Plaintiff; that Defendant Levine knowingly participated in that breach; and, that Plaintiff is entitled to damages as a result of Defendant Levine's participation. See *Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (2008).

19. Plaintiff has not established that the Family Defendants breached any fiduciary duty owed to Plaintiff. Therefore, Defendant Levine cannot not be found to have knowingly aided and abetted the Family Defendants in a breach of a fiduciary duty owed by them to the Plaintiff.

20. Additional reasons exist for denying the Plaintiff's claim against Defendant Levine aside from the fact that the Plaintiff has failed to make prove the *prima facie* elements of aiding and abetting in the breach of a fiduciary duty. In South Carolina, there is a "general rule that individuals may not sue corporate directors [under S.C. Code Ann. § 33-8-300 (2006)] or officers [under S.C. Code Ann. § 33-8-420 (2006)] for losses suffered by the corporation." *Brown v. Stewart*, 348 S.C. 33, 50, 557 S.E.2d 676, 686 (Ct. App. 2001). Instead, the individual must sue the corporation. Contrary to the holding in *Brown v. Stewart*, Plaintiff has sued the Family Defendants under these two statutes.

21. Rather than bringing an action against corporate directors and officers directly, "a Shareholder's suit [should be brought as a] derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs directly, or if their interests were submerged in the corporation whose assets were thus dissipated." *Id.* at 49, 557

S.E.2d at 684-685.

22. The inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not the Plaintiff specifically. Therefore, Plaintiff's suit was improper in that it was not filed as a derivative action. As a result, Plaintiff does not have standing to pursue the breach of fiduciary claims in the manner he did. If he did not have standing to sue the Family Defendants for breaches of fiduciary duty, he certainly did not have standing to sue Defendant Levine for allegedly aiding and abetting the Family Defendants.

23. Furthermore, "a shareholder's derivative action, as well as an action for stockholder oppression, is one in equity." *Straight v. Goss*, 383 S.C. 180, 192, 678 S.E.2d 443, 449 (Ct.App. 2009). Plaintiff argues his action for breach of fiduciary duty under the South Carolina Business Corporation Act of 1988 is an action for stockholder oppression. However, "he who comes into equity must come with clean hands." *Id.* Plaintiff's unclean hands prevent him from relying on an action for stockholder oppression, or breach of a fiduciary duty in this context.

24. "Equity requires that a shareholder derivative action cannot be maintained if the nominal plaintiff has unclean hands in connection with the transactions which are the bases for the litigation or has participated or acquiesced in, or benefitted from the conduct of which he now complains." *Id.* at 208, 678 S.E.2d at 458. Plaintiff benefitted as much as or more than the Family Defendants as a result of the inaccurate tax returns filed with the IRS or State of South Carolina. Plaintiff's own inequitable conduct came directly to bear on the transactions of which Plaintiff now complains. *Id.* Therefore, his equitable claims under the South Carolina Business Corporation Act of 1988 are improper due to Plaintiff's

own involvement in the filing of inaccurate returns.

25. Plaintiff has also failed to establish that he is owed distinct damages as a result of any conduct on behalf of Defendant Levine.

26. Plaintiff has failed to establish that Defendant Levine aided and abetted a breach of a fiduciary duty owed to Plaintiff, and therefore Plaintiff's cause of action against Defendant Levine for aiding and abetting the Family Defendants in their alleged breaches of fiduciary duties is DENIED and the same is herewith DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.


Ralph P. Stroman, Special Referee,
Fifteenth Judicial Circuit

Conway, South Carolina

Dated: Jan 19, 2012

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-26-6169

Joseph E. Mason, Jr.,
)
)
Plaintiff,)

vs.)

Catherine L. Mason, Joseph E.
Mason, Sr., Kathy St. Blanchard,
Mason Holding Company, Inc.,
and Irwin Levine,)

Defendants.)

**ORDER DENYING PLAINTIFF'S MOTION
PURSUANT TO RULE 59(e) S.C.R.C.P.**

FILED
Horry County
2012 MAY -4 PM 3:09
JELANIE HUGGINS-WARD
CLERK OF COURT

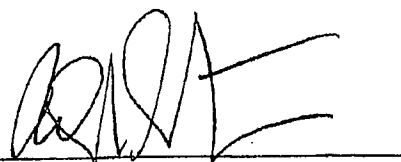
This matter comes before me on Plaintiff's Motion to Alter or Amend pursuant to Rule 59(e) S.C.R.C.P., my Final Order filed in the case on January 20, 2012. Plaintiff specifically moves the Court to alter or amend the Final Order to delete or revise Finding of Fact number 18 on pages 9 and 10 and Conclusion of Law number 15 on page 26 so as

"...to dismiss any counterclaim against Plaintiff with regard to tax obligations of Mason Holding Company, Inc. or to make clear that no finding or conclusion set forth in the Order will be binding with regard to any future claim for such taxes against Plaintiff."

In ruling on Plaintiff's Motion, I have reviewed the case file, Plaintiff's Motion, my Final Order, and a Brief in Opposition filed on behalf of Defendants Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard and Mason Holding Company, Inc. In addition, I have had the benefit of the argument of able counsel.

After review, I am of the opinion that Finding of Fact number 18 and Conclusion of Law number 15 in the Final Order are entirely consistent with issues made out by the pleadings, the evidence presented at trial, and the applicable law. Plaintiff's Motion to Alter or Amend is, accordingly, denied.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Stroman', written over a horizontal line.

Ralph P. Stroman
Special Referee

April 30, 2012

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

JOSEPH E. MASON, JR.,

Plaintiff,

vs. CASE NO. 2008-CP-26-6169

JOSEPH E. MASON, SR., CATHERINE L. MASON, KATHY
ST. BLANCHARD, MASON HOLDING COMPANY, INC., and
IRWIN LEVINE,

Defendants.

DATE: NOVEMBER 14, 2011

TIME: 9:55 a.m.

LOCATION: Horry County Courthouse
1301 Second Avenue
Courtroom 2D
Conway, SC

REPORTED BY: Rebecca A. Graziano, CSR, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 THE COURT: Let the record reflect that
2 this matter, Joseph E. Mason, the plaintiff, versus
3 Catherine L. Mason et al., civil action
4 2008-CP-26-6169, was referred to me by consent
5 order or referral to the special referee.

6 Also let the record reflect that there
7 was a previous order of reference filed
8 February 11th, 2011, and it was reaffirmed in all
9 respects, and the matter was referred by the
10 honorable Larry B. Hymen on April 8th, 2011. Thank
11 you.

12 MR. KNOWLTON: Thank you, your Honor.
13 Robert Knowlton, Bob Knowlton, along with Elizabeth
14 Black with the Haynsworth Sinkler Boyd firm. We
15 represent the plaintiff, Joe Mason, Jr.

16 Your Honor, we have premarked a set of
17 exhibits for the plaintiff, and we would now offer
18 those into evidence. We have a copy of the
19 exhibits for you, a copy for the witness in a
20 notebook, and the original for the court reporter.
21 I thought to speed things along, I'd go ahead and
22 offer them into evidence right now.

23 THE COURT: Do any of the defendants
24 have an objection?

25 MR. THOMAS: If it please the Court,

1 Jack Thomas, along with Emma Ruth Brittain. We
2 represent Catherine L. Mason, Joseph Mason, Sr.,
3 Kathy St. Blanchard, and Mason Holding Company,
4 Inc. We have no objection to the proposed exhibits
5 by the plaintiff.

6 MR. LEITER: Your Honor, I'm John
7 Leiter, and I, together with Leeann Rice, represent
8 the defendant, Irwin Levine. My objection is
9 technical in nature, and I addressed it just
10 briefly in chambers with you, but
11 Mr. Levine is a defendant on one cause of action
12 alone, and that's aiding and abetting on the breach
13 of alleged fiduciary duties.

14 So to the extent that documents are
15 coming in that are not relevant to that claim
16 against Mr. Levine, we would object to those
17 documents, and I can give you an example. I think
18 the proposed trial Exhibits 2 and 3, for instance,
19 being offered by the plaintiff, are evaluations
20 done by Mr. Levine a while ago. And while I
21 understand that valuation of the company is
22 relevant to other claims, they're not relevant as
23 to the claim against Mr. Levine.

24 And so for that reason, we are placing
25 that general objection as to these documents coming

1 Q. And the company accountant?

2 A. Correct.

3 Q. And we need to go through how we got to
4 this situation. First of all, this isn't the first
5 time your dad has been sued by family members, is
6 it?

7 A. No, it isn't.

8 Q. What other lawsuits has he had with
9 family members?

10 MR. THOMAS: Objection to relevance,
11 your Honor.

12 THE COURT: I'm going to take it
13 subject to the objection, like we will do with most
14 everything else in this trial. Go ahead. Answer
15 the question, if you would.

16 THE WITNESS: I believe back when I was
17 younger, he was involved in a lawsuit where his
18 sister was suing him. Then there was another
19 lawsuit more recent in the last 15 or 20 years
20 where his sister-in-law and brother-in-law were
21 suing the company and himself, I believe.

22 BY MR. KNOWLTON:

23 Q. Let me ask you first about your
24 employment before Mason Tire. What did you do
25 after you graduated from the University of Alabama?

1 A. I came out of the University of Alabama
2 and went directly to work for Ryder Truck Rental,
3 or Ryder Systems. I was working on their fuel line
4 pumping gas for a couple months prior to them
5 putting me in a sales position. I did the sales
6 position for about a year and a half. They moved
7 me into a management position in Miami still, and
8 then I moved to the Tampa/Saint Pete area for two
9 to three years. I was actually a district rental
10 manager in charge of an area that encompassed the
11 west coast of Florida from Tarpon Springs down to
12 Naples. I was in charge of rental trucks, leasing,
13 in about an eight to \$10 million area.

14 Q. You had a responsibility for an area of
15 eight to \$10 million in sales?

16 A. That's correct.

17 Q. Did there come a time when an
18 opportunity arose with your family to purchase a
19 Goodyear Tire dealership?

20 A. Yes, it did.

21 Q. Tell me what occurred and when it
22 occurred.

23 A. In approximately 1983, my dad phoned me
24 and said that he had heard of an opportunity in
25 Wilmington, North Carolina. There was a Goodyear

1 store apparently for sale. He flew up there,
2 checked it out, came back, said that it wasn't for
3 sale. He was talking to me at that time saying:
4 Are you interested in going in and owning your own
5 Goodyear store? And I had had some experience
6 prior to that in Goodyear stores growing up, and I
7 said yes, I was, and he said: Well, that
8 opportunity in Wilmington no longer exists.
9 Goodyear I guess changed their mind, but there is
10 an opportunity in Conway. So we went to Conway to
11 check it out.

12 Q. And did you ultimately decide on a
13 different location?

14 A. Yes. As we were discussing the Conway
15 location in the hotel in Surfside, I believe is
16 where we were staying, we came to realize
17 that -- we were discussing all the tourists and
18 people that come to Myrtle Beach and how we could
19 pull a certain amount over to Conway. And then I
20 guess a light bulb went off, and we said: Well,
21 wait a minute. Why don't we see if there's a
22 Goodyear in Myrtle Beach.

23 So we started looking it up, and we
24 found something in the phonebook. There was a
25 Shell that was a Goodyear dealer, so the next day

1 we visited it, and found out it was a very, very
2 small gas station, and the opportunity was stronger
3 in the Myrtle Beach market or Surfside market.

4 Q. So you settled on a location in
5 Surfside is where you started the first Mason Tire
6 store?

7 A. That's correct.

8 Q. Did you leave Ryder at that time to
9 pursue that opportunity?

10 A. Yeah. That was a hard decision,
11 because I had a very good job with Ryder at the
12 time. The pay was extremely well with a lot of
13 benefits and things. But the idea of owning your
14 own, the American dream and all that, kind of
15 pushed me towards going ahead and resigning there
16 and taking the other situation.

17 Q. Did you move here?

18 A. Yes, I did. In 1984, I want to say
19 around March, my wife and I -- at the time we
20 weren't married, but we moved to the Myrtle Beach
21 area to pursue the building of the location.

22 Q. And what role did you have at that
23 stage of the Mason Tire store?

24 A. My role at that point was to put
25 together the corporation, you know, whatever we

1 August of '84, and then we opened the doors in
2 September.

3 Q. And what was her role with the company?

4 A. Her role at that point was
5 predominantly some bookkeeping. And then if I got
6 inundated with sales, she would help out on the
7 counter.

8 Q. When did she first get involved?

9 A. August of '84.

10 Q. And when did the store open?

11 A. September of '84.

12 Q. And was she compensated upon her
13 arrival there?

14 A. Yes, she was.

15 Q. Did there come a time when Oswald
16 St. Blanchard became involved with Mason Tire?

17 A. Yes. He came up after the opening of
18 the store. I can't remember exactly when. It
19 might have been a few months afterwards.

20 Q. Let me ask you first to explain to
21 Judge Stroman who that is.

22 A. Ozzie St. Blanchard is my
23 brother-in-law, or was my brother-in-law. He
24 married my sister.

25 Q. And when did he first become involved

1 with the company?

2 A. In late 1984 he came up. He wasn't
3 married to my sister at the time, but he came up
4 and they lived together. He went to work for a
5 company here locally, as far as a construction
6 company went.

7 Q. And how did he become involved with
8 Mason Tire?

9 A. I believe he did that for a few months,
10 and then my dad approached me and said that
11 I -- apparently my sister had approached him and
12 said can we hire Ozzie into the store, and we did.

13 Q. Did he have training in the tire retail
14 business?

15 A. No, he didn't.

16 Q. So at this point, the store was up and
17 running?

18 A. That's correct.

19 Q. At Surfside?

20 A. Correct.

21 Q. And what was the corporate name of that
22 entity?

23 A. Mason Tire and Auto Service.

24 MR. KNOWLTON: For a convenient
25 reference to the court, we've prepared a corporate

1 structure organized chart, which is marked as
2 Exhibit 78.

3 BY MR. KNOWLTON:

4 Q. Let's just take a moment to
5 look -- we'll have to come back to it, but let's
6 just take a moment to look at how it looks today.

7 A. Is that in the book here?

8 Q. Yes, sir. It's the very last exhibit.

9 A. All the way in the back?

10 Q. Yes, sir, the very last one.

11 A. The last tab?

12 Q. Yes, sir. 78.

13 A. Okay.

14 Q. Is this the Mason Tire corporate
15 structure as it exists today?

16 A. I would have to testify this was the
17 corporate structure when I left the organization.
18 I'm not sure if the corporate structure has been
19 changed.

20 Q. Well, first of all, we've been talking
21 about the Surfside Beach location, which was formed
22 in about 1984?

23 A. That's correct.

24 Q. And that's Mason Tire and Auto Service,
25 Inc.?

1 A. That's correct.

2 Q. And at the time you left, is that where
3 the business office continued to be located?

4 A. Yes, upstairs in that location.

5 Q. And the current organization of Mason
6 Tire operations is now in the form of a holding
7 company with operating stores under it?

8 A. That's correct.

9 Q. So we have the North Myrtle Beach
10 location. That entity is wholly owned, is it not,
11 by Mason Holding?

12 A. Yes, it is.

13 Q. And that was opened in about 1990?

14 A. Yes, it was.

15 Q. There's a Pawleys Island location. Is
16 that correct?

17 A. Correct.

18 Q. And that's wholly owned by Mason
19 Holding Company also?

20 A. To the best of my knowledge, correct.

21 Q. And there is a Myrtle Beach location
22 that was opened in about 2001?

23 A. Correct.

24 Q. And that's K & J Tire?

25 A. That's correct.

1 Q. And the most recent location is in
2 Conway?

3 A. Yes, sir.

4 Q. And that's on Highway 544?

5 A. Yes, sir.

6 Q. And the operating entity there is
7 called BCJ Tires. Is that correct?

8 A. That's correct.

9 Q. Now, the first four of those entities
10 are all wholly owned by Mason Tire?

11 A. That's correct.

12 Q. And as far as currently, the other one
13 is 48 percent owned by Mason Holding, and
14 54 percent by the defendant, Irwin Levine?

15 A. I was told that. I don't know that to
16 be absolutely correct, because that happened after
17 I had left.

18 Q. Well, the best information we have is
19 that that entity is not wholly owned by Mason
20 Holding, but partly owned?

21 A. That's correct.

22 Q. I want to take you through the history
23 of this. In the early years, what sort of hours
24 did you work? What sort of things did you do to
25 operate this business?

1 A. Well, obviously in the early years,
2 you're working long hours and pretty much doing
3 everything you need to do to stay afloat. Our
4 hours were operationally 8:00 to 6:00. I would
5 probably come in around 7:15 or 7:30 and go home at
6 6:30 or 7:00, depending on what needed to be done.
7 The job responsibilities, as I stated earlier --

8 Q. You were also open on Saturdays?

9 A. Yes, we were open on Saturday half a
10 day, 8:00 to 1:00. And then if you want to throw
11 in Sundays with cutting hedges and things like
12 that, that came into play too. It was pretty much
13 a 24/7 job at that point.

14 Q. Did there come a time when your sister
15 left employment with Mason Tire?

16 A. Yes, sir.

17 Q. And when was that?

18 A. I want to say in the range of
19 1990 -- '89 or '90, when my parents had come up.

20 Q. Tell me about that. You said your
21 parents moved here in about 1989?

22 A. Yes, sir.

23 Q. Did your father have a more active role
24 in the business after he moved here?

25 A. Yeah. Prior to 1989, my dad worked, as

1 got it ready for him to occupy. We had a little
2 office in the back for him. There were bays that
3 he could work in. There was a warehouse to hold
4 those commercial or truck tires, so he basically
5 came in and started the commercial end of our
6 business.

7 He started calling on some accounts.
8 He didn't spend a lot of time really early calling
9 on accounts, because he spent time teaching me the
10 commercial business. And why he did that was so he
11 could go out and make these calls, and I'd still be
12 there to be able to help somebody if they happened
13 to show up at that point. So he was teaching me
14 the commercial side so I could handle it when he
15 went out and made the calls. That was kind of the
16 early days.

17 Q. Was he involved with the retail
18 operation?

19 A. I would say very little. I mean, he
20 tried to get involved in the retail side. If a
21 customer obviously walked up to him or something
22 and he was in the building, he helped them. But a
23 lot of times he would pass it off to me or a
24 salesman that was there to kind of handle that
25 side. Because again, he wasn't real familiar with

1 it.

2 Q. He would be in charge of the commercial
3 side?

4 A. Yeah. The truck was his baby. I mean,
5 that was just him. He handled the truck.

6 Q. Did there come a time when -- I think
7 you said in 1990 you opened another store?

8 A. Yeah. Shortly after that, the '89/'90
9 period, Goodyear came to us. There was a location
10 in North Myrtle Beach owned by Brad Reagan, or
11 Carolina Tire. Carolina Tire was a subsidiary at
12 that point of Goodyear. Goodyear approached me and
13 said: Hey, we've had this store for five years.
14 We're not able to make it. Are you interested in
15 taking over the store?

16 I immediately talked to my dad and the
17 rest of the family and said: Goodyear wants us to
18 take over the store. Here's some of the things
19 they'll do for us if we take over the store.
20 Everybody was interested in it, so I pursued it,
21 which pursuing it meant having to get values and
22 looking at the rent and the lease and all these
23 type of things, and eventually we did do it.

24 Q. So you I guess purchased an existing
25 location in North Myrtle Beach?

1 side of things?

2 A. Absolutely. Because Frankie's
3 background was golf courses, so he really didn't
4 have any background in tires. And of course my
5 background, as I stated earlier, was mostly retail.
6 I was never involved in the commercial side of it,
7 so he trained us exactly how to handle commercial.

8 Q. In the commercial side, do you deal
9 with recaps and things of that nature?

10 A. That's part of commercial. You have
11 the new tires, you have recaps, and you have
12 casings. We also had our small tires, the
13 wheelbarrow or trailer tires. Those all kind of
14 fell under that category too.

15 Q. Well, it will come back up later, but
16 explain to the judge basically what a casing
17 is -- you mentioned that word -- in as easy or as
18 lay of an explanation as you can.

19 A. In the retail side, we didn't have
20 recaps. I mean, years and years ago you had
21 recaps, but that went away. On the commercial
22 side, you'd have a new tire obviously, and when
23 that new tire was worn out, then instead of
24 throwing it away, it had value. They called it a
25 casing. Some people may say a used tire, but once

1 the tread is taken off it's a casing.

2 You would take a casing and send it off
3 to a recapper. The recapper would examine it. If
4 the casing was good, he would put tread on it, and
5 then that tire would go back out for sale, and you
6 actually sold it -- it was a combination. It was a
7 cap and casing, but that made up the retread. And
8 then that would be something that was sold
9 commercially again to trucks, if that makes sense.

10 Q. We'll have to touch on it in more
11 detail later. But from the accounting system, when
12 somebody comes in and buys a new tire, they leave
13 the old tire with you?

14 A. That's correct.

15 Q. And how do you deal with the used tire
16 or the casing in the -- roughly in the inventory
17 system?

18 A. Well, that was something that -- as we
19 went along, it was something that my dad kind of
20 taught myself and Frankie how to handle that. It's
21 not a cut and dry transaction every time. What I
22 mean by that is a trucker comes in, he needs a
23 tire, you sell him a new tire, you give him a
24 price. Some of them would say: Hey, what about my
25 casing? Can I get credit for that? Then you'd

1 A. Yes. I want to say in -- let's see.
2 That would probably be around '95. My dad and
3 I -- again, in the family we were talking about
4 adding a location. Business was good. We were
5 getting busy. We felt that we needed a location or
6 presence somewhere in the south end. There wasn't
7 any presence between Georgetown and the Surfside
8 location. Commercially, there was a lot going on
9 down there, and we felt that would be a good
10 location to have a store.

11 My dad was looking around down there
12 when he had time. I was looking around down there
13 for a piece of property. We found a piece of
14 property, secured it. My dad and I talked about
15 it. We had discussions as to how we wanted to
16 build the building. I designed the building.
17 While we were in the process of designing and those
18 type of stages, I asked my dad at the time, I said:
19 Hey, I'd really like to be a part of the real
20 estate piece in this whole thing. He has a part of
21 Surfside along with my aunt and uncle, and I felt
22 like that would be a good thing to have down the
23 road to get involved in the real estate end of it.
24 He agreed --

25 Q. Well, to be clear, those

1 locations -- the real estate is owned by an
2 affiliated entity -- or an entity that is not owned
3 by Mason Holding, right?

4 A. Correct.

5 Q. It's owned by basically your dad at one
6 location, correct?

7 A. The one location was owned by my dad
8 and aunt and uncle -- my mom and dad, aunt, and
9 uncle.

10 Q. And the operating entity has a lease
11 for that location?

12 A. That's correct.

13 Q. So they pay rent to the owners of that
14 location?

15 A. Correct.

16 Q. But they're affiliated transactions?
17 In other words, your dad was involved as an owner
18 of the real estate and negotiated a lease with the
19 operating company at that location?

20 A. Yes, he did.

21 Q. And did you end up doing a
22 similar -- having a similar arrangement for the
23 Pawleys Island real estate and operating entity?

24 A. We did. Unfortunately for me, it
25 wasn't a transaction that I was allowed to get

1 involved in.

2 Q. Who ended up owning the Pawleys Island
3 real estate?

4 A. My father and mother.

5 Q. And did they form an entity for the
6 ownership of that real estate?

7 A. That's correct.

8 Q. And did that entity enter into a lease
9 with the operating entity there?

10 A. Yes, they did.

11 Q. And what was the name of that operating
12 entity?

13 A. For the building and property?

14 Q. Right.

15 A. I believe it was Catsen.

16 Q. And the Pawleys Island operating
17 company we looked at earlier is M & S Tire?

18 A. That's correct.

19 Q. And when did you enter into the lease
20 for the Pawleys Island location?

21 A. That would be approximately 1996, I
22 believe.

23 Q. And how much was the annual rent for
24 that location?

25 A. At that point in time, I believe it was

1 We added some salespeople. That helped as far as
2 my sales responsibility, but I still had the
3 overlying responsibility of the Surfside location
4 for the retail.

5 Q. The operations generally had more
6 employees?

7 A. Yes.

8 Q. More bills?

9 A. More bills, more employees. More
10 problems would arise. More customers would call me
11 with different situations. Being that my name,
12 Joseph Mason, was out there, a lot of times I would
13 get calls from other locations with customers that
14 would want to talk to me directly, so I would get
15 involved a lot in day-to-day operations.

16 Q. In 1999, you mentioned you opened a
17 Myrtle Beach location?

18 A. That's correct. Goodyear came to us
19 approximately in that time frame. They said: We
20 want presence in Myrtle Beach. And so we discussed
21 it amongst the family, and finally decided yes,
22 we'll go ahead and take that location. Goodyear at
23 that point was building it regardless. They came
24 to us first, basically because they knew that I was
25 running or controlled the Myrtle Beach market, so I

1 guess they would ask me before they went outside to
2 do it.

3 Q. So that's the fourth location?

4 A. That's correct.

5 Q. Let me back up one step and take you to
6 Plaintiff's Exhibit Number 1. Now, in 1998, did
7 you change -- is that when you changed the
8 corporate structure for Mason Tire operations?

9 A. That's correct.

10 Q. So this is when Mason Holding Company
11 was formed?

12 A. Yes.

13 Q. And I guess this is right before Myrtle
14 Beach was open. At that time, Mason Holding
15 Company would have been the 100 percent owner of
16 the three locations?

17 A. That's correct.

18 Q. When this fourth location was open, who
19 was the 100 percent owner of that operating entity?

20 A. Mason Holding Company. It fell under
21 that umbrella.

22 Q. So that started under the umbrella?

23 A. To the best of my knowledge, yes.

24 Q. While we're looking at Exhibit 1, on
25 the front page, do you see the list of who owned

1 what shares as of that day?

2 A. Yes, I do.

3 Q. Is that accurate, to the best of your
4 knowledge?

5 A. Yes, it is.

6 Q. So there are 1,000 shares in 1998, and
7 you owned 160 of them?

8 A. That's correct.

9 Q. Your parents owned shares, your sister
10 at that point was obviously married to
11 Mr. St. Blanchard, and she and her husband owned
12 shares that equaled the same amount of shares that
13 you owned?

14 A. Combining the two of theirs, yes,
15 that's correct. That was that spinoff that I was
16 talking about earlier when I said we got Ozzie
17 involved in North Myrtle Beach.

18 Q. Now, in this agreement, this
19 stockholder agreement, it refers on the second page
20 that one of the purposes is to provide for a
21 purchase of a deceased stockholder's stock or a
22 withdrawing stock. Do you see that?

23 A. That's correct, yes, Page 2.

24 Q. And if you turn to Page 4 and look at
25 Paragraph Number 2, do you have that?

1 A. Mm-hmm.

2 Q. You'll see that the valuation for that
3 purpose was basically book value, unless otherwise
4 unanimously agreed by the shareholders?

5 A. That's correct.

6 Q. Let me ask you to turn to the following
7 page. Do you see the first full paragraph there?

8 A. Yes, I do.

9 Q. The book value is to be determined by
10 the certified public accountant of the corporation.
11 Do you see that?

12 A. Yes, I do.

13 Q. And did the company accountant also
14 provide not the book value, but fair market value
15 calculation?

16 A. Yes, he did.

17 Q. Is that something he did in the
18 ordinary course of operations of Mason Tire?

19 A. Yes, he did.

20 Q. Now, returning to -- you said in 1999
21 you opened the Myrtle Beach store. So if that was
22 the right year, that would have been somewhat after
23 this agreement?

24 A. Right.

25 Q. And you said Ozzie went to open that

1 store?

2 A. Yeah. At that point, we moved Ozzie
3 from the Pawleys Island location to the Myrtle
4 Beach location.

5 Q. So you had four stores?

6 A. Yeah.

7 Q. And what was your title with the
8 company?

9 A. I believe I was president at that point
10 of the corporation, of the four locations.

11 Q. Of Mason Holding?

12 A. Of Mason Holding, that's correct.

13 Q. And of each operating entity?

14 A. That's correct.

15 Q. Let me ask you to take a look at
16 Exhibit Number 2. Is that one of the annual
17 valuations prepared by Mr. Levine?

18 A. Yes, it is.

19 Q. And was that delivered to the
20 shareholders of the company?

21 A. Yes, it was.

22 Q. And this is basically a consolidated
23 valuation of the operating entities, and it refers
24 here at the bottom to the holding company as well.
25 Do you see that?

1 A. That's correct.

2 Q. Let me ask you to take a look at some
3 of the entries in this business valuation. The
4 first entity valued is Mason Tire Surfside, and
5 that was Mason Tire and Auto, the first one you
6 formed?

7 A. Yes, sir.

8 Q. And that's where the business office is
9 located?

10 A. Yes, it is.

11 Q. You'll see on what is Line Number 4 --
12 do you see that?

13 A. Yes, I do.

14 Q. It says: Add understated
15 inventory/parts, \$25,000.

16 A. Correct.

17 Q. Let me refer you to Line Number 15. Do
18 you see where it says: Add understated
19 inventory/parts, and I think that says, \$20,000?

20 A. Yes, it does.

21 Q. And for the Pawleys Island entity, do
22 you see where it says: Understated
23 inventory/parts, and I believe that says \$30,000.

24 A. That's correct.

25 Q. It's a little unclear.

1 A. It looks like a three.

2 Q. So you've got a total, if that is a 30,
3 it looks like a total of \$85,000 in understated
4 inventory?

5 A. That would be correct.

6 Q. Explain what this was. What was your
7 understanding of what that related to?

8 A. Basically we had an issue with when we
9 sold service parts, which this would have been
10 brakes, belts, that type of thing. Goodyear would
11 automatically put in a cost factor or cost of
12 goods.

13 Q. Cost of goods sold?

14 A. Correct. And apparently the way their
15 system was working, we weren't relieving parts
16 properly, and so parts were being relieved
17 incorrectly, and thus creating a problem in our
18 inventory parts being understated.

19 Q. So it doesn't deal with Goodyear tires.
20 This is just parts?

21 A. Correct.

22 Q. Like oil and spark plugs and belts?

23 A. Brake pads, correct.

24 Q. Anything besides tires I guess?

25 A. Correct.

1 Q. Now, who knew about that problem?

2 A. Well, we had all discussed it as a
3 family in some of the meetings that these parts
4 were becoming understated, so everyone basically
5 knew in the family that we had a problem in this
6 area.

7 Q. Was Mr. Levine aware of the issue?

8 A. Yes, he was.

9 Q. Which can be reflected in the fact that
10 he includes it as part of his valuation analysis?

11 A. That's correct.

12 MR. LEITER: Objection.

13 BY MR. KNOWLTON:

14 Q. Did you discuss it with Mr. Levine?

15 A. Yes, we did.

16 Q. What did he say about it?

17 A. Basically his comments or reaction to
18 it was: Yeah, it's something we need to get fixed.
19 We need to figure out how to fix it. But we didn't
20 go any further than that at that moment in time.

21 Q. Did that continue to be an ongoing
22 problem?

23 A. Yes, it was.

24 Q. Let me ask you to take a look at what
25 has been mark as Plaintiff's Exhibit Number 3. Do

1 you have that?

2 A. Yes, I do.

3 Q. Is that another one of Mr. Levine's
4 annual valuations?

5 A. Yes, it is.

6 Q. And is it for the year -- I guess that
7 C-Y, is that calendar year 2001?

8 A. Yes. It appears to be 2001, yes.

9 Q. So this would be as of 12/31/2001?

10 A. Yes. This would be given to us the
11 following year maybe during the first quarter.

12 Q. So after the books are closed, you will
13 do this and he will deliver it in the first quarter
14 of 2002?

15 A. Correct.

16 Q. And did he deliver this to the
17 shareholders of Mason Holding?

18 A. Yes, he did.

19 Q. Did you discuss this?

20 A. Yes, we did.

21 Q. Let me ask you to take a look at the
22 second store listed here is -- I guess at that
23 point, Myrtle Beach was still kind of just getting
24 going?

25 A. Correct.

1 Q. The North Myrtle Beach entry, do you
2 see that?

3 A. Yes, I do.

4 Q. Do you see Line Number 9?

5 A. Yes, I do.

6 Q. And does that say: Add parts
7 understated, \$25,000?

8 A. Yes, it does.

9 Q. It also talks about add net profits and
10 add parts. Do you see that?

11 A. Yes, I do.

12 Q. Let me refer you down to what's
13 numbered Line 18. Does that say understated
14 inventory-parts?

15 A. Yes, it does.

16 Q. And what number does it have for that?

17 A. \$50,000.

18 Q. Let's move down to Surfside and look at
19 Line Number 28. Do you have that?

20 A. Yes, I do.

21 Q. And does that say understated
22 inventory?

23 A. Yes, it does.

24 Q. It looks like it has the first two
25 numbers, \$25,000 and \$59,000. Do you see that?

1 A. Correct.

2 Q. Which totals in the following column as
3 \$84,000?

4 A. Correct.

5 Q. So that number has grown from the prior
6 year at Surfside -- it looks like it was \$25,000.
7 Now it's grown to \$84,000?

8 A. Correct.

9 Q. And what value did Mr. Levine place on
10 the consolidated enterprise as of the end of 2001?

11 A. My copy is cut off, so I can't really
12 read it. It looks like there's a three, but I need
13 to see another copy of this. It's been cut off at
14 the bottom.

15 Q. Well, let me do this -- I apologize it
16 was poorly copied. Take a look at Exhibit 11,
17 which is the same document, or a very similar
18 document.

19 A. Okay. It is.

20 Q. And can you see the number at the
21 bottom on that one?

22 A. Yes. It appears to be \$3,028,000, it
23 looks like. I'm not sure if there's a zero or not.

24 Q. That would be the second page of
25 Exhibit 11?

1 A. Yes. The second page, correct.

2 Q. And does that second page appear to be
3 the same valuation analysis as what's marked as
4 Exhibit 3?

5 A. I'll tell you what -- give me a second.
6 Let me pull it out so I can match it up.

7 Q. I don't think you need to do that.
8 Just hold the tab there and look at that real
9 quick.

10 A. Yes, they appear to be identical.

11 Q. Let's take a look at the cover page of
12 Exhibit 11. Does that appear to be a cover sheet
13 from Mr. Levine's accounting firm?

14 A. Yes, it does.

15 Q. And what's the date of the transmittal?

16 A. The date on the sheet is 3/26 at the
17 top. The date says March 26th, 2002.

18 A. And it has a fax number listed. What
19 fax number is that? Do you see in the middle on
20 the --

21 A. Oh, yeah. I'm sorry. That appears to
22 be the Surfside office fax number.

23 Q. That's (843) 248-8506?

24 A. Correct.

25 Q. That's the Surfside location?

1 A. Correct.

2 Q. Now, there appear to be two signatures
3 on the second page of this document?

4 A. Yes, sir.

5 Q. Whose signatures are those?

6 A. My signature is on here, and Ozzie
7 St. Blanchard, my brother-in-law's signature.

8 Q. At that time, was Mr. St. Blanchard
9 working for the company?

10 A. Yes he was.

11 Q. Was he a shareholder in the business?

12 A. Yes, he was.

13 Q. And I can't remember if we covered it,
14 but you said this was talked about with all the
15 shareholders?

16 A. Yes.

17 Q. Did you continue to talk about this
18 understated inventory issue?

19 A. That came up in quite a few of the
20 meetings, yes.

21 Q. Did that understated inventory level
22 continue to rise over time?

23 A. Yes, it did.

24 Q. Let me ask you to take a look at what's
25 marked as Exhibit Number 4.

1 the signatures purport to be on behalf of the
2 entity, but whose signatures are those?

3 A. Let's see. On behalf of the entity, it
4 would be myself and Ozzie St. Blanchard. It was
5 witnessed by my mother and father.

6 Q. Let's look at the next one. Who is
7 that note payable to?

8 A. That note is payable to myself.

9 Q. And who is promising to make those
10 payments?

11 A. Mason Tire and Auto Service, Inc.

12 Q. And who signed that one?

13 A. Myself and Ozzie St. Blanchard.

14 Q. And who else?

15 A. It was witnessed by my mom and dad.

16 Q. Do you recall who physically prepared
17 the note, or these two notes?

18 A. To the best of my knowledge, these
19 notes came from just a generic package, and then my
20 sister typed in the information. So she filled in
21 the blanks, in other words.

22 Q. Just like a stock form?

23 A. A basic form, yeah.

24 Q. And were you and your sister loaning
25 \$440,000 to Mason Tire at that time?

1 A. No, we weren't.

2 Q. What was going on?

3 A. Basically the inventory was
4 understated, and Irwin had come to us during all
5 these discussions about how we can fix it, and said
6 one of the ways to fix it would be to do these
7 promissory notes. We discussed it with him. He
8 said it would be fine. We trusted him because,
9 he's our CPA, or thought he was a CPA. He was our
10 accountant.

11 Q. Who discussed it with him?

12 A. Myself, my sister, and my dad, and my
13 mom. Everyone discussed it.

14 Q. Is this on one occasion or multiple
15 occasions?

16 A. I want to say on this particular
17 information, it might have been more than one
18 occasion, but I don't think there was a lot of
19 occasions that we discussed. It was brought to
20 light and we decided to do it.

21 Q. The understated inventory issue was
22 discussed before?

23 A. Many times.

24 Q. But this fix -- was the note -- the way
25 of dealing with it was discussed --

1 A. A couple of times maybe.

2 Q. And whose idea was it to do this?

3 A. Well, Irwin came to me with the idea.
4 I asked him if we could do it and he said yes, and
5 then we discussed it with the family, and we went
6 with that idea.

7 Q. How does this address the inventory
8 issue? Well, let me ask another question first.
9 Is this all understated inventory at Mason Tire and
10 Auto, the Surfside location?

11 A. No, this was a combination of all the
12 locations at that time.

13 Q. And how would this address the
14 understated inventory problem?

15 A. To the best of my knowledge, what it
16 was was he was making loans, and then would add
17 that inventory back in to bring it back to the
18 number it should be at, the correct number.

19 Q. And who directed how to deal with that?

20 A. Irwin did.

21 Q. And did the company take that advice?

22 A. Yes, we did. We felt like Irwin was
23 our accountant, and we trusted what he said to do.

24 Q. Was there any doubt in your mind that
25 everybody -- well, let me be clear -- that

1 . Mr. Levine, your parents, and your sister all fully
2 understood and discussed this issue about what you
3 were doing and why?

4 A. Absolutely.

5 Q. In June 2003 is when these notes were
6 executed?

7 A. Yes.

8 Q. By that time, your dad's retirement
9 package was in place?

10 A. That's correct.

11 Q. Were payments being made to your father
12 or parents under that package?

13 A. Yes.

14 Q. Did that change anything about
15 the -- how you dealt with profits or income at the
16 company?

17 A. Once my dad put together the retirement
18 package and we all agreed on it and executed it, my
19 dad's thought process kind of shifted to: Hey,
20 I've got my retirement plan. Everything now needs
21 to be shared 50/50 with you and your sister. So
22 that was his thought process moving forward.

23 Q. Let me ask you to take a look for a
24 moment, if you will, at what's been marked as
25 Exhibit 61.

1 Q. Did they become better, worse?

2 A. Well, 2004 -- late 2004 was when Ozzie
3 got in his accident.

4 Q. And I'm right now referring to before
5 his accident.

6 A. So 2003 to 2004?

7 Q. Right.

8 A. The problems still existed. If
9 anything, they were just escalating and getting
10 worse at that point.

11 Q. Were you able to deal with them at that
12 time?

13 A. The biggest problems that I had was
14 some of the issues that would come up, I would
15 discuss with my mom and dad and say: Hey, we've
16 got some of these issues we need to resolve. And
17 99 percent of the answer, if not 100 percent of the
18 answer was: You just need to let it go and move
19 on. We never seemed to solve any of the problems.

20 Q. And what sort of problems are you
21 talking about?

22 A. Again, they were family problems with
23 attendance. They were problems with -- I felt like
24 at that point Big Ozzie St. Blanchard, which is
25 what we called the brother-in-law, because there is

1 a Little Oz. Big Oz was becoming more disconnected
2 with the business. I sensed problems in him that I
3 discussed with my parents.

4 Q. Now, you mentioned he had an accident
5 in 2004?

6 A. That's correct.

7 MR. LEITER: Your Honor, I apologize.
8 This might be -- I hate asking, but could we take a
9 break?

10 THE COURT: Certainly. Let's take
11 about a ten-minute break and we'll come back.

12 (A recess transpired.)

13 THE COURT: You may proceed. Let me
14 remind you you're still under oath.

15 THE WITNESS: Yes, sir.

16 BY MR. KNOWLTON:

17 Q. Mr. Mason, you mentioned before we took
18 a break that Ozzie St. Blanchard had an accident in
19 2004?

20 A. That's correct.

21 Q. Tell us about what happened.

22 A. I wasn't a party of it, so I'd be
23 basically telling you the story I heard, that he
24 was --

25 MR. THOMAS: Then we object to what he

1 heard. That's hearsay.

2 MR. KNOWLTON: I think I can work
3 through this just to recharacterize it.

4 THE COURT: I think I'm going to let
5 him tell it with the same admission that I have
6 done through all of the evidence, with noting the
7 objection.

8 BY MR. KNOWLTON:

9 Q. Let me ask you: First of all, what
10 type of injury did he sustain?

11 A. Severe injuries. With the result of
12 the injuries, multiple injuries, he became a
13 quadriplegic.

14 Q. And he was riding a motorcycle?

15 A. He was riding his motorcycle, correct.

16 Q. What day of the week was the accident?

17 A. Saturday I believe. Saturday.

18 Q. And again, at the time he was your
19 sister's husband?

20 A. Correct.

21 Q. Was he an employee of the store at that
22 time?

23 A. Yes, he was.

24 Q. Now, tell the Court, if you would, what
25 interaction you had with Ozzie about this

1 Q. So it's an entirely separate building?

2 A. It's connected. It's not entirely
3 separate. You can walk through from one to the
4 other.

5 Q. When did you first hear about the
6 accident?

7 A. I got a phone call at approximately
8 3:00 o'clock that afternoon. I was at the function
9 in Pawleys Island. We were having lunch. We were
10 sitting at a table with a lot of the employees. I
11 got a call from an ex-employee that said that Ozzie
12 had been in a terrible accident.

13 Q. Did there come a time later on where
14 you had some interaction with your father about
15 Ozzie's accident?

16 A. Yes. After we got through the initial
17 shock and that type of thing, my dad came into my
18 office one day and --

19 Q. This would be at the Surfside location?

20 A. Yeah. Let me back up. At that point,
21 with Ozzie being hurt, I kind of assumed the
22 responsibility of the store manager. So I was
23 actually in Ozzie's office downstairs, and my dad
24 walked in the office, and he closed the door and he
25 said: I need to talk to you about something. I

1 said: Okay. What do you need to talk about? And
2 he said: We got to talk about Ozzie's accident.
3 And I said okay, and he said: We need to put this
4 on workmen's comp. I said: What do you mean we
5 need to put this on workmen's comp? He goes: We
6 need to take care of your sister. I said: Dad,
7 are you saying that I need to lie? And he said
8 yes.

9 He said: We need to take care of your
10 sister. If we don't do this, there's no way she
11 can function or afford to function with a
12 quadriplegic husband. And I said: Do you
13 understand what you're asking me? I said: You're
14 asking me to commit perjury. I said: I can't do
15 that. And at that point he got pretty irate. He
16 kept saying I have to do that, and I said: I don't
17 think I can do that. It's total perjury. In fact,
18 I can't do that. There's no way, dad. I can't do
19 this.

20 And he got really upset, to the point
21 where the doors closed, because the sales counter
22 is right there, and I'm thinking wow. I said:
23 Dad, you don't know what you're asking me to do
24 here. He said: Yes, I do. I'm asking you to take
25 care of the family. And I said: I can't do that.

1 St. Blanchard and I both had in an LLC. We owned
2 the property, which was rented back to Mason Tire.

3 Q. I guess she's married to him, so
4 there's a reference to -- she was not receiving
5 rent and her husband was?

6 A. Correct.

7 Q. There's a reference to Aflac thing. If
8 you would, read the next entry after the Aflac
9 thing?

10 A. Extra money to be divided equally-all.

11 Q. And there's a dash before the all, and
12 after the all?

13 A. Correct.

14 Q. What was the discussion about that?
15 Well, let's go on to the next paragraph first and
16 then we'll come back to that question, if you will.
17 It says: The following will change for the year
18 2005. Do you see that?

19 A. Yes I do.

20 Q. And what does that first entry state?

21 A. Money in the holding company will be
22 divided equally, and then I will give J.E.
23 Mason, Jr. -- it says \$10,000 and it's crossed
24 through, and there's a new entry that everybody
25 initialed.

1 Q. Now, did you and your sister have the
2 same salaries?

3 A. No, we did not.

4 Q. Did you get the same bonuses?

5 A. Yes, we did.

6 Q. Is this a reference to this 30 and 50
7 as it was -- what did that represent?

8 A. Basically what that represented is
9 because my sister was involved with Ozzie's care
10 during that year. She wasn't as involved with the
11 company, and actually what I probably need to say
12 is back up to when you said did she receive a
13 bonus. When I said yes, I'm referring to Ozzie at
14 that point, because Ozzie through '04 was the one
15 that was actively involved with the company. So
16 after '04 is when she came in.

17 So basically what we were saying here
18 was she was saying that you're entitled to more of
19 the money than I am because I wasn't really here.
20 You ran the business, you shouldered the
21 responsibility of not only your job but Ozzie's job
22 and kind of held things together. So that's what
23 she was referring to.

24 Q. Was everybody in agreement on that?

25 A. Yes, they were.

1 Q. Now, what is the extra money that's
2 referred to in the last entry under what will not
3 be changed for 2005.

4 A. Extra money could have been things like
5 my dad got a used tire, I got used tires. We had
6 casings that we would get money from. Any money
7 that was acquired that wasn't directly cash
8 acquired that was split equally. And what she was
9 referring to is that she wanted to make sure she
10 was still going to get her share, as Ozzie did
11 previously.

12 Q. You mentioned casings and cash.
13 Explain what the family members were doing with
14 regard to casings and cash.

15 A. Well, on the casing side, we were all
16 on an honor system. If someone had a situation
17 where they got some kind of cash payment for some
18 casings, or possibly an invoice where -- because
19 our casings were understated, they wanted to
20 reverse some of that. We would do that through
21 cash, and then whoever did it would share it with
22 the other members of the family. And she's
23 referring to I want to still be involved in that,
24 and she wanted to make sure she got it on the
25 record that she was involved.

1 Q. Were your sister and Ozzie involved
2 with that before Ozzie's accident?

3 A. Yes.

4 Q. Was your father involved with that?

5 A. Yes.

6 Q. In what way?

7 A. Originally with the casings, that was
8 something that my dad pretty much taught me,
9 because I didn't know commercial. So he was
10 showing me how you can acquire casings from people
11 again, in that example I said earlier with the
12 trucker. I said that he bought a new tire, we got
13 a used tire from him. If we didn't give him
14 credit, that would end up being credit to the store
15 that was unaccounted for, let's say.

16 Q. When you say you would split the money,
17 would your father take some?

18 A. In the early years, yes. Once we got
19 through his agreement --

20 Q. You're talking about the retirement
21 package?

22 A. Exactly, his retirement package.

23 Q. That began in 2003 as I recall?

24 A. Right. Yeah, I believe that was it.

25 Q. So now we're talking in 2005?

1 A. Right.

2 Q. During the year 2005, would your dad
3 share in what you're calling the extra money?

4 A. No, no. Not at that point, no. He was
5 pretty much out of it.

6 Q. So the full compensation he would
7 receive would be under the three agreements?

8 A. Correct.

9 Q. Well, who was aware about how you were
10 dealing with the treatment of some of this cash?

11 A. All of the family members were aware.
12 Depending on what the situation was, meaning the
13 casings, Irwin was aware, because that was a form
14 of -- he came to us and said: Hey, you can do this
15 with the casings. We did it, and so he would be
16 aware of it. Pretty much everybody involved was
17 aware.

18 Q. On the casings, procedurally, what
19 would you do?

20 A. When I did it, basically what I would
21 do is I would go into the office at the end of the
22 day, and if there was cash in the drawer, enough to
23 support it, I would write an invoice, put in the
24 casing as if it was -- as if we were purchasing the
25 casing, and then I would take the cash out and

1 split it with the members involved.

2 Q. Why do you say Mr. Levine knew of this?

3 A. Because he basically -- when we were
4 discussing the casings and why they were
5 understated and how we could fix it, it was
6 something that he approached me with and said:
7 Hey, you can do this, and then I'll somehow work it
8 into the system. I'm not an accountant, and I
9 trusted the professional opinion of an accountant
10 and thought somehow he's putting these numbers back
11 in or he's working these numbers. I don't know.

12 Q. When you were dealing with your sister
13 on this, these extra money issues, did she also
14 have other sort of personal expenses being paid by
15 the corporation?

16 A. Well, yes. During that time, part of
17 it might be that my sister would say: Hey, I've
18 bought some personal items on the credit card, and
19 she would say: I owe you for this. And then if I
20 had gotten some casing money, she would say: Hey,
21 just take that off of my debt. And so that's how
22 she worked that or dealt -- that's how we dealt
23 with that between her and I.

24 Q. How regular are these communications
25 that you'd have with your sister on these items?

1 A. We didn't really talk about each item
2 as it occurred. In some cases when it was
3 something that she might put on her credit card,
4 what she might do is we might say: Let's get
5 together and see where we're at, and she would tell
6 me. Now, those were on the smaller items. During
7 this time frame, there was Little Ozzie, which we
8 referred to him as. In '05 he got his driver's
9 license, so he had a multitude of vehicles in a
10 short period of time. Ozzie was big on buying and
11 selling vehicles.

12 Q. Are you talking about Little Ozzie now?

13 A. Little Oz, correct.

14 Q. So he's 15?

15 A. Yeah. 15, 15 and a half.

16 Q. 15 or 16?

17 A. Yeah.

18 Q. And you said he bought a multitude of
19 cars?

20 A. Well, when I say bought, obviously his
21 mother was buying the vehicles for him. And what
22 he would do immediately -- most of them were
23 trucks, and what he would do immediately is put
24 wheels, tires, jack it up, do what kids do to their
25 trucks, and then in a short period of time he would

1 turn around and sell the vehicle. I guess he got
2 tired of a lot of these vehicles, and he would sell
3 the vehicle and buy another one and sell and buy.
4 So we were putting tires and wheels on it left and
5 right.

6 And in most cases, during this time
7 what my sister was saying is: Hey, look. Ozzie is
8 going to put another set of tires on it. In the
9 early days, I would be the one that had to order
10 and get them for him, so she would say: Whatever I
11 owe you, let's work through the same deal that I
12 discussed a minute ago.

13 Q. How much are we talking about? How
14 many cars or trucks?

15 A. In that time period, I would say
16 probably in the 15 range in two years. I mean,
17 there was a lot. He went through quite a few.

18 MR. THOMAS: How many? I didn't hear
19 that.

20 THE WITNESS: 15.

21 BY MR. KNOWLTON:

22 Q. And that's just an estimate. Did you
23 keep track of how many exactly?

24 A. I did a little bit in the beginning.
25 Just in my mind I was saying to myself: Wow,

1 another one. Wow, another one. Wow, another one.

2 And then I'd go back and say to myself where are we
3 at? Eight, nine, ten...

4 Q. Now, he didn't own all the cars at one
5 time?

6 A. Not all of those, but there were times
7 where he had two cars, or maybe even three cars or
8 trucks or whatever he was working on at the time.

9 Q. Now, you indicated they would put tires
10 and rims and whatever else on this truck?

11 A. Correct. Lift parts, performance
12 parts. I didn't really keep track of exactly what
13 he was doing in a lot of cases.

14 Q. What's a lift part?

15 A. To lift the truck up. They call it
16 lift parts.

17 Q. So he had a big fat tire?

18 A. Well, and then you have to lift the
19 frame up, so you have to have shocks and struts and
20 all kinds of goodies that go under it.

21 Q. Were they paying for those?

22 A. No. In most cases, that was part of it
23 too. He was going through a lot of bills, and so
24 that's where a lot of this casing money was going
25 to, if you want to call it that. So she would tell

1 me: Hey, I did this, I did that. I would tell
2 her: Hey, I just ordered those tires. And we're
3 talking about \$2,000 here worth of tires and
4 wheels, and she'd say: Okay, put it there and
5 we'll even it up as we go.

6 Q. You're talking about for one car it
7 would cost that much, or one truck?

8 A. It could be. Absolutely.

9 Q. You're not talking about the total
10 though?

11 A. No.

12 Q. So it could be up to \$2,000 for just
13 one truck?

14 A. I know at one point he had a car that
15 was lowered with the big tires and wheels, the low
16 profile and all that, and those wheels are
17 expensive. I mean, you could be talking about
18 \$1,000 per wheel, believe it or not. I don't
19 remember him getting one quite that expensive, but
20 I'm just saying it could be that much.

21 Q. I'm not sure it's entirely clear. How
22 would they be paid for?

23 A. Basically what would happen is we would
24 order them -- I would order them. Further down the
25 road, he would actually order them himself. They

1 would come in, they'd go into inventory, and
2 basically you put them on the car. We might have
3 an invoice written at that point.

4 Q. So who would -- how would you deal with
5 it from an accounting standpoint?

6 A. Basically it went into inventory, and
7 then when we took inventory of sport wheels, or
8 whatever we reduced it to, to whatever we had. We
9 didn't normally have an inventory of sport wheels
10 in the store. Some cases it might show a little
11 bit for display wheels and stuff like that, but
12 that was about it.

13 Q. So would you create an invoice to your
14 sister or her son or not?

15 A. While the work was being done, yes. So
16 we would create the invoice so that we knew -- the
17 guys knew what to do. It would be done, and then
18 that invoice would be voided or cleared out or
19 whatever.

20 Q. But you would then reduce the inventory
21 in some other fashion?

22 A. Correct.

23 Q. Did you always balance and split things
24 with your sister in that fashion?

25 A. Absolutely. I mean, that's what we

1 did.

2 Q. Let me ask you to take a look at what's
3 been marked as Exhibit 60. Can you tell us what
4 that is?

5 A. 60?

6 Q. Yes, sir.

7 A. That's an example of what I'm talking
8 about. That would be her keeping track of what she
9 was doing or what I might be doing. There were
10 times where I might do something, too, so she kind
11 of kept a little tally. Then at the end of
12 whatever period, she might say: Hey, let's divvy
13 up, or I owe you and you owe me. Something along
14 those lines.

15 THE COURT: Excuse me. What exhibit
16 number?

17 MR. KNOWLTON: 60, your Honor.

18 BY MR. KNOWLTON:

19 Q. Whose handwriting is that?

20 A. That's my sister's.

21 Q. So is this an example of you balancing
22 things out with your sister?

23 A. That's correct.

24 Q. Was the concept that your dad was
25 getting what he expected and you split the rest?

1 A. Yes. At that point in time, with his
2 retirement agreement, he was basically saying:
3 Look, as long as everything is 50/50 between the
4 both of you, I'm good with it. And so that was the
5 track we ran on pretty much.

6 Q. Did he say that to you?

7 A. Yes.

8 Q. Is that what you're referring to in
9 these minutes we were looking at, Exhibit 21?

10 A. That's correct.

11 Q. Let me ask you to take a look at the
12 bottom of Exhibit 21, the first page.

13 A. 21?

14 Q. Yes, sir.

15 A. All right. I've got it.

16 Q. It says: Gas card, two for all
17 families.

18 A. Correct.

19 Q. Is that accurate? You're all getting
20 basically gas for whatever you use it for?

21 A. Correct.

22 Q. Was it limited for business purposes?

23 A. No. It was unlimited.

24 Q. Just a perk that you gave yourselves?

25 A. Right.

1 Q. Please state your full name for the
2 record.

3 A. Steven Edward Allison.

4 Q. An Mr. Allison, where do you live?

5 A. I live in Murrells Inlet.

6 Q. And who is your employer?

7 A. Atlantic Coast Enterprises.

8 Q. And what is your position within
9 Atlantic Coast Enterprises?

10 A. I'm the president.

11 Q. And can you please tell the Court what
12 Atlantic Coast Enterprises does? What's the nature
13 of the business?

14 A. Well, we formed a corporation in June
15 of 2008 and purchased -- when I say we, it's me and
16 two partners. I own 25 percent of the company, one
17 of my partners owns 65, and another partner owns
18 ten percent. We purchased 43 Jiffy Lubes in south
19 Florida. At that time, I sold my eight locations
20 here in Myrtle Beach into the new corporation. So
21 we had -- those 43 plus the eight, 51 total Jiffy
22 Lube locations.

23 Q. And how long have you held Jiffy Lube
24 locations in South Carolina prior to forming
25 Atlantic Coast Enterprises?

1 A. I never had Jiffy Lube locations, but
2 Quick Lube locations. In South Carolina, I've had
3 them since 1994.

4 Q. So how long have you been in the auto
5 repair business? The Quick Lube, the Jiffy Lube,
6 how long have you been in that business?

7 A. I started in 1988.

8 Q. And how long have you been in South
9 Carolina doing that business?

10 A. Since 1994 I've been doing that
11 business.

12 Q. And I understand you know Joe
13 Mason, Jr. Is that correct?

14 A. I do.

15 Q. And do you know other members of his
16 family?

17 A. I know his dad just by, you know,
18 passing by and saying hello and speaking to him
19 over the years.

20 Q. Do you know his mother or his sister?

21 A. I really don't, no. The first time
22 I've ever seen his mother was at the deposition,
23 and I've met his sister a couple of times.

24 Q. Let's talk a little bit about the
25 history of your relationship with Mr. Mason, Jr.

1 When did you first meet him?

2 A. I don't know the exact day. I moved
3 here in '94, so it was sometime thereafter. I
4 can't tell you the exact date.

5 Q. Do you recall how you met
6 Mr. Mason, Jr.?

7 A. Well, he was running the Goodyear next
8 door to our Texaco Express Lube at the time in
9 Surfside, and we just formed a relationship, a
10 neighborly relationship.

11 Q. And I understand that Mr. Mason, Jr.,
12 is currently employed with Atlantic Coast
13 Enterprises. Is that correct?

14 A. That's correct.

15 Q. Can you tell us a little bit about how
16 that employment relationship came about?

17 A. Yeah. Well, the actual -- I have known
18 him for many years, and we -- I liked the way he
19 ran his business. We always had some great
20 conversations and he had some excellent ideas, so I
21 always wanted to be in business with him somehow,
22 and the opportunity came where it didn't work out
23 at Mason Tire, and he came to ACE, and I offered
24 him a job.

25 Q. Was that towards -- near the time that

1 ACE was first beginning its operations?

2 A. Yes. Yeah, I don't know the exact date
3 of hire, but sometime I would say the latter part
4 of 2008.

5 Q. What position did Mr. Mason, Jr., hold
6 originally with ACE?

7 A. He's always been the vice president of
8 support services for us.

9 Q. And what does his job entail?

10 A. A lot. He's a jack of all trades.
11 He's support services, so he supports our
12 operations team. He's in charge of all of our
13 training, inventory control, and he -- just
14 recently we've purchased a location in Tampa. He
15 has totally converted it from an independent
16 Pennzoil oil change to a Jiffy Lube, along with a
17 car wash, and redid a car wash for us in North
18 Myrtle Beach as well. So he gets involved in the
19 maintenance locations.

20 Q. To whom does Mr. Mason, Jr., report?

21 A. To me.

22 Q. And I guess you've worked with
23 Mr. Mason, Jr., closely for the last -- about three
24 years. Is that correct?

25 A. Yeah. I would say that or a little

1 more.

2 Q. What is your impression of his job
3 performance?

4 A. A very good impression. I mean, like I
5 said, he comes with a lot of ideas. When we have
6 difficulty putting something together -- he just
7 recently took over what we call a CSA task force,
8 and he's in charge and responsible for putting
9 together reports and measurements and items like
10 that. He's done a phenomenal job with those
11 conversions of the buildings, and just brings a
12 good business mind and helps ACE a lot. Real good
13 job performance.

14 Q. Have you had occasions to assess his
15 professionalism while at ACE?

16 A. Yeah, yeah. I mean, thinking back over
17 three years, there's never been a time where I did
18 question his professionalism. He's very
19 professional. He's always -- in every meeting
20 situation, he comes prepared, treats those below
21 him great, and those above him excellent.

22 Q. Mr. Allison, I'm going to direct your
23 attention back in time a little bit. If you
24 will -- there's a big notebook in front of you. If
25 you will turn to Tab 52 in that notebook. This is

1 Plaintiff's Exhibit 52.

2 A. Okay.

3 Q. If you could take a look at this
4 document and tell us if this is a document that you
5 recognize.

6 A. It is.

7 Q. And can you tell us what this document
8 is?

9 A. This is a document that -- an e-mail
10 that I put together that shows the offer that I
11 made via the telephone to Joe Mason, Sr., and I was
12 just putting that in writing.

13 Q. And taking you back in time to the time
14 that you made that offer to Mr. Mason, Sr., how did
15 you learn about an opportunity with Mason Tire?

16 A. I mean, as I learned about a lot of
17 things with Joe -- we went to lunch, we share
18 ideas, we talk about business. And it was one of
19 those lunches that I recall that he had mentioned
20 speaking to his dad, and his dad was wanting to
21 slow down a little bit and take it a little easier
22 and maybe retire, and now it might be a perfect
23 opportunity to purchase the business. So that's
24 when I made the phone call.

25 Q. And that was in December of 2007, about

1 that time?

2 A. To the best of my recollection, because
3 I had just purchased a Speedy Lube and Tune, which
4 was on the back eight of the Air Force Base, and
5 was converting it to a Quick Lube on two of the
6 bays, and the other two was a NAPA Auto Care
7 Center. And I hadn't really been in the mechanical
8 business repairs, full service auto repairs, and I
9 knew that Joe had. I mean, that's what they do.
10 And that gave me an opportunity to get him to come
11 to work with me if this was to happen.

12 Q. Was Joe your only source of information
13 prior to talking to Mr. Mason, Sr.?

14 A. Yeah.

15 Q. And I see in your e-mail it states that
16 you offered Joe Mason, Sr., \$3 million. How did
17 you arrive at that \$3 million figure?

18 A. You're asking me to recall a
19 conversation many years ago, and I believe it was
20 because either somebody else had offered them
21 something, or his dad was considering something
22 else and that he thought his dad would take that
23 \$3 million.

24 Q. Did Joe provide any information to you,
25 figures or numbers or anything of that nature?

1 A. Yeah. I can't tell you the exact
2 figures, but he talked about the cash that was in
3 the bank, the real estate that was also involved in
4 the assets of the corporation. There wasn't a lot
5 of accounts payable, as I recall.

6 Q. But did you review any documents or
7 anything, or was that mostly done orally?

8 A. It was all done orally.

9 Q. Tell us what you recall about actually
10 making the offer to Mr. Mason, Sr. How did that
11 happen?

12 A. Well, I called him on the phone, and I
13 asked him if he was ready to retire and take it a
14 little bit easier, and I just simply made the offer
15 of would you take \$3 million for me to purchase the
16 business, and he said: I don't know. Let me talk
17 to the family, and I'll get back with you.

18 Q. And did he get back to you?

19 A. He did.

20 Q. And what happened in that conversation?

21 A. He said he had spoken with the family,
22 and they just weren't interested at this time.

23 Q. Was there any other reason, or did he
24 just say we're not interested at this time or
25 something to that affect?

1 A. Something to that affect.

2 Q. I think we covered earlier that you
3 have Jiffy Lube franchises in Florida and South
4 Carolina. How are those businesses doing today?

5 A. Actually, given the economy and what
6 it's been doing, I hear a lot of horror stories,
7 but our business since 2008 has gone up over
8 30 percent. We're doing excellent. And kudos to
9 Joe. He's been a big part of that over the last
10 few years.

11 MS. BLACK: That's all I have, your
12 Honor.

13 THE COURT: Thank you.

14 MR. THOMAS: If it pleases the Court.

15 CROSS-EXAMINATION

16 BY MR. THOMAS:

17 Q. Mr. Allison, as I understand it, you're
18 a 25 percent partner in the entity that owns the
19 Jiffy Lubes?

20 A. Atlantic Coast Enterprises, yes.

21 Q. And as I further understand it, you've
22 never been in the tire business?

23 A. I've never been in the tire business
24 where I owned a tire store. I have worked for a
25 company called Les Schwab Tires out in Portland,

1 A. Yeah. As far as negotiating and doing
2 inventory control, that all comes through me. I do
3 the negotiations with the filter companies.

4 Q. Let me ask you about e-mail. Now,
5 you've authored an e-mail that's in the record.
6 Did you send that -- did Mr. Mason, Jr., ask you to
7 send that e-mail?

8 A. Yes.

9 Q. And would you tell the Court, please,
10 what due diligence you undertook prior to offering
11 \$3 million to purchase the Mason Tire business?

12 A. Not a lot of due diligence per se,
13 other than watching them run their business over,
14 at that point, 13 years or so.

15 Q. And when you say watching them, their
16 store was next door to you, and you'd seen the way
17 they did business?

18 A. That's correct.

19 Q. But in terms of profit and loss
20 statements, you've not seen any of that?

21 A. No.

22 Q. In terms of balance sheets, you've not
23 seen any of that?

24 A. No.

25 Q. In terms of any figures or

1 documentation about what their business made on an
2 annual basis, you didn't see any of that?

3 A. No.

4 Q. You didn't do any investigation as to
5 the value of any of the assets they had?

6 A. No, other than what was told to me by
7 Joe prior to --

8 Q. But as far as -- did you make a file in
9 connection with your offer to purchase Mason Tire?

10 A. Did you say file, f-i-l-e?

11 Q. Yes, sir.

12 A. No.

13 Q. Have you ever had a file in connection
14 with your interest in purchasing Mason Tire?

15 A. No.

16 Q. Have you ever sought financing to
17 assist you in the financing of a purchase of Mason
18 Tire?

19 A. No. It never got that far.

20 Q. And is it fair to say you would have
21 had to have financing in order to buy the business
22 for \$3 million?

23 A. Yes.

24 Q. Now, would you tell the Court, please,
25 sir, before you had seriously made an offer to buy

1 Mason Tire, which is a business as I understand you
2 had no experience in. Is that right?

3 A. (Nodding.)

4 Q. Tell the Court what due diligence you,
5 as a proven and successful businessman, would have
6 required be done before you made a serious offer.

7 A. Well, this is a serious offer. I
8 called him and made a serious offer. If he was to
9 say: Yeah, I've talked to the family and we would
10 like to go forward with it, then I would do some
11 due diligence, as you call it, with looking at the
12 books and past tax returns and that sort of thing.

13 Q. And prior to looking at the books and
14 looking at the tax returns and having an
15 evaluation -- you probably had to have a phase one
16 environmental report done. Is that right?

17 A. That's right.

18 Q. You'd have to have appraisal of the
19 real estate, because the company did own real
20 estate. Is that right?

21 A. Yeah, but generally that doesn't happen
22 before the offer is made. That would happen after
23 the offer is made.

24 Q. But you would have to have had all that
25 before the point of moving forward and either going

1 to a letter of intent or contractual?

2 A. Well, a bank would require -- in my
3 past experience, the bank requires the phase one
4 and the environment.

5 Q. You had none of that?

6 A. I had not gotten that far, because he
7 had told me no.

8 Q. And as I understand it, the \$3 million
9 figure came by virtue of the fact that
10 Mr. Mason, Jr., told you he thought that was a
11 number his dad would take?

12 A. Yes.

13 MR. THOMAS: That's all I have. Thank
14 you.

15 CROSS-EXAMINATION

16 BY MS. RICE:

17 Q. Good afternoon, Mr. Allison.

18 A. Good afternoon.

19 Q. ACE doesn't use a Goodyear accounting
20 system in its affiliated stores, does it, an
21 accounting software system?

22 A. I have no idea.

23 Q. You mentioned earlier that Junior was
24 involved in accounting. Can you give me some
25 specific involvement in inventory and accounting?

1 THE WITNESS: Yes, sir.

2 CONTINUED EXAMINATION

3 BY MR. KNOWLTON:

4 Q. Mr. Mason, before we took the lunch
5 break, we were discussing events that occurred at
6 Mason Tire and Auto in about 2005. I want to draw
7 your attention back to that time frame, and we
8 discussed -- one of the things we discussed was
9 this workers' comp claim that was ongoing at the
10 time.

11 Tell me how would you describe the
12 relationships and the interactions between you and
13 your family members during that period of time.

14 A. Probably at that particular moment,
15 they were fractured. I didn't feel -- I felt there
16 was something there. I wasn't part of the family
17 like I was before.

18 Q. Did anything change with regard to your
19 sister's role with the company when she had her
20 husband to care for?

21 A. In the early stages, obviously she
22 spent a lot of time going to Charleston. That was
23 where he went originally when he got hurt, so she
24 didn't put any time at all into the store. As time
25 went on, they moved him from Charleston to Waccamaw

1 say in early 2007 to mid 2007, it was very
2 difficult for me to do my job. I was stretched
3 pretty much to the limit as it was at that point.
4 We had the new store coming on. My sister was
5 dealing with a lot of emotional issues that she was
6 going through with her husband, or ex-husband at
7 that point. She was going through issues with her
8 son. There were issues with her son coming to work
9 for the company under circumstances that weren't
10 working. So there was a lot of issues. Just a lot
11 of personal issues going on within her that was
12 creating issues for the corporation.

13 Q. Now, you indicated that her son came to
14 work for the company?

15 A. Yes, he did.

16 Q. How did that come about?

17 A. I don't have exact time frames of
18 exactly how he did. For a while there, he was in
19 and out of the company. He would come in and maybe
20 work for a month as a tire changer, and then he was
21 gone, and then he came back for another short
22 period of time. There were issues with his pay
23 structure, with his job responsibilities. Big Oz
24 and I had, in the earlier years -- because one of
25 my sons is older than Little Ozzie was, so we kind

1 of had a handshake deal on here's how we're going
2 to handle our boys. We're going to have them work
3 in the shop and run the business from the ground
4 up. Changing tires is basically where he'd start.

5 We actually had a pay structure down.
6 Whatever the lowest paid guy was, we were going to
7 be a little under that. We actually had an amount.
8 I don't want to say it's a quarter or \$.50 an hour.
9 They were basically going to earn their stripes, if
10 you want to call it that way. It's basically the
11 way I grew up and the way my dad always taught me
12 to do it. That was what we were going to do.

13 An accident happened, and Ozzie was
14 kind of out of it at that point, and Little Oz was
15 coming in and out, and there were issues with, you
16 know, he's going to get paid more money, and no,
17 he's going to start as a salesman now instead of a
18 tire changer, and it was a mess.

19 Q. Did these issues impact the
20 professional management of these Mason Tire
21 businesses?

22 A. Absolutely. It had a tremendous impact
23 on a number of our employees. They saw things
24 going on that they didn't agree with, and I would
25 be putting out a lot of fires left and right over

1 those issues and had many conversations with my dad
2 about it.

3 Q. Give me an example of what you're
4 talking about.

5 A. We had a store manager in the Surfside
6 location. One of the things I can think of is
7 Little Ozzie -- I'm going to refer to him as Little
8 Ozzie -- worked in the 10th Avenue location. Then
9 he worked in the Surfside location. My dad went to
10 the store manager and said: Look, treat him like
11 an employee. Don't give him any special
12 privileges. Treat him exactly the way you would
13 treat anybody else.

14 And at that point, my dad wanted to put
15 him in sales, and I said: This isn't what we need
16 to do. We've never brought a person in this young.
17 I believe at the time he was probably in his -- 17
18 or 18 years old range. I felt we were doing him
19 and injustice bringing him in at that position,
20 because basically I knew anybody that young
21 wouldn't be able to handle that type of position at
22 that age.

23 And so my dad and I had many
24 discussions about it. He basically said: I'm
25 doing it anyway. So he instructed John, which was

1 the store manager, to treat him the way I said,
2 treat him like anybody else. As issues popped up
3 with Little Ozzie, John would bring those issues to
4 me. I would bring those issues to my dad, and my
5 dad would say: Okay, I'll handle it. And most of
6 those issues were never handled, and so the store
7 manager, along with the salespeople on the counter
8 there with Little Ozzie, were getting very, very
9 upset about the situation.

10 Q. Let me ask you to take a look at what's
11 been marked as Exhibit 24.

12 A. I don't have 24. This says 24. It's
13 in the right spot. Do you want me to replace it
14 and put it in the right spot?

15 Q. Yeah, go ahead. So you're looking at
16 Exhibit 24?

17 A. I am.

18 Q. And tell us what that is.

19 A. That's one of Irwin's yearly valuations
20 dated 2006.

21 Q. So this would be --

22 A. The year ending 2006.

23 Q. And what time of year would you get
24 this, or did you get this?

25 A. The first quarter was traditional. The

1 with Jonah, and basically told him to mind his own
2 business. And I had to step into it and basically
3 let her know that hey, we have a process that we do
4 here. The technician works on the car, reports to
5 the service manager, which was Jonah, and then she
6 would be able to talk to Jonah about it. So that
7 was what happened.

8 Q. In the second page of this document,
9 there are two different entries. Are those further
10 disciplinary notices with regard to Sandra Allens?

11 A. Yeah. I had a couple things prior to
12 that, so I just wanted to document them and make
13 sure that it wasn't the first incident that I was
14 documenting, that she had some others.

15 Q. Let me move forward to Exhibit 28.

16 A. Okay.

17 Q. Can you tell the Court what that is?

18 A. Basically this was a buyout agreement
19 that I had proposed to my sister. It had gotten to
20 the point where I felt we needed some changes, so I
21 put this together for her.

22 Q. Why had it gotten to this point? What
23 were you doing?

24 A. Well, again, as I stated earlier, there
25 was a lot going on. There was a lot of issues that

1 I just didn't seem to be able to get control of,
2 and I felt like at that point the company was just
3 fragmented and spiralling out of control at that
4 point. My sister was directing some of the store
5 managers directly. We had the issue I spoke about
6 earlier with her son. My dad at the time sat down,
7 and I spoke with him many times asking advice and
8 help as to where we can go with this, and I finally
9 came to the conclusion that either -- well, there
10 needed to be a change one way or another.

11 Q. Are these alternative proposals?

12 A. Basically it's a proposal you buy me,
13 I'll buy you type of thing. I was trying to say
14 hey, we need harmony in the family, and this was my
15 first attempt of many to try to accomplish that.

16 Q. Well, tell us about that. You had
17 discussions about either you buying your family
18 members out or they buying you out during this
19 period?

20 A. Correct.

21 Q. And this was prompted by what?

22 A. All the issues we were having at the
23 time, the ones I've discussed.

24 Q. And what sort of reaction did you get
25 to these discussions?

1 A. At different times, there were
2 different reactions. So there's more than one
3 proposal as you go through the list. I made many
4 attempts -- I believe this was actually the first
5 one -- to try to bring harmony in the family. My
6 goal was through all of these offers -- and like I
7 said, there are many. I realized something had to
8 change. We had attempted so many other avenues
9 that weren't bearing fruit. It just wasn't
10 happening.

11 So I had come to the conclusion that if
12 my sister wanted to leave, then I would try to put
13 together something that would be beneficial to her.
14 And if I was the one that needed to go, then I
15 would put something -- maybe something would be
16 beneficial to me. So that's how the proposal
17 started.

18 Q. Did there come a time when you sought
19 legal advice about ongoing problems with Mason
20 Holding Company and its subsidiaries?

21 A. Yes, I did.

22 Q. And who did you consult?

23 A. The firm?

24 Q. Yes, sir. What firm did you consult?

25 A. Turner Padget.

1 you have somehow adjusted inventory by internal
2 entry to any inventory, and a corresponding entry
3 to loans payable to shareholders. I further
4 understand some interest has actually been booked
5 and paid with regard to these fabricated loan
6 accounts.

7 Second, I understand that you have
8 suggested the use of false invoices to set up
9 inventory purchases. These invoices have been paid
10 by cash to some or all of the shareholders. These
11 fictitious invoices have been treated as a purchase
12 of inventory, which ultimately flow through to the
13 calculation cost of goods sold expense, which is in
14 turn charged against gross income.

15 Q. Are these the issues you've been
16 discussing earlier today?

17 A. That's correct.

18 Q. When Mr. Byrd raised these issues as
19 being inappropriate, what was your reaction?

20 A. He raised those questions to me, and I
21 was kind of flabbergasted. I had no idea of the
22 severity of that, and he pointed that out to me at
23 that time, Mr. Byrd.

24 Q. Prior to that time, who had you been
25 relying on for the propriety of what you had been

1 doing?

2 A. Our accountant, Irwin Levine.

3 Q. Were the other family members aware of
4 those practices?

5 A. Absolutely.

6 Q. Did they participate and benefit in
7 those practices?

8 A. Yes, they did.

9 Q. Let me ask you to take a look at what's
10 been marked as Exhibit 32.

11 A. Okay.

12 Q. And let me first ask you: After
13 Mr. Byrd sent these letters, what sort of reaction
14 did you get from your family members?

15 A. Immediately, they were really upset.
16 My dad stormed into my office. At that point, my
17 office was moved to the truck department back
18 there. I actually took over his old office. And
19 he stormed in my office and started yelling at me
20 saying what am I doing getting an attorney, and we
21 can handle this, you didn't have to do that. And I
22 said: Dad, I've been talking to you for years now.
23 We've been trying to solve these issues. You're
24 not listening to me. Mom's not listening to me. I
25 said: I took it upon myself to do this.

1 He continued yelling at me and saying,
2 you know, a bunch of different things about what
3 I'm doing and disrespecting him and that type of
4 thing, and then he stormed out. After that, it was
5 pretty much the cold shoulder by the family
6 members. My mom came up to the office that next
7 day or the day after and she started camping out in
8 the office filing or doing something. I don't
9 know. When I came up there, I would say: Hey,
10 good morning. How are you doing, or something
11 along those lines. She just totally ignored me,
12 which the other employees up there at the time
13 obviously recognized. So it was pretty tough.

14 Q. Let me ask you to take a look at what's
15 been marked as Exhibit 32.

16 A. Okay.

17 Q. And this is a letter -- I guess you'd
18 call it a letter from Mr. Levine to Mr. Byrd. And
19 in the first paragraph, there's a reference
20 to -- it states: In part, I would review the
21 corporate financial results in order to reflect
22 taxable income to be reported to the Internal
23 Revenue Service, approximately \$100,000.

24 A. Correct.

25 Q. In order to maintain the above figure,

1 A. I don't remember that. I don't
2 remember targeting overhead to do that. It could
3 have been done, yes. I don't remember specific
4 incidents.

5 Q. Let me ask you to take a look at what's
6 marked as Exhibit 35.

7 A. Okay.

8 Q. Can you tell the Court what this is?

9 A. This was a document that Irwin had
10 provided me saying that I owed the corporation
11 \$61,558.

12 Q. And CY, calendar year, three, four,
13 five, and six?

14 A. Correct.

15 Q. What is this something about the
16 personal services or things of that nature?

17 A. Yeah. He developed this, and he was
18 claiming that I owed the company back this money.
19 Because these were things that weren't correctly
20 shown on the books I guess, and he was saying that
21 I owed it in full back to the company in these
22 particular years.

23 Q. And let me get you, while we're on the
24 topic, to look at Exhibit 38.

25 A. Okay.

1 Q. Now, there's a reference to auto
2 expense, housecleaning expense, home gardening, and
3 disability insurance. Do you see that?

4 A. Correct.

5 Q. And I guess the company paid those
6 personal expenses for the family members by
7 agreement in those four years that we were looking
8 at a minute ago?

9 A. Yes. We all got that, correct.

10 Q. Were they properly approved by the
11 company?

12 A. Yes. I mean, we all approved it and
13 knew about it and okayed it.

14 Q. Why would you reimburse the company for
15 that amount if they were approved expenses?

16 A. Well, that was the question I had. He
17 handed me this in anger, and then the next thing
18 you know we had this document that I refused to
19 sign, because I said I don't owe the corporation
20 that money. It was approved for everybody.

21 Q. Why do you say he was giving this to
22 you in anger?

23 A. Well, at that point he wasn't real
24 happy with me with the fact that we had uncovered
25 the fact that improper accounting practices were

1 occurring.

2 Q. Did he display open hostility to you?

3 A. He wasn't real happy, yeah.

4 Q. Did your other family members display
5 this hostility towards you?

6 A. Absolutely. You know, not talking to
7 me. When we got into certain meetings, they'd be
8 yelling at me saying: Look what you've done.
9 You're going to cost the company all this money.
10 It was pretty hard at that point on me, because it
11 was a real personal thing that I -- a vendetta that
12 I was being attacked on.

13 Q. Let me ask you to take a look at
14 Exhibit 36.

15 A. Okay.

16 Q. Is this an e-mail you received from
17 Mr. Levine?

18 A. To me it looks like my sister and a
19 C Tall.

20 Q. Who is C Tall?

21 A. I believe that was another attorney
22 that Mason Tire and my family had hired.

23 Q. Is that somebody that you hired?

24 A. No.

25 Q. Let me ask you: This is somebody they

1 Q. As of '07, has she been receiving
2 interest on that note for over four years?

3 A. Yes.

4 Q. Were the issues discussed at the time
5 the note was executed?

6 A. Yes.

7 Q. Were the inventory issues discussed
8 before the notes were executed?

9 A. Yes.

10 Q. Did she loan the company \$220,000?

11 A. No.

12 Q. Let me ask you about this first
13 paragraph. The company accountant is saying right
14 here that those loans were set up on a fraudulent
15 basis. What was your reaction to that statement?

16 A. Well, at that point, I already had
17 known that that was a problem. So actually, when I
18 saw him actually write it in writing, my first
19 reaction was I can't believe he wrote this down and
20 actually admitted to what he did. So that was my
21 first knee-jerk reaction.

22 Q. And when did you first learn that that
23 was a problem with the loans the way they were set
24 up in '03?

25 A. When I discussed it with Wayne Byrd,

1 when Wayne brought it to my attention.

2 Q. Shortly before the letters that we've
3 just looked at?

4 A. Correct.

5 Q. Now, when you participated in
6 discussing those loans and having the notes drafted
7 up and dealing with the inventory issues and having
8 them signed, did you understand that those were
9 fraudulent loans?

10 A. Absolutely not. When Wayne brought it
11 to my attention, it was interesting because I can
12 actually remember the moment in time that it
13 happened, because --

14 MR. THOMAS: If he's going to get into
15 a conversation with his attorney, I want to be
16 clear on the understanding --

17 BY MR. KNOWLTON:

18 Q. I think we probably ought to stay away
19 from what you actually discussed with your
20 attorney.

21 A. I was just going to give the time
22 frame.

23 Q. The time frame is what I want. That's
24 what I was getting at.

25 A. I was going to say -- and I was just

1 A. Right. We didn't know they were
2 fraudulent.

3 Q. And the business practices?

4 A. Right.

5 Q. But until Wayne Byrd had gotten
6 involved, you didn't realize the impropriety of it?

7 A. Exactly, correct.

8 Q. Would you state that's what everybody's
9 reaction was?

10 A. Everybody's reaction was that way.

11 Q. At least that's the way you read their
12 reaction?

13 A. (Nodding.)

14 Q. You mentioned on Page 27, Lines 15 and
15 16, is that where your dad said you had done a
16 fantastic job?

17 A. Correct.

18 Q. Well, after this meeting -- let me ask
19 you this generally: Were you involved in preparing
20 or involved with overseeing the preparation of
21 amended tax returns?

22 A. No, I was not.

23 Q. Who undertook that task?

24 A. I don't know exactly who undertook the
25 task from Mason Tire. I was pretty much eliminated

1 from the financial aspects. So at that point, I
2 don't know communications that were going on behind
3 the scenes.

4 Q. Was it clear that you were
5 involved -- well, let me ask you this: Did you
6 ever review any proposed amended tax returns before
7 this lawsuit?

8 A. No, I did not.

9 Q. Did anybody ever represent to you that
10 they had drafted amended tax returns?

11 A. Yes. My father did, and I believe
12 there was an accountant that they hired that said
13 there was amended tax returns.

14 Q. And who was that?

15 A. Tim Duncan.

16 Q. Let me ask you to take a look at
17 Exhibit 42.

18 A. Okay.

19 Q. And this is discussing your car. Why
20 did you -- explain what's going on here.

21 A. Most of the vehicles that we purchased,
22 or a lot of the vehicles that we purchased -- my
23 father-in-law worked for General Motors, and back
24 when employee pricing was attractive, we would try
25 to buy vehicles under that program. That program

1 Q. During this period, were you continuing
2 to try to work to resolve the issues within the
3 family?

4 A. Absolutely.

5 Q. Were there any ongoing discussions
6 about somebody buying the other out?

7 A. Yeah. I tried to continue with
8 discussions mostly with my dad about you buying me,
9 I buy you, my sister. And the discussions were of
10 the nature of: Look, we got to do something. We
11 just can't keep doing what we're doing. It's not
12 working. And we had a lot of different
13 discussions, a lot of different numbers that were
14 tossed around.

15 I remember the last one that was out
16 there, because it had an impact on me pretty strong
17 at that point, and I asked my dad and said -- it
18 was late in the day, and I had thought about it,
19 and I said: You know what? Let's just do this.
20 Let me just give my sister \$1 million, and that
21 will be good for her. She'll have a good amount of
22 money that will take care of her. If not, then buy
23 me out, and let's just do that.

24 And I remember it so vividly, because
25 he was in my office, and he looked me in the eye

1 and he just -- it was like he had this look of like
2 wow, I can't believe you're actually going to offer
3 that much money. Because I think that was my
4 highest offer at that particular moment. And he
5 shook my hand and he said thank you. He said:
6 I'll talk to her and I'll let you know. I said
7 okay. Then I went back that night, and told Erica
8 what I did, and she was like: That's great. How
9 are you going to pay for this? I said: I don't
10 know. I'll just figure it out. I'll work hard.
11 I'll cut my salary and cut whatever I have to do to
12 pay it, but we have to do something to bring the
13 family back together.

14 The next morning came. I was kind
15 of -- I don't know if I'd call it excited, but I
16 was waiting to hear what had happened overnight. I
17 don't think I got a lot of sleep. But my dad came
18 in, and he was just acting like it was another day.
19 And I waited a couple -- I'll say minutes, but it
20 was probably seconds, because I was anxious, and I
21 said: That's great, dad, whatever you're talking
22 about, but what did my sister say? What did she
23 say? And he said: Oh, no. She didn't want to do
24 it. I said: What do you mean no, she didn't want
25 to do it? He just brushed it off like it was no

1 big deal.

2 I'm thinking to myself, we just got
3 done yesterday talking about how this was great and
4 how could she not accept the deal. It's such a
5 good deal. I never thought you'd go to that
6 length. And so he said: She just doesn't want to
7 do it. I said: Dad, we got to do something. I
8 want to have Thanksgiving together. I want to have
9 Christmas together. We can't continue to do this
10 under these circumstances. It's just not going to
11 work. I said: If she won't let me buy her, then
12 buy me. I said: Dad, you buy me. Let me go.
13 Please let me go. I said: It's for the good of
14 the family. I said: We've got to do this.

15 He listened attentively, and then he
16 said no. And I said: Well, what else can we do?
17 I mean, what are my other options? I can't live
18 and work under the conditions that are going on at
19 this moment in time with our business. And he
20 said: Well, you can quit. Just as matter of fact
21 as that. You can quit. Go ahead and quit. I
22 don't know. That was another one of those really
23 rough moments, because I just -- I was basically
24 begging him at that point to please take me out of
25 this and please let's move on. This is our

1 opportunity. He basically told me to quit.

2 Q. Let me ask you to take a look at
3 Exhibit 43.

4 A. Okay.

5 Q. And this is a letter addressed to
6 Mr. Levine from Mr. Duncan?

7 A. That's correct.

8 Q. Now, Paragraph 4, do you see that?

9 A. Yes, I do.

10 Q. It states: Explain why the
11 Subchapter S tax returns for the holding company
12 allocated all the income to the minority
13 shareholders.

14 A. That's what it says, correct.

15 Q. Did an issue arise where the propriety
16 of not attributing income from the holding company
17 based on ownership of the holding company came up?

18 A. Prior to this?

19 Q. Yeah, in or about this time.

20 A. I would have to answer I don't know. I
21 don't remember anything up until this area, as far
22 as whether you could do it or can't do it. Again,
23 it was still 50/50 with my sister. So as long as
24 that was being accomplished and Irwin was handling
25 it in whatever way he handled it, I assumed it was

1 Q. Number two is corporate expenses,
2 program?

3 A. Correct.

4 Q. The third one refers to gas -- a
5 corporate gas program. The fourth deals with
6 stockholder -- I suppose that should say dividends
7 and S corp?

8 A. Correct.

9 Q. Five, attorneys' fees, corporate and
10 salaries for officers, and so forth. Now, was the
11 meeting actually held on December 7th?

12 A. To the best of my knowledge, there was
13 a meeting held after this came out.

14 Q. There was? Is that what you said?

15 A. There was, yes. I'm sorry.

16 Q. Did you attend the meeting?

17 A. Yes, I did.

18 Q. Tell me what you recall about the
19 meeting.

20 A. That meeting was again a -- I'm going
21 to call it getting yelled at. I mean, basically
22 what would happen is we'd start off the meeting,
23 and it would be one of those where my mom would
24 launch into me about what I did and why I did it,
25 and my dad had some papers in his hand that he was

1 calling the tax returns, the amended tax returns.
2 A lot of yelling and hollering. My mom would say
3 things like, you know, you're supposed to honor
4 your mother and father, and I'd be saying things
5 like well, not when they're doing something wrong.
6 So there was a lot of heated moments in that
7 meeting. That's what I mostly remember of the
8 meeting.

9 Q. Was there a discussion about what to do
10 about amending the tax returns?

11 A. Yes. That was the screaming at me. My
12 dad said: This is going to cost us X amount of
13 dollars. It's going to bankrupt the company. My
14 mom said: How could you do this? Then a
15 discussion broke out on other ways of doing it that
16 Irwin could do something else with the revenue and
17 just fix the returns. That was a statement that
18 kept coming up, was fix the return. So that was
19 part of the meeting too.

20 Q. And what was your reaction to all that?

21 A. At that point, I was probably zoning
22 out a lot of it, because I was getting screamed at
23 so much. My reaction was whatever needs to be
24 done, we need to do, we need to fix the tax
25 returns. I wasn't involved in the financial end of

1 A. Well, I had had the conversation with
2 Steve Allison the day before. I couldn't get a
3 hold of my dad that day to tell him he was
4 interested. That following morning, I was about to
5 tell my dad when he came in and he gave me this and
6 kind of took the wind out of his sails there.

7 Q. What did you tell your dad about Steve
8 Allison?

9 A. After I read this, because my dad and
10 mom were staying there and I read it, and I got
11 through the final reprimand, I said: Dad, final
12 reprimand? Where were the other reprimands? I
13 told him: By the way, Steve Allison is very
14 interested in purchasing the company for the
15 \$3 million we discussed. Is it okay for him to
16 call you or you to call him or whatever we decided?

17 Q. Where did the \$3 million figure come
18 from?

19 A. During one of our discussions, he had
20 said something to me like we won't buy you out, and
21 you can't buy Kathy out, but I will sell to a
22 third-party. And I was like -- I didn't understand
23 that. I was like: Now let me get this straight.
24 I can't purchase it, you don't want to purchase me,
25 but you're going to allow me to go outside to a

1 third-party and sell the whole thing to them? That
2 didn't make sense to me at the time, and I think I
3 expressed that to him at the time.

4 But I also said to myself: If this
5 takes care of the problem with the families, then
6 let's do it. It is another way of handling it.
7 And at that point, to me it really didn't matter
8 whether I kept the company or whether I got bought
9 out of the company. My intent was just let's solve
10 the problem whatever way we can. So he had
11 mentioned \$3 million. It seemed to be his number.
12 He had mentioned that before, and that's where the
13 \$3 million came in.

14 Q. And is that a number you discussed with
15 Steve Allison?

16 A. Yes.

17 Q. What type of information did you give
18 Mr. Allison about the company before he had the
19 conversations with your father that he discussed
20 earlier today?

21 A. Conversations with buying the company?

22 Q. Right.

23 A. Basically I told him that my dad was
24 interested in selling the company. I told him he's
25 interested in selling it for \$3 million. He asked

1 me -- you know, his first comment was: Is it worth
2 it? Is it a good deal? I said: Yeah, here's our
3 sales. Here's our cash in the bank. He asked me
4 about real estate. He was kind of big on real
5 estate I think. I gave him some of those numbers,
6 and that's how it transpired.

7 Q. Did you say you mentioned to him the
8 level of revenue?

9 A. Yes. I told him what our sales were.

10 Q. And generally what was the rough
11 estimate of annual revenues for the four operating
12 companies at that point?

13 A. I don't remember the exact --

14 Q. I guess it would be five at that point.

15 A. I don't remember the exact number I
16 gave them, but I think it was -- somewhere between
17 six and \$7 million was the number I told him.

18 Q. Did you have further discussions with
19 your dad about his lack of interest in
20 Mr. Allison's proposal?

21 A. I mentioned it to my dad. He said:
22 Okay, have him call me. Or they were going
23 to -- somehow they were going to get together. I
24 think he was going to call him. A couple days had
25 gone by, and I said: Dad, did you talk to Steve?

1 Yeah, I talked to him. I said: Well, what's going
2 on? He said: Well, he's interested in buying us,
3 but I need to talk to the family, which I assumed
4 meant my mom and sister at that point. So I said
5 okay.

6 A few days went by after that. I don't
7 remember the exact date, but I know that I had
8 mentioned it again to him, and his response was
9 that the family didn't want to do it. I said: The
10 family didn't want to do it? I said: Did we vote
11 on this? Did we talk about it? Who's the family
12 that doesn't want to do it? He goes: We just
13 don't want to do it. That was about it.

14 Q. Did you talk to your sister about that?

15 A. I would have to say I don't remember
16 talking to my sister directly about it, no.

17 Q. Let me ask you to take a look at what's
18 marked as Exhibit 50.

19 A. Okay.

20 Q. What is that document?

21 A. This was a document that my sister
22 handed me in a meeting. I don't remember the exact
23 date of that meeting. I know that she handed me
24 this. This was part of the going back and forth
25 thing, and she handed me this document.

1 Q. At the top, it references a meeting on
2 December 20th, but that's not -- is that when she
3 handed it to you, or was it a later meeting?

4 A. I'm not sure exactly when this was
5 handed to me. In the December time frame, we had
6 quite a few official meetings and unofficial
7 meetings and discussions, so this was part of one
8 of those. I don't remember exactly.

9 Q. So she was essentially at this point
10 offering to sell -- or offering to buy your shares
11 for \$1 million?

12 A. Correct.

13 Q. And what happened to that proposal?

14 A. I believe it was handed to me within a
15 day or so, or maybe even at that particular moment
16 I might have said fine, let's do it or whatever.
17 And then she basically just backed off, or I think
18 my dad said something about you really don't want
19 to do this, or it just kind of evaporated. I don't
20 think it was a serious offer at that moment,
21 because of the response I got when I said what I
22 said.

23 Q. Did you continue to work during 2008
24 for the company?

25 A. That's correct.

1 Q. And how did that go?

2 A. Well, I'm still dealing with all the
3 issues that I was dealing with before, except now
4 they're getting ramped up even more. It seems like
5 everything is kind of getting out of control with
6 Ozzie and my sister. It seems like as we're going
7 along and my dad is not really taking control of
8 his right to vote and have things changed, it's
9 getting more and more chaotic. My sister is
10 becoming more and more unbearable as far as the
11 things that she's doing.

12 I'm getting responses back when I'm
13 saying: Hey, I need answers on things, and I was
14 told -- one time my mom said to put it on a sticky
15 note and stick it on her door. I was like: How
16 can I do this? I'm running a six or \$7 million
17 business here and I need an answer when I need an
18 answer, not a sticky note. So it was pretty rough
19 at that point.

20 Q. Now, let me ask you some questions.
21 Did there come a time when you had a problem with
22 Sandra Adams in the summer of 2008?

23 A. Yes.

24 Q. Tell me what happened. Was this in
25 July?

1 A. Approximately.

2 Q. Tell me what happened.

3 A. Actually I think it started maybe a
4 little bit before that. My sister -- well, it
5 appeared to me like Sandra was taking a lot of time
6 off, and it happened to be a Saturday morning, and
7 I was in the store, and I was in my office, and I
8 decided I was going to say -- you know, it just
9 seemed to me like Sandra's taking a lot of time
10 off. So I elected to go up and grab some of her
11 timecards and stuff and just kind of review it and
12 see what was going on.

13 As I was reviewing it, I realized that
14 it seemed like her vacation time was fine, but
15 something jumped out at me on our Aflac, or
16 additional insurance bill. There was some
17 discrepancies in the amounts, meaning that this
18 bill should be pretty much a constant price, and
19 you would -- it was something the employee would
20 pay, and it would be divided equally through the
21 months, so it should be a figure that stays pretty
22 constant.

23 Q. Aflac is the supplemental insurance
24 that we see on TV all the time with the duck?

25 A. The duck, right. Exactly.

1 Q. It's an insurance product?

2 A. Yes.

3 Q. If you buy one of their products, what
4 do you experience in the form of a monthly payment?

5 A. It depends on the product. There could
6 be a cancer policy, there could be a medical type.

7 Q. I'm not asking you about the amount.
8 I'm just saying is it a predictable amount?

9 A. Yeah, yeah. It's a consistent amount
10 month to month.

11 Q. And what did you find with regard to
12 her payment of those premiums?

13 A. Well, I saw an inconsistency. I saw a
14 zero where there should have been \$30 as a
15 consistent amount every pay. And then I noticed it
16 was up and down and across the board. There was no
17 rhyme or reason to it. She might have gone two or
18 three pay periods and paid nothing. She might have
19 come back and paid one amount, then came back and
20 paid a different amount, then didn't pay again. So
21 there was inconsistencies to the payment process,
22 so I pulled the bills to try to see what the
23 pricing should be, and nothing was matching up at
24 that point.

25 Q. And how did you react to that problem?

1 A. At that point, I brought it to my dad's
2 attention, because he was the president, and I
3 thought he would be the one that would need to look
4 into it, so I brought it to his attention. He
5 seemed concerned and said: Let me look into it.
6 At that point, I didn't say anything else.

7 A week or two went by. I brought it up
8 again. I said: Hey, what did you find out on the
9 Sandra issue? He said: Oh, I need to work on
10 that. I need to look into it or whatever. I said:
11 Okay, we need to do something. We can't let it
12 continue. He said okay. And so another week or so
13 went by, and I said: What's going on with the
14 Sandra issue? And there was another: Oh, yeah, I
15 just haven't had a chance to run into your sister.
16 I want to get with her and find out what's going
17 on, that kind of thing. I said okay.

18 I believe after a few of these came up,
19 I finally said to him: Look, let me bring it up to
20 her. Let me show Kathy what's going on and let her
21 deal with it from there and see what we need to
22 document. He agreed. He said: Oh, that's a good
23 idea. You did it. I said okay. So I went and did
24 it and told my sister. At that point, my sister
25 said to me: Let me look into it and see. She

1 her another chance.

2 At that point, my sister said something
3 odd to my dad that I just let go. She said
4 something about I thought we weren't going to let
5 her go. I didn't think we were going to do that.
6 And my dad said: I didn't say that, or no, I think
7 we need to let her go. My sister got upset with
8 that and said: Well, you guys fire her. I'm not
9 doing it. I'll send her down. She left the
10 office.

11 My dad and I were waiting for her to
12 come back, and I referenced to him -- I said: Do
13 you want to do it, or do you want me to do it? He
14 said: No, you do it. I said: Okay. I'm going to
15 give her two options. Option A is going to be that
16 she just resigns. Option B, if she pushes back and
17 won't resign, we're going to have to terminate her.
18 He said that's fine. That sounds good. I said
19 okay.

20 Then she came in the door, sat down.
21 She had a check in her hand, obviously wanting to
22 pay whatever she owed, is my assumption at that
23 point because she had a check, and she said -- I
24 said: I think you know why you're here, and she
25 said: Yeah, I want to pay this. I said: Sandra,

1 it's kind of gone further than just paying this.
2 I said: We're going to have to give you the
3 options. So I gave her the options. She
4 immediately got really upset. She turned to my
5 dad -- and again, this was the second oddball thing
6 that I didn't say anything, but I just kind of took
7 it in. She said: I thought we talked about this.
8 And he quickly snapped back at her and said: No, I
9 didn't agree to anything.

10 Then she's hollering at me that she's
11 going to sue me, whatever, whatever. She jumps up,
12 and I said: I need you to clean out your desk, and
13 she left. I turned to my dad. I said: Wow, you
14 always see the worst in somebody in those
15 situations, or something along that line. He said
16 yeah. I said: Look, do me a favor. She seems to
17 be way more mad at me than you. Can you go
18 upstairs and kind of make sure she doesn't decide
19 to throw the computer off of the roof something?
20 He said yeah, so and went.

21 A little while later, he comes back. I
22 said: How did it go? He said: Tough. He said:
23 Look, I'm going to get some coffee. I said: So
24 she's cleaned out her desk and she's gone? He
25 said: Yeah, she's gone. I said okay, and he left.

1 take care of it. We'll work harder. We'll get
2 somebody to help us with the payroll. We'll do
3 what we got to do. He said: Yeah, I know. Then he
4 left.

5 The next day I pull up, he walks
6 immediately up to my truck, I roll down the window,
7 and it's one of those October days where there's
8 not a cloud in the sky and it's just a pretty day.
9 I said: Hey, good morning. He said: It's not a
10 good morning. I said: What do you mean it's not a
11 good morning? It's a great morning. Look around.
12 It's great. He said: No. I never should have
13 fired Sandra. I said: Dad, come on. I said: You
14 know as well as I know that she needed to be
15 terminated. I said: Don't beat yourself up over
16 it. He said: No, I shouldn't have fired her. And
17 then says: I'm going to offer her job back, and
18 hope she comes back. She's really mad at you.

19 I'm like, she's really mad at me? I
20 said: Are you kidding me? I said: You can't do
21 this. The message you're sending me right now is
22 horrible. I said: You can't undermine what we've
23 just done. He said: That's it, I'm doing it, and
24 he walked away from me.

25 So I went back and went in my office

1 and was going: How do I handle this now? I'm
2 thinking, I don't know what to do, so I said I'm
3 going to go talk to him about it. So I went
4 looking for him. I found him upstairs. He's
5 sitting behind that desk he was at the day before,
6 and he's just kind of sitting there. So I went
7 around and sat down in Sandra's desk, which was
8 adjacent. I said: Dad, we didn't do the wrong
9 thing. I said: There's no reason to beat yourself
10 up. There's no reason to bring her back. We can't
11 do this. He said: Nope, I'm bringing her back.

12 As he's saying that, I'm looking --
13 because I'm sitting behind Sandra's desk now, and I
14 see personal items. So I'm going why are all these
15 personal items here if this girl packed up
16 yesterday and left? So I questioned him. I
17 said -- how come -- I opened up the door. How come
18 her stuff is there? He just didn't answer. He
19 just sat there and looked at me. I said: Dad, you
20 never let her go. What's going on? What's going
21 on? Yesterday there were conversations, and then
22 it came back to me what she was saying when Sandra
23 said to him: Hey, I thought we talked about this,
24 and the comment my sister made, and I said: You
25 guys never intended to fire her. What is going on?

1 He said: I'm bringing her back. I
2 said: You can't do this. You absolutely can't do
3 it. I said: This is the wrong message to our
4 employees, on top of what you're doing to me.
5 You're totally undermining my authority right now.
6 I said: Everybody in this company is going to
7 know --

8 MR. LEITER: Your Honor, I'm going to
9 object. At this point it's become a narrative.
10 I've never actually sat through an answer that's
11 gone so long without a question. I'm not sure what
12 the question is that he's responding to at this
13 point.

14 THE COURT: Try to respond to what he
15 asked you to and not --

16 THE WITNESS: The story.

17 THE COURT: Yeah. Just kind of wind it
18 down for us if you would.

19 BY MR. KNOWLTON:

20 Q. If you would tell us how it culminated.

21 A. Basically I went back downstairs to my
22 office. They weren't upstairs, my sister and
23 Sandra at that point. As I'm sitting in my office,
24 I can see the door coming in the back way to the
25 store into the offices, and my mom walks in and

1 kind of looked at me. My sister was behind her,
2 looked at me, and then Sandra walked in. As Sandra
3 went through the doorway, she shot me the bird.
4 And at that moment I said: I'm done. I just don't
5 know what else to do.

6 Q. Before that, had other actions you had
7 taken since your termination as president been
8 undermined?

9 A. I'm sorry. Repeat the question.

10 Q. We talked about the October 24th, 2007,
11 meeting. That's when you were removed as president
12 of the company?

13 A. Correct.

14 Q. After that time, had you taken action
15 as an employee of the company that was undermined
16 by your other family members?

17 A. One more time. I'm sorry. I'm still
18 thinking about it.

19 Q. I know it's late in the day.

20 A. Well, it's late in the day and I told
21 that story and I probably did go way too far with
22 it.

23 Q. Backing you up, just a general question
24 here: From the time you were terminated as
25 president in October of 2007 until this incident

1 that you're talking about, did you have other
2 occasions where actions you had taken were
3 undermined or countermined by your family members?

4 MR. THOMAS: I'll object to the form,
5 only because he keeps saying he was terminated. He
6 was not terminated. He was simply not reelected as
7 president. He was not reelected.

8 MR. KNOWLTON: I can fix that question.
9 There is no dispute he was not reelected as
10 president.

11 BY MR. KNOWLTON:

12 Q. What I'm trying to do is refer to a
13 date. October 2007, at that point, you were no
14 longer president of the company, correct?

15 A. Correct.

16 Q. You continued to work for the company?

17 A. Correct.

18 Q. Did you take action during that period
19 of time between October of 2007 and July of '08
20 where your directions were countermined or
21 undermined by your family members?

22 A. Yes. There was lots of occasions where
23 they would give different directions to an employee
24 that I had already given directions to.

25 Q. Were those disputes among your family

1 A. He says: Being an equal bastard does
2 not make it right. Everything in the long run will
3 be equal.

4 Q. He's calling you a bastard?

5 A. I took it that way.

6 Q. I mean, what was this all about? What
7 is he talking about, an equal bastard?

8 A. My conclusion was that he was upset
9 with me for what I had done and he was calling me a
10 bastard.

11 Q. And what do you think he was upset
12 about that you had done?

13 A. That we discovered the fraudulent tax
14 returns and were trying to fix them, and it didn't
15 make him look very good, I guess.

16 Q. Was he embarrassed about the situation?

17 A. You'd have to ask him.

18 Q. Have you continued to experience
19 displays of hostility and retaliation from your
20 family members?

21 A. Yes, I have.

22 Q. Tell us, if you would, about what you
23 experienced at the funeral of your brother-in-law,
24 Ozzie St. Blanchard?

25 A. My brother-in-law passed away recently.

1 The family and I, my wife and my oldest, went to
2 the funeral. He was my partner, my friend, and a
3 brother-in-law. So we elected to go to the funeral
4 and tried to make as small an impact as possible
5 when we were there. We actually went around to a
6 side door and kind of went in and took a seat
7 quietly. Just before the funeral started, I get a
8 tap on the shoulder, and I look up and here's two
9 big biker guys. I guess that's the way I could
10 describe them. I said: Yeah? He said: We need
11 to see you outside.

12 MR. THOMAS: That's clearly hearsay.

13 THE WITNESS: The man said --

14 THE COURT: Wait just a minute. Your
15 objection is?

16 MR. THOMAS: To what the biker who
17 tapped him on the shoulder at the funeral said.

18 THE COURT: It's clearly hearsay.
19 There's no question about it. See if you can
20 rephrase your question. Take it where you want.

21 MR. KNOWLTON: That's hard to do,
22 because what happened is what happened. I don't
23 know how he can describe it without saying what
24 happened.

25 MR. THOMAS: Well, he can say what he

1 said without it being hearsay.

2 MR. KNOWLTON: It's not being offered
3 for the truth of the matter asserted.

4 MR. THOMAS: Sure it is. You're not
5 offering it for the truth of what the biker
6 apparently said.

7 THE COURT: I think you're right. I'm
8 going to let him go ahead and say it so I'll be
9 consistent. I'll consider it in the light of his
10 motion as we go through it. Go ahead.

11 MR. KNOWLTON: Thank you, your Honor.

12 BY MR. KNOWLTON:

13 Q. Tell us what happened, in a summary
14 fashion.

15 A. I was tapped on the shoulder. A
16 gentleman asked me to step outside. They escorted
17 me out the door. When I got out the door, I was
18 told I wasn't wanted there and I need to leave. I
19 responded with astonishment and tried to reason,
20 but they didn't want to hear it.

21 A few more of these gentlemen with
22 leathers on and things were coming towards me
23 outside my church, a church I attend all the time,
24 and basically I felt threatened at that point. So
25 I returned into the church, leaned over, and told

I N D E X

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WITNESS: JOSEPH E. MASON, JR.

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

JOSEPH E. MASON, JR.,

Plaintiff,

vs. CASE NO. 2008-CP-26-6169

JOSEPH E. MASON, SR., CATHERINE L. MASON, KATHY
ST. BLANCHARD, MASON HOLDING COMPANY, INC., and
IRWIN LEVINE,

Defendants.

DATE: NOVEMBER 15, 2011

TIME: 9:03 a.m.

LOCATION: Horry County Courthouse
1301 Second Avenue
Courtroom 2D
Conway, SC

REPORTED BY: Rebecca A. Graziano, CSR, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 A. That's correct.

2 Q. That was your testimony?

3 A. That's correct.

4 Q. So as I understand it, as of the date
5 that Mr. Byrd wrote his letter, and in fact, beyond
6 that when you had these meetings, your testimony is
7 that your sister knew nothing about the tax
8 liability issues. Is that right?

9 A. Prior to Byrd writing the letter, none
10 of us knew the tax implications.

11 Q. I just want to make sure who is
12 included in none of us. That would include your
13 sister?

14 A. That's correct.

15 Q. That would include your mother? Your
16 testimony is she knew nothing about the tax
17 liability issues?

18 A. That's correct.

19 Q. And that would include your father? He
20 knew nothing about the tax liability issues?

21 A. Correct, and myself. I didn't know
22 about the tax liability.

23 Q. I'm getting to that in a little bit.

24 A. Well, the whole family.

25 Q. I want to go briefly now, or perhaps

1 Q. Marketing, right?

2 A. Correct.

3 Q. Accounting?

4 A. Correct.

5 Q. Tax?

6 A. Tax, no.

7 Q. You never took a tax course at the
8 University of Alabama?

9 A. No, I believe there wasn't any tax. I
10 believe the way the management degree went is you
11 took one or two classes in each one of those type
12 of business areas. There wasn't a tax class.

13 Q. But you did take an accounting class.
14 In fact, you took more than one as a business
15 administration major, did you not?

16 A. I believe there was two, but it's been
17 a long time and I don't remember.

18 Q. Now, when your father had the idea of
19 opening a business in coastal South Carolina, did
20 you ask to be permitted to be a part of that
21 business?

22 A. Actually, he came to me and said that
23 he had opportunity or word from Goodyear that they
24 said there was some opportunity to own a Goodyear
25 store in Wilmington, as I stated yesterday.

1 Q. So he asked you would you like to be a
2 part of it?

3 A. Correct.

4 Q. And you said you would?

5 A. Yes, sir.

6 Q. And he said fine, it will cost you
7 \$10,000?

8 A. Not quite that quick.

9 Q. But pretty soon, he said it would cost
10 you \$10,000, and it will cost your sister \$10,000.
11 Is that right?

12 A. That's correct.

13 Q. And in fact, had you ever paid anything
14 for stock in any of the company -- in Mason Holding
15 Company or Mason Tire after that initial \$10,000
16 payment?

17 A. No.

18 Q. And you knew when you signed up for the
19 program that you were going to have the same
20 percentage as your sister. Is that right?

21 A. That's correct.

22 Q. And in fact, when you started that
23 original store, it wasn't just the Mason family,
24 was it? You had other shareholders?

25 A. That's correct.

1 A. I'm sure.

2 Q. And he had every right to be?

3 A. Correct.

4 Q. Now, after he moved up in 1989, and
5 prior to the last time that you left the business
6 in 2008, tell the Court how many times you got mad
7 and walked out.

8 A. You're going to have to repeat that,
9 because you made a number of references to leaving,
10 and I'm not sure what you're saying. Say it one
11 more time, please.

12 Q. Did you ever just get mad and leave the
13 business and said: I've had enough. I can't take
14 it anymore.

15 A. No, I never left the business, other
16 than 2008 when I turned in my resignation.

17 Q. So your testimony is that there were
18 never occasions when you said: I've had it. I'm
19 done. I'm gone.

20 A. I was always in touch with the business
21 and -- no.

22 Q. Sir?

23 A. I was always running the business.

24 Q. You were always in touch with the
25 business?

1 A. Right.

2 Q. Now, by that do you mean you were only
3 a phone call away?

4 A. There were times that I worked out of
5 my home, if that's what you're asking.

6 Q. Why would you work out of your home if
7 you had an office right down the street from your
8 home?

9 A. Lots of reasons. There might have been
10 pressure at the time and I wanted to get away from
11 the office.

12 Q. Pressure was getting to you and you had
13 to get away?

14 A. It could be.

15 Q. Now, did you consult with anybody
16 before you just left the business and were
17 available by phone, but you just weren't there for
18 periods of time?

19 A. Sure.

20 Q. Who did you consult with?

21 A. I don't remember the incident and who I
22 called or who I talked to.

23 Q. Do you recall, sir, that on April 26th
24 of 2001 -- and that's about two years after your
25 father got up there -- do you recall that they had

1 of mom. You got to get her out of the business.

2 Did you ever do that?

3 A. I don't remember those specific things,
4 no.

5 Q. You deny they took place?

6 A. I don't remember them. We're talking
7 about 24 years.

8 Q. During the period of time that your
9 mother would come to the business, did you ever
10 express a desire to anybody: I wish she'd quit
11 coming?

12 A. I don't remember that. Could I have?
13 Possibly. It was in the early years. She had been
14 there for years.

15 Q. What years did she work for the
16 company?

17 A. I don't remember exactly.

18 Q. Now, you've alleged in your complaint
19 that over the years, over the course of the years,
20 the business expanded, and you went from one store
21 to two stores, to three stores, to four stores, and
22 then at some point you opened a store on 544. Is
23 that right?

24 A. Correct.

25 Q. And the 544 store was BCJ Tires?

1 A. That's correct.

2 Q. And the B stood for Brian, and the C
3 stood for Cathy, and the J stood for Joe?

4 A. I believe that to be correct, yes.

5 Q. And as originally conceived, Mason Tire
6 had nothing to do with BCJ Tires?

7 A. I can't say they had nothing to do with
8 it.

9 Q. Well, did Mason Holding Company hold
10 any of BCJ Tires, as originally planned?

11 A. No.

12 Q. And did anybody own any of the stock in
13 BCJ Tires other than B, C, and J?

14 A. I don't remember exactly. There was a
15 time there where we started to go, like I said
16 yesterday, in one direction, and then we changed it
17 and went in another. And then there was a point
18 there -- and this all happened in a very short
19 period of time, where Mason Holding ended up being
20 involved. So to answer that question, was anybody
21 else involved, I can't say whether we all had it at
22 one particular time or not. I don't remember that.

23 Q. But you do recall that originally it
24 was going to be B, C, and J; and that's Brian,
25 Cathy, and Joe?

1 A. Yes.

2 Q. In furtherance of your plan to open
3 this store on 544 that was going to be owned by you
4 and your sister and Brian -- who is Brian Stout, by
5 the way? What relation is he?

6 A. The relation I had with Brian Stout, as
7 I said yesterday, was Brian used to call on us when
8 he was with Goodyear. He had about 30 years of
9 Goodyear experience, and so I had a relationship
10 knowing him. He had left Goodyear, and over the
11 years we had still stayed in communication. Once a
12 year he may call me or I may call him, that type of
13 thing. That was the relationship.

14 Q. So when you decided to open the store
15 on 544, tell me -- did you go out and look for some
16 land to buy?

17 A. I believe my dad and I were both
18 looking in the area for property to see what might
19 be available or whatever, and we found a piece of
20 property that was available, yes.

21 Q. Now, your dad was not involved in BCJ
22 as originally planned. Is that true?

23 A. That's correct.

24 Q. And you went out and you found a piece
25 of land. Did you buy the land? Did BCJ buy the

1 land?

2 A. No.

3 Q. Who bought the land?

4 A. Mason Holding Company did.

5 Q. Mason Holding Company bought the land
6 originally?

7 A. I believe so.

8 Q. Sir?

9 A. Originally, yes.

10 Q. And then did Mason Holding
11 subsequently -- does it still own the land?

12 A. I'm assuming yes. I don't know at this
13 point.

14 Q. Did BCJ Tires ever own the land?

15 A. No, sir.

16 Q. It simply leased the property?

17 A. Yes, sir.

18 Q. So you went out, and Mason Holding
19 bought some land and built a building to lease to
20 your new company. Is that right?

21 A. Yes, sir.

22 Q. Now, the money that you used to buy the
23 land and build a building and get into business
24 came from what source?

25 A. The money originally to buy the

1 good investment at this point, and we can possibly
2 build a store on it some day.

3 I got the phone call from Brian at that
4 point saying: Hey, do you have any opportunity? I
5 said: It's interesting, because we just purchased
6 a piece of property. That kind of accelerated it a
7 little bit at that point. We had somebody that
8 could step in and handle it.

9 Q. Well, was 2007 a bad time to be opening
10 up a business anywhere in the United States of
11 America?

12 A. Yes, sir.

13 Q. Sir?

14 A. Yes, sir.

15 Q. And in fact, was it one of the worst
16 times to be opening a business in the United States
17 of America since 1929?

18 A. It ended up that way, yes, sir.

19 Q. And is it fair to say that the Conway
20 store has been a burden to Mason Tire ever since it
21 was opened up?

22 A. I couldn't answer that, because I don't
23 know what the store has done for the last four
24 years.

25 Q. Well, let's talk about that. You keep

1 saying I don't know, I don't know, I don't know.
2 Isn't it true that at the meeting that was held at
3 Cliff Hall's office -- the one that's in the
4 record, that was held in October of 2007, you were
5 not reelected president, but you were elected vice
6 president. Is that right?

7 A. That's correct.

8 Q. And you were elected director?

9 A. I believe so, yes.

10 Q. So you had every right to information
11 that any of the rest of them had. Is that right?

12 A. No, sir.

13 Q. What information did you -- were you
14 refused that you asked for?

15 A. I was totally eliminated from any
16 financial information. I could not access bank
17 accounts. I could not see bank statements.

18 Q. Did you ask for it and they wouldn't
19 give it to you?

20 A. Yes, I did.

21 Q. And who did you ask for a copy of the
22 bank statement that you couldn't get?

23 A. I discussed it with my father. I asked
24 him why I couldn't get information financially.

25 MR. KNOWLTON: Can I interject one

1 thing? You may have misspoken. I want to make
2 sure -- if you think you're right, this will be
3 clear, but Exhibit 25 is a shareholder management
4 agreement from Mason Holding, and my understanding
5 is that entity does not have the records. It's
6 managed by shareholders. So I think to state he
7 was elected as a director I think is incorrect.
8 He's not going to know that, but I just want the
9 record to be clear. I think that's the case to
10 that.

11 BY MR. THOMAS:

12 Q. Well, when you walked out of the
13 meeting, did you think you were a director?

14 A. Like I said, once I was taken out as
15 the president, I kind of zoned out a little bit.

16 Q. Let's talk about that for a minute.
17 You were not reelected president in October
18 of 2007, right?

19 A. That's correct.

20 Q. But you were elected vice president.
21 Is that right?

22 A. That's correct.

23 Q. And your salary didn't change one
24 penny. Is that right?

25 A. Correct.

1 Q. Your credit card use didn't change one
2 dime? You still had your credit cards?

3 A. That's correct.

4 Q. You still had your truck?

5 A. That's correct.

6 Q. You still had your laundry allowance?

7 A. That's correct.

8 Q. You still had every -- and I'm not sure
9 what a perk is, but it's in your complaint, but you
10 still had any perquisite after that election that
11 you had before that election. Is that true?

12 A. Yes, it is.

13 Q. And you went back to work the next day
14 and went to the same office?

15 A. Correct.

16 Q. And you went and performed the same
17 duty except that you weren't doing check writing?

18 A. There was more than just check writing.

19 Q. What were you not able to do?

20 A. Access financials, banking, write
21 checks.

22 Q. Your testimony under oath is that after
23 you went back to your office in October of '07, you
24 were unable to access financial banking records?

25 A. That particular day, the next day when

1 I went back, no. It occurred slowly after that
2 within a short period of time.

3 Q. So for two days you couldn't do it.
4 How about after three days? Were you back in the
5 saddle then?

6 A. I don't remember the exact days of when
7 it happened. All I know is I went to try to get on
8 the online banking, as I always did, and I didn't
9 have access. That's when I started asking
10 questions.

11 Q. So that happened one time, maybe two
12 times, and then everything was -- you had access to
13 everything you wanted?

14 A. Once that happened, I no longer had
15 access.

16 Q. You no longer at any time --

17 A. From that point forward, correct.

18 Q. Now, as I understand it, your office
19 was kept locked?

20 A. My office at that time was locked when
21 I wasn't present or in the building.

22 Q. After you were not reelected president,
23 were you still general manager for all of the
24 companies?

25 A. No. Not general manager, no. We had a

1 general manager.

2 Q. What would you call your title?

3 A. I was vice president.

4 Q. You still had the same office, and you
5 kept financial records in your office, did you not?

6 A. That's correct.

7 Q. And you kept your office locked, did
8 you not?

9 A. When I wasn't present, correct.

10 Q. When you weren't present?

11 A. That's correct.

12 Q. Well, you testified yesterday you were
13 there 24/7, but that's not really right, is it?
14 You were not there a lot?

15 A. Nobody is ever at their job 24/7.

16 Q. I understand. And in fact, your dad
17 from time to time would need access to your office
18 because you had records in there that he needed
19 access to. Is that right?

20 A. There were times that he needed to get
21 records. Once a month he would do some financial
22 things that he liked to do.

23 Q. And he had to ask you for a key to get
24 into your office because that's where the financial
25 records were locked up. Is that right?

1 A. I don't remember him coming to me and
2 saying: I can't get into your office. I need a
3 key. I remember him coming to me and saying: Hey,
4 you shouldn't lock the office. I should have a key
5 in case you're not here and something comes up.
6 That type of conversation.

7 Q. And he didn't get a key until the third
8 time he asked you for a key, did he?

9 A. That's correct. I said to him -- on
10 the first conversation, I said: Dad, I've got some
11 personal things. My laptop and stuff is in there.
12 My office, you got to understand, was in the back,
13 like I said yesterday, in the truck department.
14 The access back there and the visibility to
15 employees was very, very limited. Anybody could
16 walk in there to that back office. I felt if I
17 wasn't going to be in the building, that that
18 office needed to be secure.

19 Q. But this is your dad, the president.
20 He asked you for a key and you said no, and he
21 asked you a second time and you said no, and when
22 he asked you a third time, you finally said: Well,
23 okay. But whatever you do, don't give my sister
24 access to my office.

25 A. That's not correct.

1 Q. That's not correct?

2 A. No, it's not correct.

3 Q. What restrictions did you place on
4 giving him a key?

5 A. I said: Please don't give the key to
6 anybody else. I said: Dad, I don't want people in
7 my office. I said: It's happened before. I don't
8 mind you having the key. I understand you feel
9 like you need to have the key. I said to not give
10 it out. I didn't specifically target anybody.

11 Q. But did you have anybody specifically
12 in mind that you didn't want to have access to your
13 office?

14 A. I had people in mind that would go
15 through my office, yes.

16 Q. Your sister would be one?

17 A. She could have been one, yes.

18 Q. Your mother was one you didn't want in
19 your office?

20 A. My mom didn't come to the office, so I
21 didn't think of her, no.

22 Q. Now, back to the perquisites again,
23 tell me about this -- was a perquisite that you had
24 maid service at your home?

25 A. It was a benefit we had, yes.

1 kind of controlled the commercial part of it,
2 because that was something he was familiar with.

3 Q. Other than what your dad did on the
4 commercial side, you were in complete charge of the
5 business?

6 A. Correct.

7 Q. You're linked by computer to all of the
8 stores. Is that right?

9 A. Correct.

10 Q. And so you can look on the computer and
11 you can tell exactly what sales a store had in a
12 particular day. Is that right?

13 A. I don't believe we had that capacity,
14 no.

15 Q. But you could look at the accounting
16 records from the stores?

17 A. We would get a report that would say
18 that. I would agree to that, yes.

19 Q. And ultimately, Mr. Mason, you were
20 responsible for filing the state and federal tax
21 returns, is that true, on behalf of the company as
22 its president?

23 A. Correct.

24 Q. Now, you signed those returns really
25 from 1984 up until 2007. Is that right?

1 A. I would want to say correct in the
2 early years. I don't know if my dad might have
3 signed in early years, but I'm going to say
4 correct.

5 Q. And you signed them specifically in
6 2003 and 2006?

7 A. Right.

8 Q. Mr. Mason, Plaintiff's Exhibit 61,
9 that's the 2003 US corporation tax return?

10 A. You said 61, correct?

11 Q. Yes, sir.

12 A. Yes, it is.

13 Q. And let's go down to line -- well,
14 let's go to where it says sign here at the bottom.

15 A. Okay.

16 Q. Read that first sentence starting under
17 penalty of perjury.

18 A. Under penalty of perjury, I declare I
19 have examined this return, including accompanying
20 schedules and statements, and to the best of my
21 knowledge and belief, it is true, correct, and
22 complete. Declaration of preparer, other than
23 taxpayer, is based on all information in which
24 preparer has any knowledge of.

25 Q. So you're representing -- when you

1 signed that return and you mailed to Internal
2 Revenue, you intended for Internal Revenue to rely
3 on the veracity and accuracy of that statement, did
4 you not?

5 A. To the best of my knowledge, yes.

6 Q. Now, to the best of your knowledge, it
7 wasn't true, was it?

8 A. At the time I signed it, it was true.

9 Q. Did you know that there were notes that
10 were made up and put on the balance sheet on this
11 tax return?

12 A. I can't say that I knew the notes were
13 on the tax return. I'm not familiar with taxes and
14 tax laws, but I knew of the --

15 Q. Mr. Mason, you are a business
16 administration major and a graduate of the
17 University of Alabama. You know -- and you're the
18 president of a \$7 million company. You know how to
19 look at a tax return and look at the balance sheet,
20 don't you?

21 A. I'm not familiar with the tax return.
22 I wouldn't say I know how to look at a tax return
23 and be able to understand it, no.

24 Q. Do you know how to look at a balance
25 sheet?

1 A. To a certain extent, yes.

2 Q. Do you know how to determine whether
3 the balance sheet shows a notes payable or account
4 payable to shareholders?

5 A. I would say yes.

6 Q. So if you had taken the time to look at
7 it, in fact, there was a balance sheet on this
8 return that showed those notes, you'd know that
9 wasn't accurate, wouldn't you?

10 A. I'd know that the notes weren't
11 accurate?

12 Q. Yes, sir. You know that not only were
13 the notes not accurate, because they were made up,
14 but also that the return that you signed under
15 penalty of perjury was not accurate?

16 A. I would know that I depend on my
17 accountant, and I know that I would not go through
18 the tax returns like that. To the best of my
19 knowledge, they were correct. I was assured by our
20 CPA, apparently, that the taxes were correct, so I
21 would sign them with that assurance.

22 Q. So the part where you told the Internal
23 Revenue you had examined this return, including
24 accompanying schedules and statements, that part,
25 at least, you admit was not true?

1 A. I didn't examine them to the point
2 where I could understand that, no. I depended,
3 again, upon the professionals. I've found in my
4 career that mostly the best way to do it is you
5 surround yourself with professionals and you go
6 based on their knowledge.

7 Q. Now, we've already established that you
8 don't think your sister or your mother or your
9 father had any knowledge about the tax issue until
10 after the Wayne Byrd letter?

11 A. That they were fraudulent, correct.

12 Q. And I guess you're saying you didn't
13 know it either?

14 A. Correct.

15 Q. Now, do you think that as the president
16 of a \$7 million company, the person who signs the
17 return certifying he's looked at them, he's looked
18 at the return and the schedules, do you think you
19 owed any obligation to the company to see that the
20 returns were accurate?

21 A. Well, the only way I could see if the
22 returns were accurate would be to hire a second
23 accountant and have him go through them.

24 Q. Well, how about if the return balance
25 sheet had an accountant in there saying you and

1 your sister owed \$440,000? Would that give you a
2 clue that that return was not exactly accurate?

3 A. Well, if the loans were correct, and
4 that's what I believed were correct, then would the
5 information being transferred to the tax returns be
6 correct? Then my answer would be yes, I would feel
7 that's correct.

8 Q. Are you testifying now that you believe
9 the company actually owed you and your sister
10 \$220,000 a piece?

11 A. I believe that what Irwin set up and
12 told me to do was correct. I went by his advice
13 again.

14 Q. Let me ask you the question again. Do
15 you understand the question? There are some
16 promissory notes in evidence that were testified to
17 yesterday. Is it your testimony that those notes
18 were actually notes that represented a loan or an
19 indebtedness owing to you by the company?

20 A. Did we physically loan money to the
21 company?

22 Q. Yes.

23 A. No.

24 Q. And the company didn't actually owe you
25 \$220,000, did it?

1 A. Correct.

2 Q. And you knew that when you signed the
3 tax returns?

4 A. I don't think I thought that through
5 when I signed the tax returns. Again, I'm saying
6 that Irwin had done what he had done. We did it.
7 Everybody agreed. We moved on.

8 Q. Mr. Mason, have you Laura Durant's
9 report? Laura Durant is a certified public
10 accountant that the company hired to look at --

11 A. I did not go through her report, no. I
12 believe I saw the report, but I didn't go through
13 it line by line.

14 Q. Well, did you look at the numbers?

15 A. I looked at some of the numbers.

16 Q. Well, did it interest you to know how
17 much potential liability the company had as a
18 result of the fraudulent returns that were filed?

19 A. Did it interest me?

20 Q. Yes.

21 A. I guess, yes.

22 Q. So you looked for that number, didn't
23 you?

24 A. I saw that number, correct.

25 Q. What was that number?

1 MR. KNOWLTON: Same objection, your
2 Honor. It calls for --

3 THE COURT: I'll note it. Thank you.

4 THE WITNESS: Again, if those numbers
5 are correct, it appears to be that way.

6 BY MR. THOMAS:

7 Q. And in that light, is it understandable
8 that your family members are a little disenchanted
9 with you?

10 A. In that light?

11 Q. Yes.

12 A. Could you be a little more specific?

13 Q. Well, you filed tax returns, and now
14 the company has got \$700,000 plus in tax liability.

15 A. Disenchanted with me for signing the
16 tax returns? Is that what you're ultimately
17 saying?

18 Q. Yes.

19 A. I think they'd be disenchanted with
20 Irwin Levine telling us everything was fine to do
21 it. We all agreed to do it.

22 Q. Let me ask you this: Would it be
23 inappropriate for them to assume or presume that
24 you, as the president, were doing whatever was
25 necessary to make sure that the company was filing

1 A. He would make a statement to do the
2 same thing you're doing, and yet actions prohibited
3 me from doing the same things I was doing. So
4 that's why I kept coming back and saying write-up a
5 list of exactly what you want me to do. I wanted
6 to be clear, so that if he said do this and he was
7 hindering me to do this --

8 Q. Well, let me ask it another way. What
9 did you not do after the October meeting that you
10 had been doing before?

11 A. Predominantly it was all the financials
12 as far as business things. There was a lot of
13 overlapping and undermining authority. I thought I
14 might be in charge of a particular service manager
15 or store manager, whatever, like I always did, and
16 then I would go to tell them something, and then it
17 was countered by my father.

18 And he said at one point -- I remember
19 a particular situation where a store manager had
20 said: Your dad told me to do this, and you're
21 telling me to do that, and he tells me you're the
22 president. So that's why I wanted to know
23 specifically.

24 Q. But you were trying to do the same
25 thing you did before, albeit with some interference

1 of the income and the reason for the
2 understatement, would you agree with that?

3 MR. KNOWLTON: I'll object to bidding
4 one witness against the other.

5 MR. THOMAS: I'll withdraw that
6 question.

7 BY MR. THOMAS:

8 Q. Did you ever ask Joe Mason -- did you
9 ever ask Tim Duncan to manipulate inventory figures
10 for the Mason Tire Company for a subsequent year,
11 just as you had done in the past?

12 A. I don't remember asking him directly to
13 do that, no. I remember talking to him possibly
14 about solutions to the problem.

15 Q. And one solution, or a solution that
16 you've used in the past, was to manipulate the
17 inventory, right?

18 A. One of the solutions that I had -- say
19 that one more time.

20 Q. One of the solutions that you were
21 aware of that had been used in the past was the
22 manipulation of inventory?

23 A. I was aware of that, correct.

24 Q. And did you suggest that maybe that
25 will work?

1 A. I don't remember exactly what the
2 conversation was.

3 Q. So you can't deny that?

4 A. I guess I can't deny it.

5 Q. Did Mr. Duncan ever absolutely refuse
6 to take any accounting action that you had
7 requested of him?

8 A. I don't remember that, no. I don't
9 remember asking him to do certain things. My dad
10 and Mason Tire had hired them. I wasn't handling
11 the financials. What I remember mostly of the
12 meeting, the second meeting, was more cordial
13 stuff, and like I said yesterday. He talked about
14 benefits to me and compensation packages and along
15 those lines.

16 Q. Now, after the amended returns were
17 prepared, you testified that there was a meeting
18 held to discuss, among other things, the filing of
19 the amended return. Is that true?

20 A. Correct.

21 Q. And you attended that meeting. Is that
22 true?

23 A. Correct.

24 Q. And where was it held?

25 A. Mason Tire Surfside, upstairs in the

1 with my wife.

2 Q. For what year?

3 A. For the year 2007.

4 Q. And what date was it signed by the
5 preparer?

6 A. March 1st.

7 Q. Of?

8 A. 2008. Sorry.

9 Q. So in fact, is your memory now
10 refreshed that Mr. Levine did, in fact, file your
11 personal return for the year 2007, and then he
12 filed it in March of '08?

13 A. Apparently so.

14 Q. You were aware, were you not, that
15 Mr. Levine acquired an interest in BCJ Tires?

16 A. I'm aware of that.

17 Q. Sir?

18 A. I'm aware of that.

19 Q. You're aware of that?

20 A. Correct.

21 Q. And in fact, you were given the
22 opportunity to comment on whether or not Mr. Levine
23 should be permitted to buy stock in BCJ?

24 A. Are you showing me that?

25 Q. No, sir. I'm just asking you a

1 question.

2 A. Repeat the question then.

3 Q. Yes, sir. You were given notice of a
4 meeting to discuss selling seven shares of BCJ to
5 Irwin Levine?

6 A. That particular time, again, is during
7 that time that we were restructuring and doing a
8 lot of differences. I've seen those documents.
9 Apparently so, yes.

10 Q. You signed it. That's your signature?

11 A. That's correct.

12 Q. And you consented to his buying a
13 percentage in BCJ?

14 A. Correct. Apparently that's correct.

15 Q. And in fact, you found out later that
16 Brian Stout had sold his interest in BCJ to
17 Mr. Levine?

18 A. I believe that's correct, yes.

19 Q. Do you still have the complaint?

20 A. Yeah.

21 Q. Flip over to Paragraph 37.

22 A. Okay.

23 Q. Do you see the statement after: The
24 plaintiff was wrongfully removed from his position
25 as president. Do you see that? That's your

1 you're suing and what you're suing them for.

2 What contract is it you say that they
3 breached? Is it the contract to give you permanent
4 employment?

5 A. Again, a lot of these causes of action
6 or actions -- is that what you call them? I'm not
7 versed in the legal end of it. A lot of these
8 actions were developed through my legal counsel at
9 the time, so I'm not familiar with a lot of the
10 statements and the things that they say and they
11 mean. Maybe you can ask me a direct question on
12 it.

13 Q. All right. Let me ask you this direct
14 question: You say in Paragraph 36 that they
15 orchestrated the plaintiff's wrongful termination
16 and expulsion so that the defendants would enjoy
17 the financial fruits and rewards of the enterprise
18 to the exclusion of the plaintiff. That's in
19 Paragraph 36.

20 I want to make sure I understand what
21 you're saying. You're saying that these three
22 people, your sister, your father, and your mother,
23 terminated you, kicked you out, so they could beat
24 you out of your interest in the company and take it
25 for themselves?

1 A. Question?

2 Q. That's a question.

3 A. I feel that what they did was they did
4 everything possible for me to quit. They did
5 everything by the book as far as not reducing my
6 salary, as you said, not reducing my benefits, but
7 made my life miserable, intolerable. I believe
8 they embarrassed me a lot of times in front of
9 employees. Wherever they could, they made it
10 intolerable. That's what I believe.

11 Q. Well, your life had been intolerable
12 since 2001, hadn't it, when you walked out the
13 first time?

14 A. I don't believe it was intolerable at
15 that point. I believe we had problems and it was
16 chaotic, yes.

17 Q. Now you're saying what they did they
18 did for the purpose of their enjoying the financial
19 fruits and rewards of the enterprise to your
20 exclusion. They wanted to take your money. Is
21 that what you're charging them with?

22 A. They wanted to eliminate me from the
23 organization, correct.

24 Q. And you said in terms of what you call
25 wrongful termination, I think you testified

1 yesterday that nobody fired you. Is that right?

2 A. That's correct.

3 Q. Nobody told you not to come back. Is
4 that right?

5 A. That's correct.

6 Q. Nobody cut your pay?

7 A. We established that, correct.

8 Q. And you just simply didn't want to go
9 back to work?

10 A. I found it intolerable at that point.

11 Q. You found it intolerable. So you
12 didn't want to go back then, and you wouldn't go
13 back today if they offered you your job back?

14 A. That's correct.

15 Q. All you want is to be bought out, just
16 like you wanted in 2001?

17 A. Question?

18 Q. Sir?

19 A. That was a question?

20 Q. Yes, sir.

21 A. At this point, that's what I want,
22 correct.

23 THE WITNESS: Your Honor, can we take a
24 break? I hate to jump Mr. Leiter, but we've been
25 doing the eye thing here and I know I'm ready.

1 A. The way you're suggesting it is I
2 wanted it the whole time, and that is not true.

3 Q. You didn't want somebody to buy you out
4 the whole time or you buy them out?

5 A. Not between 2001.

6 Q. When did that start?

7 A. Probably sometime in 2007, if I
8 remember correctly, that it was discussed.

9 Q. Tell me, if you will, about the
10 oppression that you allege the defendants have
11 engaged in that entitles you or that you base your
12 request of the Court on to make them buy your
13 stock. What have they done wrong to you?

14 A. Well, going back from how far? Do you
15 want me to go through the whole story of all the
16 things we talked about earlier?

17 Q. Well, first of all, when did these acts
18 of oppression start?

19 A. Well, I think once --

20 Q. I'm sorry. Go ahead. When did the
21 acts of oppression start?

22 A. I think it really turned the corner
23 when I wouldn't do the requests of my father on the
24 workmen's comp to try to take care of my sister. I
25 think that was a major turning point at that point.

1 you make the statement as you left, or when you
2 left: I'm not going to stand for this. I've lost
3 control of this company.

4 A. No. I believe when I left, I was in
5 the office, and it was the end of the day, and I
6 had put all my stuff -- took all my stuff out and
7 actually walked away, and I didn't see anybody. It
8 was kind of lonely, to be honest with you. I just
9 walked off. It was the end of the day.

10 Q. Did you ever make the statement right
11 before you left that: I've lost control of the
12 company?

13 A. To whom would I be making that
14 statement to?

15 Q. To your father.

16 A. I could have made that statement to my
17 father, that I've lost control of the company, yes.

18 Q. Let's talk about the \$100,000. You
19 gave some testimony yesterday that you and
20 Mr. Levine looked at the issue of how much to pay
21 the federal government and determined that the goal
22 was \$100,000?

23 A. The sales goal was \$100,000, so the
24 revenue.

25 Q. I thought the revenue --

1 A. I guess it isn't revenue.

2 Q. I thought revenue was \$6 million.

3 A. It's profit. I apologize.

4 Q. Profit?

5 A. Correct.

6 Q. Your goal was that the profit was about
7 \$100,000?

8 A. Correct.

9 Q. And that's what you're going to pay
10 taxes on?

11 A. Correct.

12 Q. And the goal was to not pay taxes on
13 any more than \$100,000?

14 A. Correct.

15 Q. Even if you made \$250,000, you were
16 only going to pay -- you were going to do something
17 so you'd only pay taxes on \$100,000?

18 A. I believe there were times that we paid.
19 on more than \$100,000, but the goal, correct, was
20 \$100,000.

21 Q. And is that something that you and
22 Mr. Levine together decided?

23 A. It's something that Irwin talked about
24 and we talked about, yes.

25 Q. And you said yeah, we ought not to pay

1 taxes on anymore than \$100,000?

2 A. I don't remember the exact
3 conversation, I just remember over the years it's
4 here's where we're at, what can you do, and give me
5 suggestions or whatever, and it went from there.

6 Q. There were two notes that were signed
7 that are in evidence. Is that right? Two
8 promissory notes to you and to your sister?

9 A. That's correct.

10 Q. And as I recall, your sister didn't
11 sign either one of them. Is that right?

12 A. That's correct.

13 Q. And do you recall asking her to sign
14 another note?

15 A. I don't recall ever presenting her with
16 another note to sign, no.

17 Q. You don't recall presenting her with a
18 note to sign and she refused?

19 A. No.

20 Q. Now, when you went to see Mr. Byrd, did
21 you get \$10,000 from the company?

22 A. Did I personally get \$10,000 from the
23 company?

24 Q. Yes.

25 A. Meaning written to me?

1 Q. To the law firm.

2 A. Correct.

3 Q. And then the law firm, as I understand
4 it, sent that money back and said that was
5 inappropriate because they were representing you
6 personally. Is that right?

7 A. They sent it back, correct.

8 Q. And so then you owed the law firm
9 \$10,000. Did you then write an invoice to the
10 company to reimburse you for not only that \$10,000,
11 but an additional \$7,000?

12 A. That's incorrect.

13 Q. Okay. What is incorrect about that?

14 A. I didn't write an invoice I don't
15 think.

16 Q. Did you get a check from the company
17 made payable to you to use to pay your attorneys'
18 fees?

19 A. They weren't my attorneys' fees at that
20 point in my mind, but yes, I did get a check from
21 the company.

22 Q. So you disagreed with your attorney
23 when they sent them back and said: Wait a minute,
24 the company can't pay these fees. We represent
25 you.

1 A. At that point I wasn't disagreeing with
2 anybody. I don't want to go into the exact
3 conversation of what I was being told at that
4 point, because again, I think I'd have to invoke
5 client-attorney privilege. But I was under
6 direction.

7 Q. There's no question that the law firm
8 sent the check back. Is that right?

9 A. Correct.

10 Q. And no question that you somehow
11 obtained from the company a check to you for
12 \$17,000, correct?

13 A. That's correct.

14 Q. And you used that money to pay Turner
15 Padgett?

16 A. Correct.

17 Q. And when you left, you also wrote
18 yourself a check for \$20,000, didn't you?

19 A. Yes. There was bonus money that was
20 owed to me and my sister, and I wrote a check for
21 that money, correct, at that time frame.

22 Q. When you say that was bonus money owed
23 to you, is that --

24 A. Well, a lot of times what we did is the
25 money in bonuses that were owed we wouldn't pay out

1 of 2007 for the check?

2 MR. LEITER: That's what he said.

3 BY MR. THOMAS:

4 Q. Can we agree now that the check was
5 8/19 of '07?

6 A. I agree it was around that around that
7 date, yes.

8 Q. So you had already been to see Mr. Byrd
9 at that time, hadn't you?

10 A. Again, I testified that I could have.
11 It was around that time. I don't remember. I
12 thought it was before.

13 Q. In fact, did he write me this letter,
14 which is in evidence, on September 17th of 2007?

15 A. That letter was written to you on
16 September 17th, 2007.

17 Q. Casings. We hadn't talked about
18 casings. Let's talk about it for a minute. You
19 told Mr. Knowlton what a casing is. Now, those
20 things are pretty big, are they not, commercial
21 truck tires?

22 A. Bigger than passenger, correct.

23 Q. And as I understand it, you would
24 fabricate the name of a company and write-up a
25 receipt for truck tires from this fabricated

1 company. Is that right?

2 A. That's correct.

3 Q. And you would take cash out of the
4 drawer in an amount equal to the fabricated
5 invoice. Is that right?

6 A. That's correct.

7 Q. And you'd stick that in your pocket?

8 A. I would split that with my sister.

9 Q. Well, you'd originally stick it in your
10 pocket, and then at some point your testimony is
11 you would split it equally with your sister?

12 A. Correct.

13 Q. After taking credit, of course, for the
14 wheels and the spinners and the whatever it was
15 they put on those 15 cars that her son bought?

16 A. Correct.

17 Q. 15 trucks. I'm sorry.

18 A. Some cars.

19 Q. And your testimony is that at some
20 point, you would split it with your sister.

21 There's no question you never split it with your
22 father or your mother?

23 A. It depends on the time frame.

24 Q. Well, what about between 2005 and 2008
25 when you terminated your employment?

1 A. I'd say no.

2 Q. Now, tell us, if you will, Conway
3 Hauling, is that one you made up?

4 A. That was one of the names we used,
5 correct.

6 Q. And A & J Tires, you made that one up?

7 A. I don't remember that name. I remember
8 the Conway Hauling more than I remember the other
9 ones.

10 Q. And this was nothing more than tax
11 fraud, wasn't it?

12 A. We had an issue with the casings where
13 they were doing something very similar to the
14 parts, and Irwin and I had discussed another option
15 of dealing with these casings, and Irwin said to
16 me: As long as you give half to your sister, then
17 this is the way you can do it. I said okay.

18 Q. So your belief as the president of the
19 company was that as long as you split the cash with
20 your sister, it was perfectly okay to fabricate an
21 invoice, stick the cash in your pocket, and report
22 it to Internal Revenue that way?

23 A. I'm telling you --

24 Q. That's your testimony?

25 A. I'm telling you that our professional

1 accountant told me how to handle that, and that was
2 the way he told me to handle it.

3 Q. How many thousands of dollars did you
4 take out and stick in your pocket using the casing
5 scheme?

6 A. I couldn't answer a figure.

7 Q. How frequently did you use the casing
8 scheme?

9 A. Again, I don't know frequently. I know
10 that for a time frame there, my sister had a lot of
11 expenses and things that she was doing, and
12 especially when it came to the son and the cars.
13 So that was more frequent probably than any time.

14 Q. Would it be fair to say if you had a
15 good day cash-wise, that was a good day to have a
16 casing fabrication?

17 A. Not necessarily. That wasn't the
18 trigger, if that's what you mean.

19 Q. But that was the best time to have it
20 because you had cash?

21 A. Correct.

22 (Off-the-record conference.)

23 MR. THOMAS: Your Honor, can we have
24 just a couple minutes to get through some exhibits?

25 THE COURT: We will adjourn for about

1 A. Any particular part of the exhibit, or
2 do you want me to read the whole thing? You said
3 take a look at it.

4 Q. Well, let me find it. I'm sorry.
5 That's the wrong exhibit. Turn to Exhibit 35.

6 A. Okay.

7 Q. Do you know what that is?

8 A. Yes, I do.

9 Q. What is that?

10 A. That was a list of expenses that Irwin
11 said I owned the company for those years that are
12 listed there.

13 Q. And is the reason he said you owed
14 those expenses is because they were, from a tax
15 standpoint, inappropriate. That's for your maid
16 and cutting your grass and things of that nature?

17 A. Correct.

18 Q. And so as part of fixing the problem
19 that had occurred while you were president, were
20 you asked to reimburse the company the amount of
21 those expenses?

22 A. Correct.

23 Q. And let's turn to Plaintiff's
24 Exhibit 38.

25 A. Okay.

1 Q. Were you asked to agree to repay those
2 expenses?

3 A. Was I asked by this letter?

4 Q. By anybody.

5 A. Or asked to sign it?

6 Q. Yes, sir. Were you ever asked to repay
7 that \$61,588?

8 A. I was asked to repay it in the original
9 doc you just showed me, and then in this doc they
10 wanted me to sign it. But I didn't believe those
11 were expenses that I should pay back to the
12 company. They were authorized by the company.

13 Q. Even though they were inappropriate,
14 you refused to pay them back?

15 A. I refused to pay the corporation back
16 for those expenses, correct.

17 Q. And even though the corporate
18 accountant, Mr. Levine, was asking you to pay him
19 back and believed you should pay him back, you
20 refused to pay him back?

21 A. Correct.

22 Q. Thank you, Mr. Mason.

23 MR. THOMAS: If the Court will indulge
24 me.

25 (Off-the-record conference.)

1 MR. THOMAS: Thank you, sir. You've
2 been very patient.

3 MR. LEITER: Your Honor, what's the
4 Court's preference in terms of -- I'm now next on
5 cross-examination. It's going to take a little
6 while. Not quite as long.

7 THE COURT: Well, we're so close to
8 12:30. Why don't we break and come back in an
9 hour, if that suits everybody else. Let's do that
10 then.

11 { (A luncheon recess transpired.)

12 MR. LEITER: Your Honor, if it please
13 the Court?

14 THE COURT: Okay.

15 CROSS-EXAMINATION

16 BY MR. LEITER:

17 Q. Mr. Mason, I want to talk a little bit
18 about the growth of the company. As I understand
19 it, you've turned the company into -- at the time
20 you left, you had turned it into a six or
21 \$7 million company. Am I correct?

22 A. Revenue-wise, correct.

23 Q. And it went from one store to five
24 stores?

25 A. Correct.

1 Q. And you helped us by giving us an
2 organizational chart of all the stores. I believe
3 it's Exhibit 78. Do you have that in front of you?
4 It's the very last exhibit in your book.

5 A. I've got it.

6 Q. There are five stores there ranging
7 from Surfside to North Myrtle Beach, to Conway, to
8 Pawleys Island. Is that correct?

9 A. Correct.

10 Q. I'm going to state some truisms, but
11 the main truism I want to state is: You can't be
12 in five places at one time, correct?

13 A. Correct.

14 Q. You need to rely on people at each of
15 those stores to make sure that that store is
16 running efficiently?

17 A. Correct.

18 Q. As I understand it, you have a general
19 manager and a service manager at each of those
20 stores?

21 A. At this present time, or at the time?

22 Q. Thank you. I'm really addressing these
23 series of questions to at the time you were still
24 president and even vice president.

25 A. Okay. Correct.

1 Q. And their jobs at each of those stores
2 is to make sure that each of those stores make a
3 profit?

4 A. Correct.

5 Q. That's what you want them to do?

6 A. Correct.

7 Q. And your job is to make sure that they
8 are doing their job?

9 A. Correct.

10 Q. You're, in essence, checking the
11 checkers. They're checking -- they have to check
12 out the store each day, they have to make sure that
13 they have enough inventory, enough parts, enough
14 labor on hand, things like that, correct?

15 A. Correct.

16 Q. And you have to make sure that they're
17 doing their job to see that all this is being done?

18 A. Correct.

19 Q. And this isn't just at one store, but
20 this is five stores?

21 A. Correct.

22 Q. Now, in order to check the checker, you
23 need to have various tools at your disposal to make
24 sure they're doing what they're supposed to be
25 doing and I'm sure what they want to be doing.

1 Fair statement?

2 A. Fair.

3 Q. So the tools I'm talking about are the
4 reports that you need to look at to see how each
5 store is doing.

6 A. Okay.

7 Q. Now, in our case, in Mason Tire's case,
8 it's a Goodyear franchise, correct?

9 A. Correct.

10 Q. And Goodyear does a lot to help its
11 franchisees keep track of things like inventory,
12 how much is on hand, how much has been ordered,
13 things like that?

14 A. Again, it depends on your definition of
15 a lot.

16 Q. Well, we can talk about that. But for
17 instance, they provide balance sheets to you on a
18 monthly basis?

19 A. Correct.

20 Q. They provide profit and loss statements
21 to you?

22 A. Correct.

23 Q. Trial balances?

24 A. Correct.

25 Q. Daily reports?

1 A. Correct.

2 Q. All these are tools that you rely on to
3 make sure that you're running at your peak
4 profitability?

5 A. Correct.

6 Q. The only reason you're interested in
7 seeing these reports is to make sure that you're
8 making as much money as you can be making?

9 A. Correct.

10 Q. I'd like to spend a few minutes --
11 well, I think you've already said this, but in
12 terms of your position when you were at Mason Tire,
13 you did everything with respect to the day-to-day
14 operations? And by that, when you said that, I
15 think you meant you were the chief cook and bottle
16 washer. Everything stopped with you?

17 A. Fair statement.

18 Q. Now, let's talk a little bit about
19 inventory. As I see it, or as I understand it,
20 inventory constitutes the lubrication, if I can
21 make a pun here, of what constitutes success for
22 Mason Tire?

23 A. Can you repeat that question again?

24 Q. Sure. Having the right inventory and
25 controlling your inventory is what really is going

1 to make Mason Tire profitable or not profitable?

2 A. It's a component of it, yes.

3 Q. Now, when we're talking about
4 components, we're talking about a large component
5 of what makes Mason Tire profitable?

6 A. It's a component, yes.

7 Q. So that component includes the sale of
8 tires. That's part of inventory -- tires are part
9 of the inventory?

10 A. Correct.

11 Q. That's a major part of the inventory?

12 A. Correct.

13 Q. But Mason Tire also deals with brakes,
14 oil, other car parts, batteries, all the things
15 that would be related to car repair and replacement
16 items?

17 A. Correct.

18 Q. It even gets down probably -- I'm
19 assuming to things as minor as wiper blades, for
20 instance?

21 A. It does.

22 Q. So again, I'm going through what I've
23 had to learn, but as I understand it, if you have
24 too little inventory on hand, you're not going to
25 make money because you're not selling your

1 inventory, or you're not selling as much inventory
2 as you could?

3 A. Depending on what the inventory
4 consists of, yes.

5 Q. But in our case, inventory of tires,
6 batteries, oil, all those kinds of things. If our
7 shelves are bare and people are saying: Can you
8 change my tires, and we say: Well, we don't have
9 any tires to sell you, you're not making money on
10 that?

11 A. Correct.

12 Q. Now, likewise, or maybe the mirror
13 image of that, is if you have too much inventory on
14 hand, you're not making money?

15 A. Correct.

16 Q. So if you're selling too little
17 inventory, you're not making money. If you're
18 selling inventory for too much, meaning you're
19 selling your goods for more than people want to pay
20 for it, you're actually hurting your sales. Fair
21 statement?

22 A. Correct.

23 Q. So somewhere in here, there's a sweet
24 spot about having the right amount of inventory on
25 hand and selling it at the right price?

1 A. Yes.

2 Q. So you, in order to find that sweet
3 spot on any given day, need to know how much
4 inventory you have on hand, correct?

5 A. I wouldn't say that's something you
6 look at on any given day.

7 Q. But on a regular basis, if not frequent
8 basis?

9 A. Fair enough.

10 Q. And you need to know how much you have
11 on order, just so that you don't have too much or
12 too little coming in. Fair statement?

13 A. Fair.

14 Q. You need to know how much it's going to
15 cost you or how much it did cost you. In other
16 words, you don't want to sell it for less than
17 cost?

18 A. Correct.

19 Q. And you want to know how much you're
20 going to actually sell it for. In other words, you
21 have to create the right price for it?

22 A. Correct.

23 Q. You, as the CEO of the organization,
24 have to be in charge of all of these kinds of
25 details?

1 A. Correct.

2 Q. Now, I already mentioned this, but I
3 want to go back to a second. Goodyear, I'm going
4 to assume, is one of your main suppliers, or at
5 least it's the sole supplier on tires. Is that
6 fair?

7 A. Not a sole supplier, but they were one
8 of the main.

9 Q. However, on parts, you get those from
10 other providers, such as NAPA or Mighty. Were
11 those your two main suppliers?

12 A. At one time, yes.

13 Q. You're using -- when I say you, Mason
14 Tire used a Goodyear program that helped you keep
15 track of your inventory?

16 A. We used the program that encompassed
17 all of that, yes.

18 Q. It would include inventory, but it
19 would include other things as well to show whether
20 the organization as a whole is profitable or not,
21 correct?

22 A. Point of sale, yeah.

23 Q. Point of sale, things like that. As I
24 understand it, it even helped you keep track of
25 your customer base. When you fill out an invoice,

1 when a salesperson is inputting that, that somehow
2 goes into the database that Goodyear will pick up
3 in its program?

4 A. There was a customer base, yes.

5 Q. And so again, in order to control
6 everything you needed to know about inventory, you
7 would receive daily reports? Whether you looked at
8 them or not on a daily basis is a different matter,
9 but the company would receive daily reports?

10 A. Rephrase the question again on the
11 inventory. What did you say? Did we receive daily
12 reports? Yes.

13 Q. And daily reports included inventory
14 information?

15 A. As far as the sale went, yes.

16 Q. But not whether you have something on
17 order or how much you have in stock?

18 A. Correct.

19 Q. So if you needed to find that out, you
20 would go to other kinds of inventory reports that
21 would tell you that?

22 A. I'm trying to remember how you would
23 know what was on order. I believe there was a
24 report or something you could go into in the system
25 and find out what was on order.

1 Q. My educated guess is going to be that
2 you had sufficient reporting resources available to
3 you to answer these questions, no matter what they
4 were called, whatever the reporting system was
5 called?

6 A. Correct.

7 Q. And again, these were the important
8 documents that you needed to rely on in order to
9 control these five stores, or at least to monitor
10 these five stores. Because again, you couldn't be
11 at each store all the time?

12 A. Correct. It helped me do that.

13 Q. It did help you to do that. Okay. And
14 without this information, you could not have run a
15 six to \$7 million company that ran profitably?

16 A. It made it more difficult, exactly.

17 Q. And I think there's been some testimony
18 that these documents were so important that you
19 kept them -- I think the term we've used is lock
20 and key. You kept them in your office, and when
21 you weren't there, the office was locked so that
22 people couldn't go in and pilfer through these
23 documents?

24 A. Correct.

25 Q. And you would, in other words, keep the

1 important documents in your office?

2 A. Correct.

3 Q. We're going to get into the inventory
4 and the underreporting of inventory in a minute,
5 but it was a Goodyear system that kept track of the
6 inventory that was on hand?

7 A. Right.

8 Q. And it was as good only as the program
9 ran, or as good as the inputting was into it?

10 A. As always, correct.

11 Q. Now, at some point, you were
12 having -- when I say you, Mason Tire was having a
13 problem with understated inventory?

14 A. Parts and inventory, correct.

15 Q. Just to be clear, the problem with the
16 understated inventory didn't have anything to do
17 with tires. It was really the parts inventory that
18 was understated?

19 A. That's correct.

20 Q. Now, I believe -- and we can point them
21 out, but I believe yesterday we talked about some
22 valuations that Mr. Levine, Irwin, did back in
23 2000/2001. They were handwritten valuations?

24 A. Correct.

25 Q. And you remember you were asked about

1 one line item on several of them, which was
2 understated inventory?

3 A. Correct.

4 Q. And that was added back in?

5 A. Correct.

6 Q. To his valuation?

7 A. Correct.

8 Q. So at that time, even as early as 2000,
9 you knew that there were issues relating to
10 understated valuation taking place at Mason Tire?

11 A. Yes. We knew we had that going on,
12 yes.

13 Q. And again, one of the truisms is having
14 understated valuation on your inventory is not good
15 for a business?

16 A. In what context? When you say not good
17 for the business?

18 Q. Yeah. Let's talk about that a minute.
19 You need to have good information available to you
20 in order to make decisions about buying, about
21 selling, about what you have, what you need, things
22 like that?

23 A. Well, you got to understand that's not
24 what those values meant in inventory. In other
25 words, we did not have an inventory on parts that

1 said you've got ten of these, five of these, three
2 of these. It was just a dollar figure.

3 Q. I understand it was a dollar figure,
4 but it's a dollar figure telling you something.
5 And until you drill down into it, you're not sure
6 what it's telling you?

7 A. Fair enough.

8 Q. So it's important for you, as a
9 businessman and the CEO of Mason Tire, to
10 understand why we're having an under-reporting
11 problem?

12 A. Correct.

13 Q. And again, this is information being
14 reported through the Goodyear system?

15 A. Correct.

16 Q. And it was clear to you that it needed
17 to be fixed? You can't just continue to have
18 reports --

19 A. That was a problem that needed to be
20 addressed, correct.

21 Q. And it was your understanding that
22 there was a negative inventory being shown on some
23 of your reports because of an embedded program in
24 the Goodyear program, in the Goodyear software?

25 A. Restate the question.

1 Q. Sure. You believed, at least at one
2 point, that there was a negative inventory taking
3 place because of an embedded program in the
4 Goodyear software?

5 A. I don't use the word embedded program.
6 It's the program.

7 Q. I'm not a programmer, so I'm not going
8 to challenge you on that.

9 A. I'm not either. I want to be clear.

10 Q. But it was something about the program?

11 A. Correct.

12 Q. But it could have also been something
13 about the way bookkeeping was entering some of its
14 data. Was that one the of things that you had to
15 consider?

16 A. Could it have been? I guess it could
17 have been, but I feel it was more the program that
18 was doing it. I don't believe the bookkeeping
19 department upstairs was inputting the information
20 wrong, if that's what you're saying.

21 Q. And was part of the problem because of
22 the way that the margins were set for the goods
23 being -- for the inventory being sold?

24 A. That's correct.

25 Q. And the margins -- again just to draw a

1 slight distinction here, Goodyear sets its own
2 margins for its Goodyear tires?

3 A. Were you going to say something?

4 Q. That's just what I understood.

5 A. They don't set the margins for their
6 own tires. When you sold a tire, they have the
7 exact cost, so it generated the margin. Make
8 sense?

9 Q. Makes sense. But they didn't have that
10 information on the other products that you sold,
11 the batteries, the oil?

12 A. The parts side?

13 Q. The parts side.

14 A. Correct. It was handled differently.

15 Q. And that had to be inputted by someone
16 at Mason Tire?

17 A. Correct.

18 Q. And again, I forgot the year that Mason
19 became a Goodyear franchisee, but at some point
20 early on, you were trained by Goodyear in their
21 various programs that were available to you for
22 reporting purposes?

23 A. I actually was trained two different
24 times. One to be a store manager, which really
25 wasn't that program at that point. I don't believe

1 that program was even available. And then we were
2 trained to operate the system, not necessarily what
3 every report meant or that type of thing. It was a
4 new system they had come out with, and we were
5 taught really the basics.

6 Q. At some point, as you were mentioning,
7 the program changed, and the margin that was set on
8 the parts inventory was changed by someone at Mason
9 Tire?

10 A. I think we had tried to change -- to
11 make an impact on what was happening to try to
12 correct it, and it wasn't working well. We had all
13 talked about it. My dad and I had talked about it,
14 and it just didn't seem to be affecting it
15 correctly.

16 Q. And when you talked about it, what was
17 that conversation about? Why it was happening, how
18 do we correct it?

19 A. Yeah, we knew we had the problem, so we
20 talked about what's an option to be able to correct
21 it and try to get it to where it's reporting
22 correctly, and we changed some of the numbers to
23 see if that would help.

24 Q. At some point, you talked to Irwin,
25 Mr. Levine, about this, and he told you that the

1 negative inventory had to be brought down?

2 A. Yeah, correct. He saw it.

3 Q. And I believe that you discussed with
4 Mr. Levine the options that were available to you
5 in order to fix it?

6 A. Yeah. Irwin came to me with the
7 options and we discussed them, yes.

8 Q. Well, whether he came to you or you
9 went to him, you needed to know how to fix it?

10 A. Fair enough.

11 Q. And you needed some -- you wanted to
12 know what your options were?

13 A. I needed expert advice on how to do it,
14 correct.

15 Q. And one of the options he gave you was
16 we go back in and we report that we understated our
17 inventory, which means that we overstated our cost
18 of goods sold. So we can go back in and correct
19 that, but the only problem with that is you're
20 going to end up paying more taxes. That was part
21 of the discussion you had with Irwin?

22 A. I don't believe we ever had that
23 discussion that you just referred to, no.

24 Q. Well, isn't that a basic piece of the
25 discussion pie?

1 A. It wasn't, no.

2 Q. So you understood it that that was the
3 affect of having the understated inventory, that it
4 was affecting the cost of goods sold?

5 A. That the understated inventory was
6 affecting the costs of goods sold?

7 Q. Correct. If you have understated
8 inventory, by definition you're going to have a
9 higher cost of goods sold, because you have less
10 pieces, but you're still -- to sell, at least
11 according to the computer.

12 A. You're confusing me a little on it.

13 Q. Okay. Let's talk about it.

14 A. I can't answer yes. I'm not sure I
15 understand that.

16 Q. Well, tell me what you understood the
17 problem to be. If you're talking to your dad about
18 the understated inventory and we need to fix it,
19 and you're talking to Irwin, who's saying you need
20 to fix it, what did you understand the problem to
21 be?

22 A. That we had understated inventory, that
23 it was relieving inventory of too much somehow.

24 Q. And obviously if it's a problem,
25 there's a reason why it's a problem?

1 A. Correct.

2 Q. And Irwin is there to help you with the
3 taxes, correct?

4 A. Correct.

5 Q. He's not inputting things into the
6 computer?

7 A. No.

8 Q. Is it fair to say that we all know that
9 Irwin doesn't know how to use a computer?

10 A. I don't know his abilities on the
11 computer.

12 Q. You've never seen him at a computer at
13 your office at Mason Tire?

14 A. I don't believe so.

15 Q. So the reason you're talking to Irwin
16 is to be talking about the effect that the
17 understated inventory is having on the taxes?
18 That's why you're talking to him?

19 A. I don't think we ever talked about the
20 effect on the taxes, no.

21 Q. Do you understand today that if you
22 have understated inventory, that that's going to
23 then make your cost of goods sold go up, and if you
24 have a higher cost of goods sold, that brings down
25 your net revenues, which means you pay less taxes

1 I didn't know him. I didn't pick him really, so I
2 was kind of open to why am I going in and talking
3 to him. In fact, I think the first conversation I
4 had when my dad said: Hey, I want you to meet him,
5 was: Well, what do I need to talk to him about? I
6 didn't know what I needed to do.

7 Q. So if I'm understanding your testimony
8 correctly, when you went to talk to him, you talked
9 to him about your bonuses or possible bonuses?

10 A. He brought those issues up, salaries
11 and those type of thing, yeah.

12 Q. Did he bring up the amended returns?

13 A. I think he brought them up in the
14 second conversation when he said that, yeah.

15 Q. And you asked him -- or you all
16 discussed -- was your father with you at that
17 second conversation?

18 A. No, he was not.

19 Q. Just you?

20 A. Correct.

21 Q. So in that conversation, you said:
22 Okay, Mr. Duncan. What's this going to cost us in
23 terms of taxes?

24 A. I don't believe I asked him that, no.

25 Q. Then I believe the next thing that came

1 up about the taxes was a meeting in December. Am I
2 correct about that?

3 A. .Correct.

4 Q. And at that time, the issue of filing
5 the amended returns came up as a matter that you
6 all discussed?

7 A. Correct.

8 Q. And at that time, there was a
9 discussion about how much is this going to cost the
10 company?

11 A. I think there was some shouting and
12 screaming about how much it was going to cost the
13 company. I doubt if that is a discussion. I
14 understand.

15 Q. You understood, or at least someone in
16 the room understood, it was going to cost the
17 company a lot of money?

18 A. Correct.

19 Q. At that time, the amended returns were
20 not filed?

21 A. I don't have knowledge of whether they
22 were or not.

23 Q. Did anyone at the meeting say we're
24 going to file the returns?

25 A. There was discussions on filing

1 A. Correct.

2 Q. And that was in response to an issue
3 Mr. Thomas raised recently, is it not?

4 A. That's correct.

5 Q. Since you terminated your employment in
6 August of 2008, have you served in any capacity in
7 this company as an officer?

8 A. No, I haven't.

9 Q. Have you served in any capacity
10 whatsoever as an employee of the company?

11 A. No, I haven't.

12 Q. Have they called any shareholder
13 meetings?

14 A. No, they haven't.

15 Q. Have they invited you to any -- to the
16 extent there is a board, which I refute -- to any
17 board of directors meetings?

18 A. No.

19 Q. Have they paid you a penny in dividends
20 since you left the company in December of 2008?

21 A. No.

22 Q. Have they paid you for Mason Holding
23 Company or Mason Tire or its wholly owned
24 subsidiaries any compensation since that time?

25 A. No, they haven't.

1 Q. Now, Mr. Thomas asked you about
2 Mr. Stout selling a portion of what he owned -- or
3 what he owned in BCJ to Mr. Levine. Do you recall
4 that?

5 A. Correct.

6 Q. He mentioned the first installment,
7 where you had a small portion. Do you remember
8 that with Mr. Levine?

9 A. Yes.

10 Q. The balance of that transaction, that
11 occurred after you left Mason Tire, did it not?

12 A. That's correct.

13 Q. So that would have been sometime in
14 late 2008 or 2009, or do you remember?

15 A. I don't remember the date.

16 Q. Mr. Thomas asked you a couple
17 questions, and I want to make sure this is clear,
18 about your percentage of share ownership. You have
19 physical custody of 30 percent of the shares in
20 Mason Holding, do you not?

21 A. That's correct.

22 Q. Is it your contention in this case that
23 you own 50 percent of the shares of the company?

24 MR. THOMAS: We object to this line of
25 questioning. There's nothing in his

1 complaint -- and we asked him about this -- nothing
2 in the complaint that in any way claims that he
3 owns anymore or is entitled to have this court owe
4 him anymore than he already owns. Nothing
5 anywhere.

6 MR. KNOWLTON: This has been an issue
7 throughout the case, your Honor, in that retirement
8 package, Mr. Mason was to deliver the shares in
9 installments. He did, and he said the only reason
10 he didn't deliver the other ones beginning in 2008
11 was because he was sued. And our position is that
12 agreement should either be recharacterized to be
13 what it was, and that is a sale at the time of the
14 event with the retention of voting rights, or it
15 ought to be enforced on its terms, and that being
16 the last installment is due next month.

17 So that would make up the balance
18 between 30 percent and 50 percent. But some of
19 those events have occurred since the filing of the
20 complaint. The complaint was filed in 2008.
21 Pursuant to that agreement, there should have been
22 stock delivered in the beginning of December
23 of '08, December of '09, December of 2010, and
24 another one due next month.

25 THE COURT: I'm going to take it

1 subject to your objection. I'll note your
2 objection, and I'll sort through all these when we
3 get through it. You may proceed.

4 MR. KNOWLTON: Thank you, your Honor.

5 BY MR. KNOWLTON:

6 Q. Did I accurately state your contentions
7 in this case?

8 A. Yes, you did.

9 Q. I may have missed it, but I want to
10 make sure I'm clear on the record. Did you retain
11 Mr. Tim Duncan?

12 A. No, I did not.

13 Q. Who did?

14 A. To the best of my knowledge, Mason
15 Tire, my dad.

16 Q. Did you handle that relationship?

17 A. No, I did not.

18 Q. Were you involved in the termination of
19 that relationship?

20 A. No, I was not.

21 Q. Did he provide you with the accounting
22 advice that he suggested or tax advice that he
23 suggested to remedy the problems that you were
24 dealing with at the time?

25 A. I don't remember any tax advice.

1 A. That's correct.

2 Q. Let's take a look in the notebook at
3 Plaintiff's Exhibit 35.

4 A. Okay. I've got it.

5 Q. Now, this is something Mr. Levine
6 prepared that you were asked about?

7 A. That's correct.

8 Q. Now, how did you receive the comments
9 and discussions aimed at you in connection with
10 asking you to repay corporately approved expenses
11 at this time frame?

12 A. Well, this was in conjunction with the
13 whole situation going on at that point, and this
14 was given to me kind of like in my opinion like a
15 retaliatory type, like: Well, you're going to owe
16 this for what you've done. And that's when I
17 disagreed with it.

18 Q. This is the same time frame where
19 everybody is yelling at you?

20 A. Correct.

21 Q. Do you think it was an attempt to get
22 you to change your mind?

23 A. Absolutely.

24 MR. KNOWLTON: That's all I have.

25 Thank you, your Honor.

1 Q. And I talks about such other and
2 further relief as the Court may deem just and
3 proper?

4 A. That's what it says, correct.

5 MR. KNOWLTON: And your Honor, you will
6 see you've got Mr. Mason, Sr.'s deposition. We've
7 asked questions about this topic throughout
8 discovery, and I will also move to amend, to the
9 extent you feel it necessary under Rule 15 D, for
10 supplemental pleadings for events that occurred
11 after filing of the initial complaint. The initial
12 complaint was filed in August of 2008, and under
13 Exhibit 17, the last four installments of those
14 shares were not due until after the filing of the
15 original complaint. So we would move to supplement
16 our pleading to the extent that it is necessary.

17 THE COURT: Okay. I'll take that under
18 advisement. Do you want to address that?

19 MR. THOMAS: Your Honor, we object to
20 it. We can only try what's in the pleadings. It's
21 not in the pleadings.

22 THE COURT: What do you have next? Are
23 we finished with this witness?

24 MR. KNOWLTON: Yes, your Honor.

25 THE COURT: You can come down. Thank

I N D E X

Page

WITNESS: JOSEPH E. MASON, JR.

CROSS-EXAMINATION

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CROSS-EXAMINATION

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(All exhibits were retained.)