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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Casey L. Manning, Circuit Court Judge

Civil Action No.: 2011-CP-40-8456

Civil Action No.: 2011-CP-40-8459

Appellate Case No.: 2013-000386

Xu Dong Sun,

Appellant.

v.

Xiaolan M. Wang, Rui Cao,  
and M. Vista Restaurant, LLC,

Respondents,

Shengen Sun,

Appellant.

v.

Xiaolan M. Wang, Rui Cao,  
and Miyo's at Sandhills, LLC,

Respondent,

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

ARBITRATION PURSUANT TO  
S.C. CODE ANN. § 15-48-10

Xu Dong Sun )  
 )  
Claimant )

vs. )

Xiaolan M. Wang, Rui Cao, and )  
M Vista Restaurant, LLC )  
Respondents and Counter-Claimants. )

**DECISION AND AWARD OF THE  
ARBITRATOR IN BINDING ARBITRATION**

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Shengen Sun )  
 )  
Claimant )

vs. )

Xiaolan M. Wang, Rui Cao, and )  
Miyo's at Sandhills, LLC )  
Respondents and Counter-Claimants. )

These two matters involve written Claims and Counterclaims arising from the sale by Respondents of a restaurant to each of the Claimants and the Respondents' subsequent reacquisition of the restaurants by ouster of the Claimants. The terms of the sales are each framed by an Amended Purchase Agreement and an Amended License/Management Agreement. The Amended License/Management Agreements provide for binding arbitration and the Amended Purchase Agreements specifically provide for binding arbitration pursuant to the South Carolina Uniform Arbitration Act (S.C. Code § 15-48-10 et seq.). The parties, through their attorneys, also entered into

an Agreement to Arbitrate designating the undersigned as the Arbitrator of the issues presented by the pleadings and hearing.

The arbitration hearing was held before me over six days (March 14, 15 and 16 and May 10, 11 and 12, 2011). Prior to the hearing, the parties served and submitted written Claims and Counterclaims and Responses. At the hearing, the parties presented their witnesses and their exhibits. The Claimants Xu Dong Sun and Shengen ("Jack") Sun and the Respondent/Counter-Claimant Xiaolan M. ("Michelle") Wang, testified, as did Chen Xiang Zhi and Su Shen Li on behalf of the Claimants, and Mark Thompson and David Siddons, Esq. on behalf of Respondents. At the conclusion of the testimony, the attorneys presented argument and submitted memoranda of authorities. Having heard and considered the testimony of the witnesses and the arguments of the attorneys, and now having reviewed and considered the submitted pleadings, the documentary evidence, and the memoranda of authorities, I make the following decision and award based on the following findings, reasoning and conclusions.

#### **FINDINGS OF FACT**

1. On July 13, 2010, Xu Dong Sun ("Xu Sun") entered into a Purchase Agreement with Xiaolan M. Wang ("Michelle Wang") and her husband Rui Cao ("Cao") (the members of M Vista Restaurant, LLC) to purchase the M Vista Restaurant in the Vista area of Columbia on the closing date of August 1. At the same time and with an effective date of August 1, 2011, Xu Sun also entered into a License/Management Agreement with M Gourmet Group, LLC (of which Michelle Wang and Cao are the members) for license rights to the name M Vista and for management services in exchange for a monthly fee of 3% of M Vista's gross receipts.

2. Shortly after the commencement on August 1 of Xu Sun's period of ownership of M Vista, Michelle Wang, who became unhappy with the sale to Xu Sun, locked Xu Sun out of the restaurant on August 22. Four days later and after negotiations among the parties, Xu Sun signed an Amended Purchase Agreement and an Amended License/Management Agreement. The Amended Purchase Agreement retained the same purchase price of \$680,000 but changed the down payment amount (from \$80,000 to \$150,000) and changed the payment terms (from a level amortized monthly payment of \$18,253 for 36 months at 6% interest to a flexible monthly principal payment of the restaurant's "gross monthly profit" less \$10,000 with an additional payment of interest at 10% per annum and with the unpaid balance due in full on March 1, 2012). The payment provisions included a reversion and forfeiture term that also was contained in the original Purchase Agreement:

In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units [in M Vista Restaurant, LLC] sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business.

The Amended Purchase Agreement also added the following sentence not contained in the original Purchase Agreement:

Until the Purchase Price is paid in full the Seller shall have a majority vote in the event of any disputes between the Seller and Purchaser.

3. On July 16, 2010, Shengen Sun ("Jack Sun") entered into a Purchase Agreement with Michelle Wang and Cao (the members of Miyo's at Sandhills, LLC) to purchase the Miyo's at Sandhills Restaurant in the Northeast area of Columbia. Jack Sun also executed a License/Management Agreement with M Gourmet Group, LLC

which, like the Agreement with Xu Sun, provided for licensing of the restaurant name and for management services in exchange for 3% of the monthly gross receipts.

4. Shortly after the commencement on August 1 of Jack Sun's period of ownership of Miyo's at Sandhills ("Sandhills"), Michelle Wang, who also became unhappy with the sale to Jack Sun, locked Jack Sun out of the restaurant on August 22. Four days later and after negotiations among the parties, Jack Sun signed an Amended Purchase Agreement and an Amended License/Management Agreement. The Amended Purchase Agreement for Sandhills retained the same purchase price of \$480,000 but changed the down payment amount (from \$80,000 to \$100,000) and changed the payment terms (from a level amortized monthly payment of \$12,169 for 36 months at 6% interest to a flexible monthly principal payment of the restaurant's "gross monthly profit" less \$8,000 with an additional payment of interest at 10% and the unpaid balance due in full on September 1, 2012). The Sandhills' Amended Purchase Agreement included the same reversion, forfeiture and majority vote provisions as referenced above for M Vista.

5. Xu Sun and Jack Sun each paid a down payment of \$80,000, with the balance of the recited down payments "paid" by way of a credit based on previous "draws" after August 1 from the checking accounts of the two restaurants by Michelle Wang (who retained the ability to transfer funds from the accounts.).

6. The sales of the two restaurants were a part of the sales of other Michelle Wang/Rui Cao restaurants in July 2010. These sales, with the exception of the M Vista and Sandhills sales, resulted in reacquisitions (with refunds of the respective down payments) in August 2010.

7. In keeping with the broad management authority retained under the Amended License/Management Agreements, and in an effort to determine the appropriate payment of "gross monthly profit" (a term undefined in the Amended Purchase Agreements), Michelle Wang closely monitored the operations and cash flow of the two restaurants for the months of August through November 2010. Much of the testimony and documentary evidence at the hearing was related to the detailed results of this monitoring. In Michelle Wang's view, the monitoring revealed that Xu Sun and Jack Sun each were making inappropriate cash withdrawals and were reporting to her undocumented or inappropriate expenses as deductions from the monthly gross receipts. These conclusions by Michelle Wang, along with her perceptions of damage to the quality and reputation of the restaurants, were the impetus for her "self-help" reacquisitions of the two restaurants and are the basis for the Counterclaims of the Respondents. I find that these Counterclaims were not waived by the monthly income reconciliations by Michelle Wang and the Claimants.

8. On December 6, 2010, Michelle Wang again locked Xu Sun out of M Vista. On December 16, 2010, Wang again locked Jack Sun out of Sandhills. Neither Sun returned to possession, and these arbitration actions followed.

9. Prior to locking Xu Sun and Jack Sun out of their restaurants in December 2010, Respondents did not provide Xu Sun or Jack Sun with notice of any specific payments alleged by Respondents to be due. There is no evidence that Claimants, before dispossession from the restaurants in December 2010, were thirty days or more late on any payment due under the Amended Purchase Agreements.

10. Under the terms of the Amended Purchase Agreements, all gross monthly profits of the restaurants were payable to the Respondents with the exception of \$10,000 monthly for Xu Sun and \$8000 monthly for Jack Sun. No testimony was offered that either Xu Sun or Jack Sun failed to draw these designated shares of the monthly profits.

11. Xu Sun and Jack Sun made no direct cash payments on the purchase prices of the restaurants beyond their initial down payments of \$80,000 each. Any subsequent reductions of the principal amounts of the purchase prices resulted from credits for certain withdrawals by Michelle Wang and from credits from "gross monthly profits" as determined by Michelle Wang.

12. In the absence of lead up to any final payoff of the purchase price, the crediting of profit to the balance owed is an academic exercise. In light of my resulting decision that Claimants are entitled to refunds of only their direct cash down payments, it is unnecessary to determine the precise amount of "gross monthly profit" for each restaurant for each month. Rather, the necessary inquiry is whether the evidence established, as alleged in the Counterclaims, that either Claimant made inappropriate cash withdrawals or received the benefit of inappropriate expense deductions from gross receipts.

13. Respondents established, by a preponderance of the evidence, that Xu Sun treated as business expenses of M Vista several items which were not appropriate business expenses. From the checking account of M Vista, Xu Sun issued (1) a check in October in the amount of \$3000 payable to Jackie Zheng, an Atlanta business associate, (2) a check in November in the amount of \$2000 payable to Wells Fargo card

service, and (3) a check, also in November, in the amount of \$1000 payable to Cardmember Services. Additionally, the last page of Claimants' Exhibit 30 contains a Wal Mart receipt in October in the amount of \$90.94 indicated to be and marked as family expenses. Xu Sun also deducted from gross revenues for three months an expense for personal apartment rent of \$1080 per month. The contentions by Respondents that these items were not proper business expenses were uncontested (or not convincingly contested) by the Claimant. These items total \$9330.94.

14. Respondents failed to establish that the salary paid to Xu Sun (in addition to his monthly share of profits) was an improper business expense deduction. Section 5.1(h) of the Amended Purchase Agreement for M Vista contemplates payments to Purchaser "of salaries in the ordinary course of business and consistent with past practice." The testimony of Xu Sun was that he paid himself for his services as a chef. I find that these payments were appropriate under the Amended Purchase Agreement.

15. Respondents failed to establish, by a preponderance of evidence, that any other payments to, by or for Xu Sun were inappropriate business expenses. The evidence was insufficient to prove that any other operational details, such as amounts of salaries to staff, number of employees or management of food purchases, were improper under the Agreements. Similarly, the evidence was not sufficient or convincing to prove that cash receipts and cash withdrawals were used for purposes other than staff payments as testified to by Xu Sun.

16. Respondents established, by a preponderance of evidence, that Jack Sun treated as business expenses of Sandhills several items that were not appropriate business expenses. From the checking account of Sandhills, Jack Sun made debit

payments of \$560.46 to Capital One in October and November and a payment to Bank of America for \$386.91 in November. Jack Sun also deducted from gross revenues as a business expense (1) four months of personal apartment rental at \$2400 per month, and (2) a charge of \$2386.91 in October for purchase of a car. He also withdrew \$12,000 from the checking account on the day of the last lockout on December 16, only \$8000 of which is justifiable as a draw for his share of December profits. The contentions by Respondents that these items were not proper business expenses were uncontested (or not convincingly contested) by the Claimant. These items total \$16,934.28.

17. Respondents failed to establish, by a preponderance of evidence, that any other payments to, by or for Jack Sun were inappropriate business expenses. This includes the allegations as to misuse of cash receipts or cash withdrawals, as well as the contention by Respondents that items purchased for the YaFood restaurant were not reimbursed by Jack Sun to the Sandhills account. I found Jack Sun's testimony concerning his use of cash and his reimbursement of purchases for YaFood to be credible and convincing.

18. Respondents failed to establish, by a preponderance of evidence, that the quality or reputation of either restaurant or the restaurant trade names were damaged by any actions or omissions of Xu Sun or Jack Sun.

19. In closing argument, Claimants expressly abandoned any arguments that the Amended Purchase Agreements were unconscionable or otherwise invalid.

## CONCLUSIONS OF LAW

1. Claimants established that Respondents breached the Amended Purchase Agreements by dispossessing Claimants from the restaurants in December 2010. Respondents' "self-help" reacquisitions of the two restaurants were made contrary to the provisions of the Amended Purchase Agreements, including Section 2.2(b), and were breaches of the Agreements.

2. As damages for this breach, Claimants are entitled, on their Claims, to a refund of their direct cash down payments to Respondents. Any other booked reductions of principal owed were not the result of cash contributions by Claimants but merely were paper credits from revenues that were otherwise designated for Respondents. The only right to proceeds by the Claimants was the right to receive the designated share of monthly profits.

3. Respondents established, on their Counterclaim, that Xu Sun received the benefit of \$9330.94 for payments of items that were not properly business expenses of M Vista, as described in Finding of Fact number 13 above. Respondents are entitled to a credit in that amount against the refund to Xu Sun of his cash down payment.


4. Respondents established, on their Counterclaim, that Jack Sun received the benefit of \$16,934.28 for payments of items that were not properly business expenses of Miyo's at Sandhills, as described in Finding of Fact number 16 above. Respondents are entitled to a credit in that amount against the refund to Jack Sun of his cash down payment.

5. I conclude that none of the parties have established a right to recover any other damages.

## AWARD

The Award of the arbitrator is in favor of the Claimant Xu Sun in the amount of \$80,000 on his Claim and in favor of the Claimant Jack Sun in the amount of \$80,000 on his Claim. I find in favor of the Respondents on their Counterclaim against Xu Sun in the amount of \$9330.94, which shall operate as a set-off or credit against the Award to Xu Sun. I find in favor of the Respondents on their Counterclaim against Jack Sun in the amount of \$16,934.28, which shall operate as a set-off or credit against the Award to Jack Sun. The Award to Xu Sun, after Respondents' set-off, is \$70,669.06. The Award to Jack Sun, after Respondents' set-off, is \$63,065.72. I make no award of costs and the parties have agreed that the fee of the arbitrator will be paid one-half by the Claimants and one-half by the Respondents.

This Decision and Award resolves all issues raised by the Claims and Counterclaims and submitted in the arbitration.



---

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ARBITRATOR

June 1, 2011

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Xu Dong Sun )

Claimant )

vs. )

Xiaolan M. Wang, Rui Cao, and )  
M Vista Restaurant, LLC )

Respondents and Counter-Claimants. )

---

Shengen Sun )

Claimant )

vs. )

Xiaolan M. Wang, Rui Cao, and )  
Miyo's at Sandhills, LLC )

Respondents and Counter-Claimants. )

ARBITRATION PURSUANT TO  
S.C. CODE ANN. § 15-48-10

**ORDER OF THE ARBITRATOR ON THE  
POST-DECISION MOTIONS**

Following service of the Arbitrator's Decision and Award on June 1, 2011, the parties made timely motions to modify and correct the Award. I now have considered fully the grounds and arguments set out in the two motions and accompanying written arguments and again have reviewed the related evidence and testimony.

I find and conclude that the motions should be, and are hereby, denied. The issues and contentions as to payments, credit, deductions and damages raised by the motions were raised at or by the hearing and were considered as part of the overall decision-making involved in my June 1 Decision and Award. The motions, in my view,

reveal no sound basis or reason to modify, or correct or clarify the Decision and Award.

The Decision and Award of June 1, 2011, is confirmed.



---

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Post Office Box 1473  
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ARBITRATOR

November 11, 2011

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Xu Dong Sun )  
 )  
*Petitioner-Claimant,* )

Civil Action No. 2011-CP-40-08456

vs. )

Xiaolan M. Wang, Rui Cao, and )  
M. Vista Restaurant, LLC )  
 )  
*Respondents.* )

RICHLAND COUNTY  
FILED  
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JEANETTE W. McBRIDE  
C.C.P. & G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Shengen Sun )  
 )  
*Petitioner-Claimant,* )

Civil Action No. 2011-CP-40-08459

vs. )

Xiaolan M. Wang, Rui Cao, and )  
Miyo's at Sandhills, LLC )  
 )  
*Respondents.* )

ORDER ON MOTIONS TO MODIFY, VACATE OR CORRECT

These matters came before the Court pursuant to Respondents' motion under S.C. Code Ann. §§ 15-48-130 and 15-48-140 (the "Motion"), filed January 18, 2012<sup>1</sup>, under

<sup>1</sup> Petitioner-Claimants argued that the Respondents requests to this Court for relief under S.C. Code Ann. §§ 15-48-130 and 140 were untimely, because they were filed following the Arbitrator's ruling on requests to the Arbitrator for reconsideration rather than within 90 days of the original award (which time had expired while the requests for reconsideration were being considered by the Arbitrator.). This Court agrees with the majority of jurisdictions that have considered the issue that a timely filing of a request for

which Respondents' sought an order of this Court vacating and/or modifying or correcting the Arbitrator's award in the above-captioned matters.

This Court has fully considered the Arbitrator's award, the motions and materials filed with the Court in this matter to date, as well as arguments of counsel at the hearing held on March 15, 2012 at 11 a.m., at which counsel for all parties were present. This Order addresses both matters captioned above, which are related and which have been treated as related throughout all proceedings.

The Arbitrator issued his decision on June 1, 2011. Thereafter, both parties filed timely motions pursuant to S.C. Code Ann. § 15-48-100. The Arbitrator issued his decision in response to those post-decision motions on November 11, 2011. A copy of the Arbitrator's award was submitted as a part of the Court record.

Respondents assert that the Arbitrator's award, on its face, directly violates governing South Carolina law, and must therefore be modified or corrected. This Court agrees. The findings and conclusions in the Arbitrator's reasoned decision point to the conclusion that each Petitioner-Claimant can recover nothing because the Order shows on its face that each Petitioner-Claimant was the first to commit material breaches of the agreements at issue and Respondents' actions in response to those breaches were specifically authorized by the parties' written agreements.

This case involves arms length contracts between business persons. In this case, Respondents, restaurant owners, sold interests in their restaurant businesses to two businessmen. Respondents sold one restaurant location ("Sandhills") to Claimant,

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reconsideration to the Arbitrator tolls the time to file a request for relief to the Court under S.C. Code Ann. §§ 15-48-130 and 140 and therefore, Respondents' Motions to this Court were timely filed.

Shengun Sun and another location (“Vista”) to Claimant Xu Dong Sun. The terms of the sales were nearly identical. They provided that each Claimant would make a down payment and then operate the businesses, paying the remainder of the purchase price to Respondents by paying to Respondents *all* of the monthly profits from the businesses except for a set, stated amount (considered the purchasers’ “salary” by the parties) in the amounts of \$10,000 per month for Vista and \$8000 per month for Sandhills, until the full purchase price was paid. The agreements provided that:

In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units [of ownership in the Restaurant] sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business.

Vista Agreement, attached as Exhibit B to the Respondents’ Motion, at p. 2; Sandhills Agreement, attached as Exhibit C to the Respondents’ Motion, at p. 2.

This Court reviews the Arbitrator’s award under the following standard:

A reviewing court should vacate an Arbitrator's decision only when the Arbitrator has exceeded his or her authority or has manifestly disregarded or perversely misconstrued the law. ‘[F]or a court to vacate an arbitration award based upon an Arbitrator's manifest disregard of the law, the governing law ignored by the Arbitrator must be well defined, explicit, and clearly applicable.’ *Id.* ‘[M]anifest disregard of the law occurs when the Arbitrator knew of a governing legal principle yet refused to apply it, and the law disregarded was well defined, explicit, and clearly applicable to the case.’ *Bazzle v. Green Tree Fin. Corp.*, 351 S.C. 244, 268, 569 S.E.2d 349, 361 (2002), vacated and remanded on other grounds, 539 U.S. 444 (2003). ... An Arbitrator manifestly disregards the law when he or she appreciates the existence of a clearly governing legal principle and decides to ignore it. *Harris v. Bennett*, 332 S.C. 238, 246, 503 S.E.2d 782, 787 (Ct. App. 1998).

*C-Sculptures v. Brown*, 394 S.C. 519, 523, 716 S.E.2d 678, 680 (S.C. Ct. App. 2011).

Respondents argued, and this Court agrees, that the Arbitrator manifestly disregarded the well-defined, explicit and clearly applicable governing law. Specifically, the Arbitrator manifestly ignored the law that provides that the first to breach may not complain about any subsequent breach by the other party. See Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008), and that it is not a breach of contract for a party to do what the contract expressly permits. Williams v Riedman, 339 S.C. 251, 529 S.E. 2d 28 (S.C. App. 2000). These authorities were brought to the Arbitrator's attention by way of timely request for reconsideration, but the Arbitrator declined to modify his decision. See Exhibit D to Respondents' Motion.

The fact that the Arbitrator manifestly disregarded the law is evident on the face of the award itself. The award specifically finds that each Claimant failed to pay to Respondents the entire profits due monthly as to each restaurant, for a period of at least three months – a clear breach of the contracts. This is most clearly evident from the Arbitrators' findings in paragraphs 13 and 16 of the reasoned award decision. There, the Arbitrator found that each Claimant, in addition to taking their agreed "salary" amount, also charged the businesses with purely personal items, including personal apartment "rent" (among other things) for a period of three months.<sup>2</sup> This finding alone

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<sup>2</sup> The Arbitrator's decision reveals that over a series of months in late 2010, each Claimant improperly failed to pay over to Respondents each month the full gross profits less the agreed salaries. Indeed, the award is clear that each Claimant wrongfully misappropriated monies of the businesses, over the course of months, to pay for improper and purely personal non-business expenses. See Arbitrator's Order, Exhibit A, to Respondents' Motion ¶ 13 at pp. 6-7; ¶ 16 at pp. 7-8. By using business funds to pay these purely personal expenses, each Claimant in effect took extra monthly "salary" over and above the agreed amount, without consent and in violation of the agreements. In the case of Sandhills, the Arbitrator found that Claimant Shengen Sun wrongfully took almost \$17,000 over the course of only a few months leading up to December 2010. In the case of Vista, the Arbitrator found that Claimant Xu Dong Sun improperly took

demonstrates that Claimants were the first to commit material breach of the agreements, and precludes them from recovering even if there were a subsequent breach by Respondents. Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008).

As a result of these actions on the part of Claimants over a course of months, Respondents re-took possession of the businesses in December 2010 and declared that Claimants had forfeited their investments under the contract clause quoted above. Claimants argued, and the Arbitrator evidently found, that Respondents failed to give “notice” of these breaches by Claimants. Further, Claimants urged this Court to conclude that Respondents should have given such notice and were required to allow a “30 day cure” period to Claimants. However, there is simply no provision in the parties agreements that requires such notice, or that provides any such “right to cure” period. Essentially, Claimants requested that the Arbitrator and the Court re-write the contract between the parties to incorporate such terms. However, in cases such as this between business persons, neither the Arbitrator nor the Court can re-write the parties written contract. See Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983) (stating that it is not the function of the court to rewrite contracts for parties).

Because the Claimants failed to pay each month the full profit less the agreed “salary” amount for three months or more, another provision of the contract recognized in the Arbitrator’s award applies:

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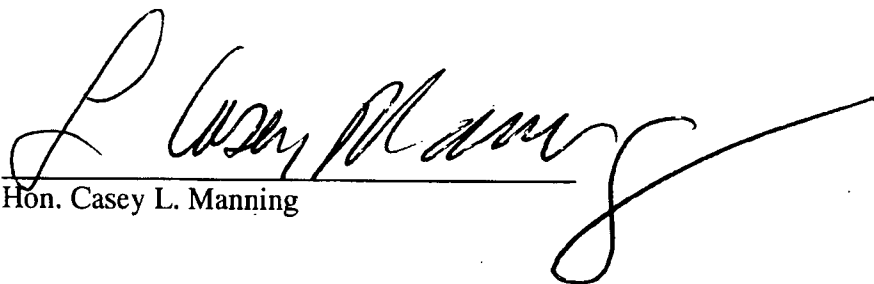
almost \$10,000 in the course of only a few months leading up to December 2010. And while the Claimants contended that Respondents “waived” these matters, the Arbitrator found that there was no such waiver. See *Id.*, p. 5.

In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units [of ownership in the Restaurant] sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business.

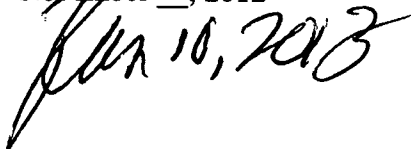
Based on this provision of the agreements, it was simply not a breach on the part of Respondents to reclaim the restaurants as they did, and to consider the money paid to Respondents as forfeited. It is axiomatic that it is not a breach of contract to so that which the contract specifically permits. Williams v Riedman, 339 S.C. 251, 529 S.E. 2d 28 (S.C. App. 2000).

Because the Arbitrator's reasoned award found that the Claimants were the first to breach the parties agreement and because the governing agreements allowed Respondents to take exactly the action they took in response to such breaches, the Arbitrator's award failed to apply governing South Carolina black-letter law to these facts and therefore, the Arbitrators award must be vacated, modified, or corrected. Accordingly, the Arbitrator's award is corrected and modified so that each Claimant shall recover nothing. To the extent that the award grants any recovery to either Claimant, the awards are vacated.

IT IS SO ORDERED.

  
Hon. Casey L. Manning

Columbia, South Carolina  
November \_\_, 2012

  
Nov 10, 2012

STATE OF SOUTH CAROLINA )

ARBITRATION PURSUANT TO

COUNTY OF RICHLAND )

SOUTH CAROLINA CODE § 15-48-10

Xu Dong Sun )

Claimant, )

vs. )

**DEMAND FOR ARBITRATION**

Xiaolan M. Wang, Rui Cao, and Miyo's at )  
Sandhills, LLC )

Respondents. )

CLAIMANT

Xu Dong Sun  
5935 McMillan Circle  
Columbia, SC 29212

CLAIMANT'S REPRESENTATIVE

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RESPONDENTS

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## NATURE OF THE DISPUTE

The Claimant, a party to two arbitration agreements, dated August 26, 2010 (Amended Purchase Agreement) and August 1, 2010 (Amended License/Management Agreement) hereby demands arbitration.

Respondents have breached the Amended Purchase Agreement and Amended License/Management Agreement (collectively "Agreements") by, among other things, improperly taking money for their own use and benefit and improperly removing Claimant from the business. Additionally, Respondents fraudulently induced Claimant into signing the Agreements. Finally, the Agreements are void as against public policy.

## AMOUNT OF CLAIM

Claimant seeks return of all monies invested in the restaurant to date, all monies improperly taken, and all future monies owed under the contract.

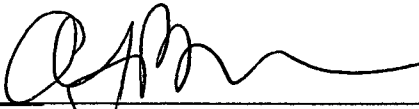
## LOCATION OF ARBITRATION

Richland County, South Carolina

## TERMS OF ARBITRATION

Claimant is amendable to the use of one (1) arbitrator if such single arbitrator can be agreed to. Claimant is also amenable to such arbitration on an expedited basis.

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Attorneys for Claimant

Columbia, South Carolina  
December 22, 2010



## RESPONDENTS' REPRESENTATIVES

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## NATURE OF THE DISPUTE

The Claimant, a party to two arbitration agreements, dated August 26, 2010 (Amended Purchase Agreement) and August 1, 2010 (Amended License/Management Agreement) hereby demands arbitration.

Respondents have breached the Amended Purchase Agreement and Amended License/Management Agreement (collectively "Agreements") by, among other things, improperly taking money for their own use and benefit and improperly removing Claimant from the business. Additionally, Respondents fraudulently induced Claimant into signing the Agreements. Finally, the Agreements are void as against public policy.

## AMOUNT OF CLAIM

Claimant seeks return of all monies invested in the restaurant to date, all monies improperly taken, and all future monies owed under the contract.

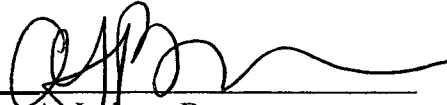
## LOCATION OF ARBITRATION

Richland County, South Carolina

## TERMS OF ARBITRATION

Claimant is amendable to the use of one (1) arbitrator if such single arbitrator can be agreed to. Claimant is also amenable to such arbitration on an expedited basis.

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Attorneys for Claimant

Columbia, South Carolina  
December 22, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Shengen Sun )  
Claimant, )  
vs. )  
Xiaolan M. Wang, Rui Cao, and )  
Miyo's at Sandhills, LLC )  
Respondents and Counter-Claimants.)

ARBITRATION PURSUANT TO  
S.C. CODE ANN. § 15-48-10

**RESPONDENTS'**  
**ANSWER AND**  
**COUNTERCLAIMS**

**RESPONDENTS' ANSWER TO CLAIMANT'S DEMAND FOR ARBITRATION**

Respondents deny all allegations of Claimant's Demand for Arbitration. Respondents further deny that they have breached the parties' Agreement as alleged by Claimant's Demand for Arbitration dated December 22, 2010 and deny that they acted improperly in any way, and deny that they are liable to Claimant.

Respondents are agreeable to the use of a single arbitrator if the parties can reach agreement on such a single arbitrator. In the absence of such an agreement, Respondents agree to follow the arbitrator selection provisions of the South Carolina Uniform Arbitration Act.

Respondents are agreeable to conducting the arbitration in Richland County, South Carolina and are agreeable to an expedited schedule.

**RESPONDENTS' COUNTERCLAIMS AGAINST CLAIMANT**

The Respondents complaining of the Claimant herein would allege as follows:

1. Shengen Sun is a resident alien currently residing in Richland County.
2. Respondent, Xiaolan M. Wang ("Wang"), also known as "Michelle Wang" is a citizen and resident of Lexington County, South Carolina. Wang started what has become the Miyo's family of restaurants in Columbia, South Carolina in 1996 and along with her husband, Respondent, Rui Cao, ("Cao") expanded the Miyo's restaurant family to include seven restaurants: Miyo's on Main, M. Café, Miyo's on Forest Drive, Miyo's at Harbison, Miyo's at Sandhills, M. Vista, and Miyo's Lexington.
3. Respondent, Miyo's at Sandhills, LLC, is a limited liability corporation, organized and existing pursuant to the laws of the State of South Carolina.

4. Sun, Wang, and Cao entered into a Purchase Agreement dated on or about July 16, 2010 ("Agreement") which set forth the terms under which Respondents Wang and Cao would sell their interest in Miyo's at Sandhills, LLC to Claimant.

5. Sun, Wang, and Cao entered into an Amended Purchase Agreement dated August 26, 2010 ("Amended Agreement") which amended the terms under which Respondents Wang and Cao would sell their interest in Miyo's at Sandhills, LLC to Claimant.

6. The parties entered into an Amended License/Management Agreement effective August 1, 2010 which set forth the terms under which Claimant could use the "MIYO'S" Service Mark.

7. The Amended Agreement provides in part as follows:

Commencing September 1, 2010, the Purchaser shall pay or cause to be paid to the Seller the gross monthly profit of the LLC less Eight Thousand Dollars (\$8,000) in monthly payments with interest at the rate of ten percent (10%) per annum on the unpaid balance. Any unpaid balance shall be paid in full no later than September 1, 2012. In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business. Until the Purchase Price is paid in full Seller shall have a majority vote in the event of any disputes between the Seller and Purchaser.

Amended Agreement, ¶ 2.2(b).

8. The Amended License Agreement provides in part as follows:

In exchange for the license, PURCHASER agrees to maintain the current high standards of food quality, food preparation and presentation, and general ambience and physical décor of the restaurant including an "A" sanitation rating from DHEC.

Amended License Agreement, ¶ 2.

9. Beginning on or around September 1, 2010 and monthly thereafter, Claimant and Respondents would meet to go over the monthly receipts of Miyo's at Sandhills. Claimant would then make a monthly payment to Respondents falsely

indicating to Respondents that it was the full monetary payment required by the Amended Agreement.

10. Beginning on or around September 1, 2010, Claimant began breaching the Amended Agreement in at least the particulars set forth below:

- a. Claimant withdrew from the business account for no legitimate business purpose, approximately \$20,000.00 in a two week time period;
- b. Claimant purchased supplies on Miyo's at Sandhills account and transported the goods to other businesses owned by Claimant;
- c. Claimant violated the Respondents' rights to payment of gross profits from the restaurant over the past several months;
- d. Claimant committed financial fraud by using restaurant funds to pay personal and non-business expenses.
- e. Claimant never deposited over \$47,000 cash receipts from the past four months into the Miyo's at Sandhills account and instead used that cash to purchase a Mercedes Benz from McDaniel Acura;
- f. Claimant made personal car payments using the business accounts; and
- g. Claimant made other illegitimate withdrawals from the business account.

11. Beginning on or around September 1, 2010, Claimant began failing to maintain the standards of food quality, food preparation and presentation required by the Amended License Agreement in at least the following particulars:

- a. By hiring ex-employees of Miyo's who had violated company policy; *Joanna -*
- b. By diminishing service and food quality as demonstrated by numerous verbal and email complaints;
- c. By using the Miyo's at Sandhills accounts to pay for food expenses for other businesses owned by Claimant;
- d. By causing or allowing problems at Sandhills Village apartments to be attributed to Miyo's, including pests, bed bugs and serious unsanitary conditions.

12. Respondents informed Claimant of the above-referenced breaches on multiple occasions. The misconduct of Claimant described herein constitutes breach of contract, fraud and conspiracy, and Respondents seek judgment for actual and punitive damages as to each such wrong.

13. Because Claimant was more than thirty (30) days late on payments under the Amended Agreement, pursuant to ¶ 2.2(b) of the Amended Agreement, the Units sold to Claimant reverted to Respondents and Claimant forfeited all money paid to Respondents and his ownership in the LLC and Business.

14. On December 20, 2010, Respondents provided Claimant documentation that his shares had reverted to Respondents and from that date forward Respondents resumed operation of Miyo's at Sandhills restaurant.

15. Due to Claimant's breaches of the Amended Agreement and Amended License Agreement, Respondents have suffered monetary damages as follows:

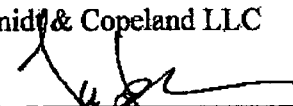
- a. In addition to the \$8,000, which Claimant took every month from September 1, 2010-December 1, 2010, Claimant also used the Miyo's at Sandhills account to pay for his personal expenses and business expenses for his other business, Yafood, in an amount in excess of \$65,000.
- b. Claimant failed to pay all November bills, which Respondents had to pay in the amount of approximately \$30,000.

16. In addition to the monetary damages set forth above, Respondents have suffered damages to their reputation and goodwill to the "Miyo's" and "M.Vista" family of restaurants.

17. Respondents seek an award in arbitration against Claimant for actual damages as set forth above, damage to reputation and good will, punitive damages, attorneys' fees and costs, and such other and further relief as the arbitrator deems appropriate.

RESPECTFULLY SUBMITTED,

Schmidt & Copeland LLC



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ATTORNEYS FOR RESPONDENTS AND  
COUNTER-CLAIMANTS

Columbia, South Carolina  
January 19, 2011

1 STATE OF SOUTH CAROLINA ) IN COMMON PLEAS  
 2 COUNTY OF RICHLAND ) COURT  
 3 )  
 4 XU DONG SUN, ET AL., )  
 5 ) TRANSCRIPT  
 6 -V- ) OF  
 7 ) RECORD  
 8 XIAOLAN WANG, ET AL., ) 2011-CP-40-8456  
 9 DEFENDANTS. ) 2011-CP-40-8459

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FEBRUARY 25, 2013  
 RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CASEY L. MANNING, JUDGE;

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

FOR THE PLAINTIFF:

JOHN SCHMIDT, III, ESQ.

FOR THE DEFENDANT:

A. JACKSON BARNES, ESQ.

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I-N-D-E-X

PG.

MOTION:

3

CERTIFICATE OF REPORTER:

27

E-X-H-B-I-T-S

(REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)

1 have 15-48-10 and the following that the provisions that  
2 allow and the cases cited in our brief that allow this court  
3 sitting essentially in appeal to overturn that decision.

4 THE COURT: All right, sir.

5 MR. SCHMIDT: We would not bring it to you if this  
6 was a quibble over facts of, you know, who shot John. We  
7 only bring it to you because it although is a complicated  
8 case below, if you read the decision and see how we analyzed  
9 that in our brief, the decision essentially is what I told  
10 you that the plaintiff did something wrong. The defendant  
11 did nothing wrong and, therefore, plaintiff shall recover.

12 Now, if you were to ask me why this happened I  
13 would redirect you and say I think that Danny Crow excellent  
14 person an arbitrator kind of want to issue some solomonic  
15 justice and find a way to split the baby. And while I know  
16 you greatly respect King Solomon and as I do. Even if King  
17 Solomon were here today he would have to be bound by the  
18 laws of --

19 THE COURT: Well, Solomon offered to split the  
20 baby but nobody split the baby. Go ahead.

21 MR. SCHMIDT: And he didn't actually split the  
22 baby. That's exactly correct. So I want to just draw your  
23 attention to the key points where this can be found.  
24 Naturally it's not quite as simple as that. Danny wouldn't  
25 have done that but it's all most.

1 it -- trying to avoid the forfeiter to these people  
2 basically.

3 What Mr. Crow did was he over looked the law that  
4 requires him to find that they were the first to breach,  
5 they could not recover and further, that because they did  
6 breach my client was entitled to disposes of the  
7 restaurants, get her money back and keep the forfeited money  
8 they paid. So that's the case in a -- in a pretty large  
9 nutshell but I think fairly clear.

10 We -- the point of the very last Exhibit D you  
11 don't have to really look at but under the law about when  
12 this court can and should overturn an arbitrator's decision.  
13 What it says is we got to make sure that Mr. Crow was put  
14 squarely on notice of these issues because that's only fair  
15 to give him that.

16 THE COURT: Was he asked to reconsider?

17 MR. SCHMIDT: He was and that's what Exhibit D is.

18 THE COURT: All right.

19 MR. SCHMIDT: Okay. Your Honor, for those reasons  
20 we do ask that you reserve the decision of -- of Mr. Crow  
21 and determine that -- that the claimants are entitled to  
22 nothing. We disagree with the issue that Mr. Barns raised  
23 about timeliness. It's brief fully and what you'll find  
24 is -- it's a strange issue but basically there's no deadline  
25 for an arbitrator to decide on a motion for reconsideration.

1 So there's no dispute that that motion for reconsideration  
2 to Mr. Crow was timely filed while we waited for his  
3 decision Mr. Barnes argues that we should have appealed  
4 during the interim while we're waiting. There's only one  
5 court in the country that held that. All the other courts  
6 that have looked at that have says that doesn't make any  
7 sense. You've got to wait for him to decide his  
8 reconsideration before you appeal.

9 THE COURT: All right. Thank you, sir.

10 Yes, sir, Mr. Barnes.

11 MR. BARNES: Thank you, Your Honor. May it please  
12 if Court?

13 I'm Jack Barnes and I'm hear on behalf of the Mr.  
14 Sun, Shengen and Jack Sun.

15 If I could start with where Mr. Schmidt ended  
16 because it's important because if he -- if he's not timely  
17 then we're entitled to have the award approved and judgment  
18 entered so that we can proceed in collections.

19 And I'm not going to belabor the point but it's  
20 obviously not been an issue that's been decided in South  
21 Carolina. There aren't but about five -- five opinions  
22 around the country; two that are on my side. There's a  
23 dispute about whether or not one of them from Texas applies.  
24 There's -- language that would seem to indicate that even  
25 though they're not -- that one wasn't timely -- that motion

1 to reconsider to the arbiter wasn't timely made. They still  
2 touched on the issue of what you do in the interim. There  
3 are a cup -- two, perhaps, three, you know. I think it's a  
4 little bit of a stretch to say, "the vast majority of  
5 opinion favor him."

6           The reason is important and the reason I would  
7 argue that you do, in fact, have to file your motion within  
8 90 days even if a motion to be reconsidered is pending is  
9 because the whole notion of arbitration as a  
10 dispute-resolution mechanism is to provide a less expensive,  
11 more timely, more friendly forum for people to resolve  
12 disputes. And that being the case, there's nothing wrong  
13 with he being the process moving along. All, Your Honor,  
14 had to do if Mr. Schmidt filed his motion within 90 days was  
15 to say, let's stay that. Get Mr. Crow an opportunity to  
16 issue the order on reconsideration then I'll address it.  
17 Your Honor actually could have decided the issue and  
18 immediately sent it back to Mr. Crow with further  
19 instructions. I mean, the -- the South Carolina Arbitration  
20 Act which -- Uniform Arbitration Act provides for a little  
21 bit different mechanism. There isn't this divesting of  
22 jurisdiction. Be that as it may, you know, so much time has  
23 past now that, you know, I don't want to -- let's just argue  
24 the -- I'm preserving my -- my issue in the event that I  
25 loose but at the same time, you know, I think we need to

1 focus more on the merits. Your Honor, I'm happy if you're  
2 looking for an easy way out to say I'm right. But be that  
3 as it may, I think Mr. Schmidt with his interpretation of  
4 the law that two-fold that, you know, the first breaching  
5 party can't -- if you breach first --

6 THE COURT: I go back to the doctrine clean hands  
7 problem.

8 THE DEFENDANT: Well, it -- I think it's a similar  
9 idea, if I breach first and then you don't go through with  
10 the contract I can't come in and say, Oh, you breached the  
11 contract. You didn't do what you were suppose to do or what  
12 you were allowed to do. In this particular case, though,  
13 it -- that's not what happened. The reason the 30 day time  
14 period the right to cure is very important. Because let me  
15 explain to you the way this worked. A month would go by and  
16 then within the first -- within a few days, maybe, it was  
17 generally around the tenth of each month the next month my  
18 clients and Ms. Wang would get together and do a  
19 reconciliation. They would do a trueing-up of what the  
20 gross profits were what, you know, who owed whom what. They  
21 were buying some tea that she had imported from China. She  
22 just scratched that off. They could do this. They would do  
23 that. October went by. November went by. Let's see -- no,  
24 excuse me, September went by. October went by. November  
25 went by, and in around the tenth -- well, actually with

1 regard to Jack Sun and the Sandhills location she never had  
2 a December conference to true-up things. She just locked  
3 the doors and locked them out.

4 With regard to Shengen Sun and the Vista location  
5 they had a meeting around the tenth at which point she just  
6 threw her hands up in the air and said, you know, enough of  
7 you. I'm locking you out and she did. No dispute that in  
8 September, October -- well, actually it was August,  
9 September because they reconciled the months of August, the  
10 month of September, the month of October and then the  
11 reconciliation for November was in December and that's what  
12 resulted in the lockout. For those first three months, they  
13 have this like I said this sort of credit and debit system  
14 going; all handwritten. She never in any of those months  
15 said you owe me anymore money. The issue of the card came  
16 up. The issue of the receipts came up. All that came up.  
17 She never said you owe me any money. In fact, she was  
18 giving them credit, buying credit, over those course of  
19 months so that the equity that they could earn by the time  
20 she locked them out was hundreds of thousands of dollars.  
21 Now Danny did not find that they were entitled to the return  
22 of that sweat equity that she had financed. But  
23 nonetheless, she for months give them credit for that and so  
24 it is absolutely not inconsistent that there was no evidence  
25 that before she came in and locked them out there were 30

1 days or more had gone by. They -- if she had come in, you  
2 know, he would probably be right, if she came in in December  
3 and said, if you don't give me these amounts of moneys that  
4 you owe me which they believed to be absolutely appropriate  
5 expenses because she had signed off on them every month.  
6 They were only determined to be inappropriate by Mr. Crow a  
7 year after she had signed off on them. So they were never  
8 given a 30 day period in which to cure before she locked  
9 them out. Because nobody thought that there was any money  
10 owed at that point until she locked them out.

11           And so, he's right. My clients can't breach first  
12 and come in and then sue her for breach of contract. They  
13 didn't. They were locked out because she used her self-help  
14 remedy 30 to days and their -- their period of time to cure.  
15 So, you know, in hindsight by way of Mr. Crow's  
16 determination that some of these payments were not  
17 appropriate business expenses. Yeah, they did owe her money  
18 in October, November and soon. But she didn't think they  
19 were inappropriate at the time that she reconciled --

20           THE COURT: So she decided to remain silent about  
21 it?

22           MR. BARNES: Well, you know --

23           THE COURT: Any reason -- a savvy business woman.  
24 I'll just let it go until I've had enough, but go ahead.

25           MR. BARNES: Well, you know, at some point --

1 THE COURT: Because you don't enforce a right that  
2 you have doesn't actually mean that you abandon it.

3 MR. BARNES: Well, it doesn't --

4 THE COURT: Because she kept quiet about it  
5 doesn't mean that --

6 MR. BARNES: But here's the --

7 THE COURT: Let's say that, you know, your wife is  
8 cheating on you or your husband is cheating on you, it  
9 doesn't mean because you don't file for divorce or call him  
10 out on it that you abandon that right to later on do so, if  
11 that makes sense.

12 THE DEFENDANT: Well, you're right but Mr. Schmidt  
13 says that there's no notice requirement. Well, there  
14 actually is a provision that says --

15 THE COURT: Okay --

16 MR. BARNES: -- that they must be given written  
17 notice. No doubt that she never gave them written notice of  
18 anything. But again, my clients take -- my clients don't  
19 take -- I mean, today -- today we still take the position  
20 that those expenses were not inappropriate.

21 Now, for -- because Mr. Schmidt has, you know, is  
22 not arguing the facts. You know, that doesn't change the  
23 fact that we still -- this was not a situation where we  
24 quote, "knew we were taking inappropriate business expenses  
25 or in your analogy knew our spouse was cheating on us." We

1 determined that they were appropriate and --

2 THE COURT: Like the payment of an apartment,  
3 okay.

4 MR. BARNES: Well, so you understand.

5 THE COURT: Or --

6 THE DEFENDANT: The deal. There was another  
7 apartment that she was paying for but that the staff lived  
8 in. He shared an apartment, a second apartment, with some  
9 other people and some of those payments should have been  
10 clear. Now, factually, it's our position that she approved  
11 --

12 THE COURT: All right --

13 MR. BARNES: The -- I mean, this was -- because  
14 they have all of those workers that are working from outside  
15 the United States, you know --

16 THE COURT: Yes, sir --

17 MR. BARNES: They all share an apartment. Again,  
18 Your Honor, these mouthy reconciliations were an opportunity  
19 for everybody to say, you owe me this. You don't owe me  
20 this and, in fact, they did that. If you look at the  
21 reconciliation statements, she said, Hey, you owe me for  
22 this because I paid for some tea for you. You owe me this.  
23 I owe you this. You owe me this. So they did that every  
24 single month, Your Honor. And now, it's only because there  
25 were some additional items that Mr. Crow determined a year

1 later that were inappropriate that somehow now we have to  
2 retroactively impose the determination that they were  
3 inappropriate and that she therefore, you know, gave them  
4 more than 30 days. That -- there's simply no way that that  
5 could make sense. I mean, they did among themselves a  
6 monthly reconciliation. And rather than reconciling that  
7 last months in December and saying here's what you owe me.  
8 You got 30 days to get right with me or I'm locking the  
9 doors, she didn't do that.

10 THE COURT: Okay. Thank you, sir.

11 Yes, sir.

12 MR. SCHMIDT: And, sir, just briefly in reply, I  
13 think that we've pretty well narrowed the issues.

14 Your Honor's picked up on one of them and to  
15 address it most clearly I'd like to turn your attention to  
16 either one of the Exhibits B or C.

17 THE COURT: Yes, sir.

18 MR. SCHMIDT: The agreement that we're here about  
19 because the first point is non waiver. Just to reference  
20 what Your Honor had said about just the fact that you're  
21 silent about something doesn't mean that you give it up.  
22 There's actually a clause in the contract that addresses  
23 that in that way. It's at page ten of I think it's of  
24 either agreement. It's paragraph 10.8 and what it says is:  
25 In the agreement on the part of the party of any extension

1 or waiver both any provision you're owed shall be waived  
2 only if set forth in an instrument in writing signed on  
3 behalf of either such party.

4 So that addresses exactly what Your Honor talked  
5 about. The fact that someone's in breach and you don't call  
6 them on it immediately does not mean there's a waiver.  
7 There's a clause that actually says so as well.

8 The other thing that -- and I got to confess, I'm  
9 not perfect but there is not a 30 day notice to cure  
10 provision in this contract. Mr. Barns entire argument has  
11 been hinged on what he says is a 30 day notice and  
12 opportunity to cure provision. And I could be wrong. I  
13 don't think I am. And I'm looking at the agreement and so  
14 to just draw you attention to that. In that same agreement,  
15 if you see a paragraph -- well, in paragraph 2.1 on the  
16 purchase price is what the accurate amount is, price that's  
17 paid. This is the part that was quoted by Mr. Crow in part  
18 in the -- in his order, and it doesn't provide a 30 day  
19 notice and cure provision. What it says is that the amount  
20 will be 80,000 down with 20 -- an additional 20 as a down  
21 payment earnest money commencing September 1. Purchaser  
22 shall pay or cause to pay gross monthly profits less -- and  
23 the one I'm reading less \$8,000 it could be ten with  
24 interest at the rate of ten percent. Any unpaid balance  
25 shall be paid in full no later than September 1, 2012. In

1 the event the purchaser is more than 30 days late on any  
2 payments hereunder. It doesn't say notice. It doesn't say  
3 cure and the next paragraph doesn't either.

4 I will turn you also to then further down in there  
5 and I looked through here to see does anything say cure in  
6 here or notice to cure and I didn't see it. Again, I might  
7 have overlooked it but I do not see it. And so as I go  
8 through there is a notice provision but it doesn't say  
9 notice shall be given. It says basically, if there's a  
10 notice required under the contract which I didn't find, if  
11 there's a notice required it shall be given to these  
12 addresses. So that's paragraph 10.1 on my copy.

13 THE COURT: All right.

14 MR. SCHMIDT: So that really doesn't create an  
15 obligation for notice and it certainly doesn't create a  
16 right to cure period. And then there, of course, was the  
17 non waiver provision at paragraph -- so I think that  
18 addresses the points I would like to make.

19 THE COURT: Yes, sir.

20 MR. BARNES: Your Honor, well, first of all, I  
21 want to point out Mr. Schmidt said in his papers and this  
22 morning he doesn't dispute any facts, okay. He's making a  
23 legal argument only, if that's the case, Mr. Crow found as a  
24 matter of fact that there is no evidence that claimants  
25 before disposition from the restaurants in December were 30

1 days or more late on any payment due under the amended  
2 purchase agreement. He's stuck with that and the reason  
3 that's important you can call it what you want to but it  
4 doesn't say it's a right to cure period but that clearly is  
5 what it is. The only way she had the right to come in and  
6 lock them out is if the 30 days had expired and the shares  
7 had automatically reverted. She in that case had the right  
8 to come in and lock them out because she now owned  
9 everything; they were dispossessed of their shares. But  
10 that only happened after the expiration of 30 days where she  
11 was owed money. We, it strains logic to decide how  
12 somebody's going to be owed money if there's not some sort  
13 of discussion about you owe me money. Maybe, she didn't  
14 have to give them -- maybe, there -- I mean, it seems  
15 illogical to me that there's this notice requirement that  
16 things happen in writing and that a decision about whether  
17 or not money is owed -- what about people that just made a  
18 mistake, I mean, what did they -- I mean, in this particular  
19 instance they take position these were legitimate business  
20 expenses but what if there simply had been a mistake? Could  
21 she have waited six months and said, oops, you made an  
22 accounting money. You owe me money. I'm locking you out.  
23 I don't think so. I mean, that's the whole reason for the  
24 30 day period and as a matter of fact which Mr. Schmidt does  
25 not dispute there was no money owed before 30 days when she

1 took her self-help remedy.

2           And the other think I point out as a matter of  
3 law, Your Honor, I mean, you know, the other -- just the  
4 basics of contract law that, you know, things have to be  
5 give a plain meaning. They have to be read in the context  
6 of the whole document. And the other thing is, yes, it's  
7 true that nonconsumer agreements can contain a forfeiture  
8 clause. That doesn't make them favored by the law. Case  
9 after case after case says if you sophisticated business  
10 people are going to have forfeiture clauses they have got to  
11 be clear. They have got to be, you know, there has to be no  
12 confusion that there is a forfeiture clause. At a minimum  
13 this is a very, very, poorly drafted forfeiture clause which  
14 is what it is.

15           THE COURT: All right. Thank you both. I'll give  
16 y'all five days to submit proposed orders.

17           MR. SCHMIDT: Thank you, Your Honor.

18           MR. BARNES: Thank you.

19           THE COURT: Think about it a little bit more.

20 There's still a chance that the purchaser want to buy it,  
21 she wants to sale it?

22           MR. SCHMIDT: I don't think so.

23           THE COURT: Not anymore, right?

24           MR. BARNES: No.

25           MR. SCHMIDT: No.



governing South Carolina law, and must therefore, under governing precedent, be vacated, modified or corrected. All of the findings and conclusions in the Arbitrator's reasoned decision point to only one outcome under law, namely, that each Plaintiff can recover nothing, having been the first to commit material breach of the agreements at issue. Importantly, this motion does not dispute any of the Arbitrator's findings of fact, but only demonstrates that, given the findings of fact made by the Arbitrator, the law permits only one result.

South Carolina law is clear, and there are numerous South Carolina decisions that support Defendants' position that the Arbitrator's decision should be vacated, modified or corrected under these very circumstances. These decisions affirm the proposition, which is axiomatic, that when parties submit claims to arbitration, they submit to the Arbitrator's findings and conclusions on the facts, but they are also entitled to expect that the Arbitrator will carry out his obligation to apply the governing law.

Defendants' position supports the policy promoting arbitration – because if parties are to believe that an Arbitrator can completely ignore governing law in his decision, without recourse, parties will simply stop using arbitration. When the Arbitrator clearly fails to apply the clear, governing law to the facts he has found, as here, the Court must grant relief.

#### FACTS AND PROCEDURAL BACKGROUND

In this case, Defendants, restaurant owners, in the summer of 2010 sold interests in their restaurant businesses to two businessmen. Specifically, Defendants sold one restaurant location (“Sandhills”) to Plaintiff, Shengun Sun, and another location (“Vista”) to Plaintiff Xu Dong Sun. The terms of the sales were nearly identical and provided that

Plaintiffs each make a down payment and then operate the businesses, paying the remainder of the purchase price to Defendants by paying to Defendants all of the gross monthly profits from the locations except for a set, stated "salary" amount (\$10,000 per month for Vista and \$8000 per month for Sandhills) until the full purchase price was paid. The agreements provide that:

In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units [of ownership in the Restaurant] sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business.

Vista Agreement, attached as Exhibit B, p. 2; Sandhills Agreement, attached as Exhibit C, p. 2.

Beginning around September 2010, Defendants began noticing and alerting Plaintiffs to the fact that Plaintiffs were not paying Defendants all gross profits as required by the agreement. The Arbitrator found that Plaintiffs continued the wrongdoing until finally, in December 2010 and pursuant to the terms of the agreement quoted above, Defendants re-took the locations. Arbitration ensued.

The Arbitrator issued his initial decision on June 1, 2011. Thereafter, both parties filed timely motions pursuant to S.C. Code Ann. § 15-48-100 with the Arbitrator. Defendants' motion is attached as Exhibit D, and shows specifically that the Arbitrator was confronted directly with the plain legal errors in his initial decision. The Arbitrator issued his final decision in response to those post-decision motions on November 11, 2011, attached as Exhibit E. Plaintiffs filed a Motion to Confirm the Arbitrator's Award on December 12, 2011.

## ARGUMENT

I. THIS MOTION TO VACATE AND/OR MODIFY AND CORRECT IS TIMELY AS IT IS BEING FILED WITHIN 90 DAYS OF THE ARBITRATOR'S FINAL DECISION ON THE POST-DECISION MOTIONS.

S.C. Code Ann. §§ 15-48-130 and 140 both provide that the motions pursuant to those sections must be made "...within 90 days of delivery of a copy of the award to the applicant ...". There is nothing in the statute or in South Carolina cases that directly addresses the impact of the filing of a post-decision motion on the time for filing with the Court. However, the vast majority of courts that have addressed the issue under the Uniform Arbitration Act have found that the filing of post-decision motions tolls the time for filing motions with the court:

Courts in other jurisdictions that have enacted some version of the Uniform Arbitration Act have addressed the question of whether the filing of a timely motion to modify with an arbitrator (under what in Maryland is CJ section 3-222) tolls the running of the period for filing a petition to vacate the award (under what in Maryland is CJ section 3-224). The better reasoned of those cases have held that a timely motion to modify indeed has such a tolling effect, because a contrary interpretation of the Uniform Arbitration Act provisions would defeat the objective of arbitration: expeditious private dispute resolution.

*Mandl v. Bailey*, 858 A.2d 508, 532 (Md. Ct. App. 2004), attached as Exhibit F. The Court in Maryland, in holding that a post-decision motion filed with the Arbitrator tolls the deadline to file with the court, addressed that holding otherwise would cause unjust and anomalous results:

For example, the UAA places no time restriction upon the arbitrator's disposition of an application under section 9. Thus, if the time for review is not tolled, a party would effectively lose his statutory right of judicial review if the

arbitrators failed to resolve the application within the 90-day period. In order to preserve his right of review a party would then be forced, perhaps needlessly, to apply to the court during the pendency of the section 9 application and before the arbitrator has made a final award. Since the grounds for a section 9 application are included within [the section governing a court action to vacate], the courts would be asked in many cases to simultaneously decide issues still pending before the arbitrator. We do not think such duplicative and inexpedient use of the judicial and arbitration system was contemplated by the enactment of section 9.

*Id.* at 533 (citing numerous decisions). As indicated by the Maryland Court there has only been one case that has held otherwise - a 1999 Indiana decision, *Groves v. Groves*, 704 N.E.2d 1072 (Ind. Ct. App. 1999) which was cited by Plaintiffs in their Motion to Confirm the Award. The *Groves* court found that it was actually proper to have two parallel proceedings one in arbitration on a post-decision motion and one in court on a motion to vacate or modify. This reasoning and decision was rejected by Maryland and the other courts that have addressed the issue as well.<sup>1</sup>

As determined by the vast majority of the courts that have addressed this issue, the only proper interpretation of the uniform arbitration act provisions is that a timely filed post-decision motion filed with the Arbitrator tolls the time for filing with the Court. This analysis is in keeping with the manner that South Carolina Courts toll the time for filing an appeal based on a timely filed post-trial motion. See S.C.R. Civ. P. 52(c).

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<sup>1</sup> Plaintiffs also cite the Texas decision of *Teleometrics International, Inc. v. Hall*, 922 S.W.2d 189 (Tex. App. 1999) in support of their position that the filing of post-decision motion does not toll the time for filing with the Court. However, in that decision, the post-decision motion was actually *untimely*. Thus, the Texas court held that an *untimely* post-decision motion filed with the arbitrator did not toll the time for filing in Court. The post-decision motion here was timely and therefore this decision is entirely inapplicable.

II. THE COURT SHOULD VACATE AND/OR MODIFY AND CORRECT THE ARBITRATOR'S DECISION BECAUSE THE ARBITRATOR MANIFESTLY DISREGARDED APPLICABLE CONTROLLING LAW AND THE CLEAR TERMS OF THE PARTIES' AGREEMENT.

It is well-established that this Court is specifically authorized by South Carolina law to vacate, modify or correct an Arbitrator's decision when the Arbitrator exceeds his powers, including where the Arbitrator manifestly disregards the law:

A reviewing court should vacate an arbitrator's decision only when the arbitrator has exceeded his or her authority or has manifestly disregarded or perversely misconstrued the law. '[F]or a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable.' .... '[M]anifest disregard of the law occurs when the arbitrator knew of a governing legal principle yet refused to apply it, and the law disregarded was well defined, explicit, and clearly applicable to the case.' [citations omitted] 'The focus is on the conduct of the arbitrator and presupposes something beyond a mere error in construing or applying the law.' [citations omitted] An arbitrator manifestly disregards the law when he or she appreciates the existence of a clearly governing legal principle and decides to ignore it. [citations omitted]

*C-Sculptures v. Brown*, 394 S.C. 519, 523, 716 S.E.2d 678, 680 (S.C. Ct. App. 2011).

The governing law, of which the Arbitrator was well-aware in this case, provides that the first to breach may not complain thereafter about any subsequent breach by the other party. See *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008.), referenced in Defendants' post-decision motion to the Arbitrator Exhibit D, page 3.

The Arbitrator's patently disregarded that law. Here, the Arbitrator ruled that Defendants -- after months of clear, Arbitrator-determined prior breaches by Plaintiffs -- breached the Agreements in December 2010 by exercising the very rights granted to

Defendants under the agreements. Not only did the Arbitrator disregard the law regarding first to breach, but also, he disregarded the clear law that it is not a breach of contract for a party to do exactly what an agreement expressly permits. See Williams v Riedman, 339 S.C. 251, 529 S.E. 2d 28 (S.C. App. 2000).

Below, Defendants point to the exact findings and conclusions of the Arbitrator's decision that compelled his denial of the claims he granted to Plaintiffs. If the Arbitrator had not manifestly disregarded, and instead applied controlling law, he was required to deny the Plaintiffs' claims entirely. The Arbitrator properly found as follows:

- that the controlling and operative agreements, as amended, required each Buyer [Plaintiffs] to pay over to Seller [Defendants] all gross profits after an agreed "salary" was deducted for the purchasing Plaintiff. Exhibit A, pages 3-4. In the case of Sandhills, the salary was 8,000 per month. Exhibit A, pages 3-4. In the case of Vista, the salary was 10,000 per month. Exhibit A, pages 3-4.
- the controlling and operative agreements, as amended, provided certain remedies to Defendants (in addition to other legal remedies, such as damages) in the event that either or both Plaintiffs breached the obligation to pay, namely, that:

In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units [of ownership in the Restaurant] sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business.

Exhibit A, page 3.

- that over a series of months in late 2010, each Plaintiff improperly failed to pay over to Seller each month the full gross profits less the agreed salaries. Each Plaintiff's failure to do so was the result of each Plaintiff's wrongful misappropriation of monies of the businesses over the course of months to pay for improper and purely personal non-business expenses. Exhibit A, ¶ 13 at pp. 6-7; ¶ 16 at pp. 7-8.
- that each Plaintiff's use of business funds to pay these purely personal expenses amounted to both the taking by each Plaintiff of extra monthly "salary" over and above the agreed amount, as well as a failure to pay over monthly all gross profits, in violation of the agreements. (In the case of Sandhills, the Arbitrator specifically found that the amount wrongfully taken by Plaintiff was almost \$17,000 over the course of only a few months leading up to December 2010. *Id.* In the case of Vista, the Arbitrator found that the amount wrongfully taken by Plaintiff was almost \$10,000 in the course of only a few months leading up to December 2010. *Id.*)
- that as of December 2010, based on the wrongdoing of Plaintiffs, Defendants had had enough of Plaintiffs' wrongdoing, and exercised their rights to revert ownership of Units under the contract provision as quoted above, and claiming forfeiture of the payments made to Defendants by the Plaintiffs, as specified in the agreements.

Given these unquestioned findings of fact made by the Arbitrator, the Arbitrator manifestly disregarded the law: (1) by finding that it was a breach of the agreement for Defendants to do what they were specifically authorized to do under the Agreements and

(2) by allowing Plaintiffs a recovery even though he found that Plaintiffs had materially breached the agreement prior to the conduct of Defendants on which Plaintiffs based their claims. It is clear under South Carolina law that the first to materially breach an agreement may not recover for a subsequent breach by the other party. *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008). It is also clear under South Carolina law that it is not a breach for a party to do what the contract specifically allows. *Williams v Riedman*, 339 S.C. 251, 529 S.E. 2d 28 (S.C. App. 2000). Given this black-letter law and the Arbitrator's complete disregard of this law, the Court must either vacate, modify, or correct the decision to find that Plaintiffs may not recover for the alleged breach of Defendants and that Plaintiffs are not entitled to the return of their down payments.

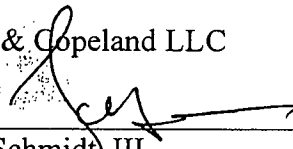
#### CONCLUSION

The Arbitrator found that the Plaintiffs were the first to breach the parties agreement and that the governing agreements allowed Defendants to take exactly the action they took in response. The Arbitrator, however, failed to apply governing South Carolina black-letter law to these facts and thus the Arbitrators decision must be vacated, modified, or corrected to remedy these flagrant errors.

[SIGNATURE BLOCK MOVED TO NEXT PAGE]

RESPECTFULLY SUBMITTED,

Schmidt & Copeland LLC



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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina  
January 17, 2012

*Xudong*

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE §15-48-10. Any dispute, controversy, interpretation of claim including claims for, but not limited to, breach of Agreement, any form of negligence, fraud or misrepresentation arising out of, or relating to this Agreement shall be submitted to final binding arbitration under the appropriate rules governing arbitrations relating to such matters. The decision of the Arbitrator appointed thereunder shall be final and binding and judgment on the award may be entered in any Court of competent jurisdiction.**

AMENDED PURCHASE AGREEMENT

by and between

Xu Dong Sun ("Purchaser")

and

Xiaolan M. Wang and Rui Cao ("Seller")

DATED August 26, 2010

*x.w*

Sun

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE §15-48-10.** Any dispute, controversy, interpretation of claim including claims for, but not limited to, breach of Agreement, any form of negligence, fraud or misrepresentation arising out of, or relating to this Agreement shall be submitted to final binding arbitration under the appropriate rules governing arbitrations relating to such matters. The decision of the Arbitrator appointed thereunder shall be final and binding and judgment on the award may be entered in any Court of competent jurisdiction.

### AMENDED PURCHASE AGREEMENT

THIS AMENDED PURCHASE AGREEMENT, dated as of August 26, 2010 to that Purchase Agreement dated July 13, 2010 is made and entered into by and between Xu Dong Sun (the "Purchaser"), and Xiaolan M. Wang and Rui Cao (collectively the "Seller"). The Purchaser and the Seller are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

#### RECITALS:

WHEREAS, the Seller is engaged in the full service restaurant business located at 701 Lady Street, Columbia, South Carolina 29201 (the "Business");

WHEREAS, the Seller owns one hundred percent (100%) of the Membership Interests ("Units") of M Vista Restaurant, LLC, a South Carolina limited liability company ("LLC") which owns and operates the Business; and

WHEREAS, upon the terms and conditions set forth herein, the Seller proposes to sell to the Purchaser and the Purchaser proposes to purchase from the Seller, all of the Units; and

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, each Party hereby agrees as follows:

#### ARTICLE I PURCHASE AND SALE

Section 1.1 Agreement to Purchase and Sell Units. Subject to the terms and conditions hereof, at the Closing, the Seller shall sell, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Seller, all right, title and interest of the Seller in and to the Units, free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions, and encumbrances of any nature whatsoever (the "Liens").

#### ARTICLE II PURCHASE PRICE

Section 2.1 Purchase Price. The aggregate amount to be paid for the Units (the "Purchase Price") shall be Six Hundred Eighty Thousand Dollars (\$680,000).

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Section 2.2 Payment of Purchase Price.

(a) On the date hereof, the Purchaser shall deliver to Seller, a cashier's check in the amount of Eighty Thousand Dollars (\$80,000) along with an additional Seventy Thousand Dollars (\$70,000) as a down payment of the Purchase Price ("Earnest Money").

(b) Commencing September 1, 2010, the Purchaser shall pay or cause to be paid to the Seller the gross monthly profit of the LLC less Ten Thousand Dollars (\$10,000) in monthly payments with interest at the rate of ten percent (10%) per annum on the unpaid balance. Any unpaid balance shall be paid in full no later than March 1, 2012. In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business. Until the Purchase Price is paid in full the Seller shall have a majority vote in the event of any disputes between the Seller and Purchaser.

(\*)

(c) All payments required under this Section 2.2 or any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Seller.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF  
THE SELLER

The Seller represents and warrants to the Purchaser as follows as of the date hereof and the Closing Date:

Section 3.1 Organization.

(a) LLC is a limited liability company duly formed and validly existing under the Laws of the State of South Carolina and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

(b) LLC does not own, directly or indirectly, any capital stock or other equity, securities or interests in any other corporation or in any limited liability company, partnership, joint venture or other association.

(c) The membership interests in LLC are as follows:

(i) LLC is a limited liability company, with the Seller as the only members. The Seller has good title to, and is the record holder and beneficial owner of one hundred percent (100%) of the membership interests, free and clear of all Liens.

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Section 3.2 Authorization.

(a) The Seller has the capacity to execute and deliver this Agreement to which they are a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been and shall be as of the Closing Date, duly executed and delivered by the Seller and do or shall, as the case may be, constitute the valid and binding agreements of the Seller, enforceable against the Seller in accordance with their respective terms.

Section 3.3 Absence of Restrictions and Conflicts. The execution, delivery and performance by the Seller of this Agreement, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, (a) contravene or conflict with any term or provision of the articles of organization or operating agreements of LLC, (b) violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel any contract to which LLC is a party, (c) contravene or conflict with any judgment, decree or order of any governmental entity to which LLC is a party or by which LLC is bound, or (d) result in the creation or imposition of any Lien on any asset of the LLC.

Section 3.4 Real Property Lease. LLC leases one parcel of real estate located in Richland County and known as 701 Lady Street, Columbia, South Carolina 29201, containing an approximate four thousand seven hundred fifty(4,750) square feet building thereon (the "Real Property Lease") as shown on the attached Lease Agreement.

Section 3.5 Title to Assets. The LLC owns all of the operating assets and inventory necessary and sufficient to conduct the operations of the Business with the exception of the dishwasher which is leased and the restaurant building under the Real Property Lease.

Section 3.6 No Undisclosed Liabilities. There are no liabilities of LLC of any kind whatsoever, whether accrued, contingent, absolute or otherwise, except for:

- (a) Lease payments as disclosed under Sections 3.4 and 3.5; and
- (b) liabilities and obligations incurred in the ordinary course of business, consistent with past practice.

Section 3.7 Legal Proceedings. There is no suit, action, claim, arbitration, proceeding or investigation pending or, to the knowledge of the Seller, threatened against LLC, the Business or the LLC's Assets before any governmental entity. No suit, action, claim, proceeding or investigation pending or, to the knowledge of the Seller, threatened against LLC, the Business or the LLC's Assets before any governmental entity, if finally determined adversely, is reasonably likely, individually or in the aggregate, to have a material adverse effect on the financial condition, results of operations, or prospects of the Business or the LLC's Assets. LLC is not subject to any judgment, decree, injunction, rule or order of any court or arbitration panel. There are no suits, actions, claims, proceedings or investigations pending or, to the knowledge of the Seller, threatened against, relating to or involving the Seller which would reasonably be expected

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to adversely affect the Seller's ability to consummate the transactions contemplated by this Agreement.

Section 3.8 Tax Returns; Taxes. All Tax Returns due to have been filed by LLC through the date hereof in accordance with all applicable Laws have been duly filed and are correct and complete in all respects; and the Tax Return for the year 2010 shall be filed by Purchaser.

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser hereby represents and warrants to the Seller as follows:

Section 4.1 Authorization. The Purchaser has full power and authority to execute and deliver this Agreement; to perform his/her obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been and, as of the Closing Date, shall be duly executed and delivered by the Purchaser and do or shall, as the case may be, constitute the valid and binding agreements of the Purchaser, enforceable against the Purchaser in accordance with their respective terms.

Section 4.2 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement; the consummation of the transactions contemplated hereby and thereby and the fulfillment of, and compliance with, the terms and conditions hereof and thereof do not or shall not (as the case may be); with the passing of time or the giving of notice or both, (a) violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel any Contract to which the Purchaser is a party, (b) contravene or conflict with any judgment, decree or order of any governmental entity to which the Purchaser is a party or by which the Purchaser is bound or (c) contravene or conflict with any statute, law, rule or regulation applicable to the Purchaser. No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental entity is required with respect to the Purchaser in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby or thereby.

ARTICLE V  
CERTAIN COVENANTS AND AGREEMENTS

Section 5.1 Conduct of Business by LLC. For the period commencing on the date hereof and ending on the Closing Date, LLC shall, except as expressly required hereby and except as otherwise consented to in advance in writing by the Purchaser:

- (a) conduct the Business in the ordinary course on a basis consistent with past practice;
- (b) use its commercially reasonable efforts to preserve intact the goodwill and business organization of LLC, keep the employees of LLC and preserve the relationships and goodwill of LLC with customers, suppliers, employees and other persons having business relations with LLC;

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- (c) maintain its existence and good standing in its jurisdiction of organization;
- (d) duly and timely file or cause to be filed all reports and returns required to be filed with any Governmental entity and promptly pay or cause to be paid when due all taxes, assessments and governmental charges, including interest and penalties levied or assessed, unless contested in good faith by appropriate proceedings;
- (e) maintain in existing condition and repair (ordinary wear and tear excepted), consistent with past practices, the Real Property Lease, and all equipment, fixtures and other tangible personal property located at the Business;
- (f) not authorize for issuance or issue and deliver any additional units of its securities;
- (g) not amend or modify its articles of organization or operating agreement;
- (h) not declare any distribution; pay or set aside for payment any other distribution or make any payment to the Seller or Purchaser, other than the payment of salaries in the ordinary course of business and consistent with past practice;
- (i) maintain in full force and effect and in the same amounts policies of insurance comparable in amount and scope of coverage to that maintained as of the date hereof by or on behalf of LLC;
- (j) continue to maintain its books and records in accordance with tax basis accounting consistently applied and on a basis consistent with past practice; and
- (k) continue its cash management practices in the ordinary course of business consistent with past practice.

In connection with the continued operation of the Business during the period commencing on the date hereof and ending on the Closing Date, the Seller shall confer in good faith on a regular and frequent basis with the Purchaser regarding operational matters and the general status of on-going operations of LLC. The Seller shall not take any action that is reasonably likely to, directly or indirectly, cause or create events, occurrences or transactions substantially similar to those prohibited by this Section 5.1.

Section 5.2 Tax Matters.

- (a) Tax Periods Ending on or Before the Closing Date. The Purchaser shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for LLC for all periods ending on or prior to the Closing Date which are filed after the Closing Date.
- (b) Tax Periods Beginning Before and Ending After the Closing Date. The Purchaser shall prepare or cause to be prepared and file or cause to be filed any Tax Returns for LLC for Tax periods which begin before the Closing Date and end after the Closing Date.

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(c) Cooperation on Tax Matters. The Purchaser, and the Seller shall cooperate as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns pursuant to this Section and any audit, litigation or other proceeding with respect thereto. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

## ARTICLE VI CONDITIONS TO CLOSING

Section 6.1 Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by the Purchaser) at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Seller set forth in Article III shall have been true and correct in all material respects as of the date hereof and shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that those representations and warranties that by their terms are qualified by materiality shall be true and correct in all respects.

(b) Performance of Obligations of the Seller. The Seller shall have performed in all material respects all covenants and agreements required to be performed by them hereunder at or prior to the Closing.

(c) No Material Adverse Effect. Between the date hereof and the Closing Date, there shall not have occurred any material adverse effect.

Section 6.2 Conditions to Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by the Seller) at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Purchaser set forth in Article IV shall have been true and correct in all material respects as of the date hereof and shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that those representations and warranties that by their terms are qualified by materiality shall be true and correct in all respects.

(b) Performance of Obligations by the Purchaser. The Purchaser shall have performed all covenants and agreements required to be performed by him/her hereunder on or prior to the Closing Date including all licenses necessary to operate the Business.

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ARTICLE VII  
CLOSING

Section 7.1 Closing. Subject to the satisfaction or waiver of the conditions set forth in Article VI, the Closing shall be effective as of August 1, 2010. The Closing shall take place at the office of Siddons Law Firm, PC or at such other place as the Parties may agree.

Section 7.2 Seller Closing Deliveries. At the Closing, the Seller shall deliver to the Purchaser the following:

(a) all documents required to be entered into by the Seller pursuant hereto or reasonably requested by the Purchaser to convey the Units to the Purchaser or to otherwise consummate the transactions contemplated hereby.

Section 7.3 Purchaser Closing Deliveries. On the Closing, the Purchaser shall have delivered, or caused to be delivered, to the Seller the following:

(a) a fully executed License/Management Contract between M Gourmet Group, LLC and Purchaser; and

(b) all other documents required to be entered into by the Purchaser pursuant hereto or reasonably requested by the Seller to convey the Units to the Purchaser or to otherwise consummate the transactions contemplated hereby. The Seller shall transfer all licenses necessary to operate the Business and assist with the assumption and extension of the Real Estate Lease once the Purchase Price has been paid in full.

ARTICLE VIII  
TERMINATION

Section 8.1 Termination. This Agreement may be terminated in writing by mutual consent of the Purchaser and the Seller.

Section 8.2 Remedies. Each Party hereby acknowledges that the rights of each Party to consummate the transactions contemplated hereby are special, unique and of extraordinary character and that, in the event that any Party violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching Party shall be entitled to damages.

ARTICLE IX  
INDEMNIFICATION

Section 9.1 Indemnification Obligations of the Seller. The Seller shall indemnify, defend and hold harmless the Purchaser from, against, and in respect of, any and all claims, liabilities, obligations, damages, losses, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common) and damages whenever arising or incurred (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:

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(a) any breach or inaccuracy of any representation or warranty made by the Seller in this Agreement whether such representation and warranty is made as of the date hereof or as of the Closing Date;

(b) any breach of any covenant, agreement or undertaking made by the Seller in this Agreement.

Section 9.2 Indemnification Obligations of the Purchaser. The Purchaser shall indemnify and hold harmless the Seller from, against and in respect of any and all claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common) and damages whenever arising or incurred (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:

(a) any breach or inaccuracy of any representation or warranty made by the Purchaser in this Agreement, whether such representation and warranty is made as of the date hereof or as of the Closing Date; and

(b) any breach of any covenant, agreement or undertaking made by the Purchaser in this Agreement.

Section 9.3 Survival Period. The representations and warranties of the Parties contained herein shall not be extinguished by the Closing, but shall survive the Closing for, and all claims for indemnification in connection therewith shall be asserted not later than, twenty-four (24) months following the Closing Date.

ARTICLE X  
MISCELLANEOUS PROVISIONS

Section 10.1 Notices. All notices, communications and deliveries required or made hereunder must be made in writing signed by or on behalf of the Party making the same, shall specify the Section hereunder pursuant to which it is given or being made, and shall be delivered personally or by telecopy transmission or by a national overnight courier service or by registered or certified mail (return receipt requested) (with postage and other fees prepaid) as follows:

To the Purchaser: Xu Dong Sun  
5935 McMillan Circle  
Columbia, SC 29212

d.w

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To the Seller: Xiaolan M. Wang  
Rui Cao  
209 Wood Moor Place  
Columbia, SC 29212

with a copy to: Siddons Law Firm, PC  
246 Stoneridge Drive, Suite 100  
Columbia, South Carolina 29210

or to such other representative or at such other address of a party as such party may furnish to the other parties in writing. Any such notice, communication or delivery shall be deemed given or made (a) on the date of delivery, if delivered in person, (b) upon transmission by facsimile if receipt is confirmed by telephone, (c) on the first (1st) Business Day following delivery to a national overnight courier service or (d) on the fifth (5th) Business Day following it being mailed by registered or certified mail.

**Section 10.2 Assignment; Successors in Interest.** No assignment or transfer by any Party of such Party's rights and obligations hereunder shall be made except with the prior written consent of the other Parties.

**Section 10.3 Captions.** The titles, captions and table of contents contained herein are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

**Section 10.4 Controlling Law.** This Agreement shall be governed by and construed and enforced in accordance with the internal Laws of the State of South Carolina without reference to its choice of law rules.

**Section 10.5 Severability.** Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Law, each Party hereby waives any provision of law that renders any such provision prohibited or unenforceable in any respect.

**Section 10.6 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts.

**Section 10.7 Enforcement of Certain Rights.** Nothing expressed or implied herein is intended, or shall be construed, to confer upon or give any person other than the Parties, and their successors or permitted assigns, any right, remedy, obligation or liability under or by reason of this Agreement, or result in such person being deemed a third-party beneficiary hereof.

d.w

Sum

Section 10.8 Waiver, Amendment. Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. This Agreement may not be amended, modified or supplemented except by written agreement of the Parties.

Section 10.9 Integration. This Agreement and the documents executed pursuant hereto supersede all negotiations, agreements and understandings among the Parties with respect to the subject matter hereof and constitute the entire agreement among the Parties with respect thereto.

Section 10.10 Interpretation. Where the context requires, the use of a pronoun of one gender or the neuter is to be deemed to include a pronoun of the appropriate gender. References herein to any Law shall be deemed to refer to such Law, as amended from time to time, and all rules and regulations promulgated thereunder.

Section 10.11 Cooperation Following the Closing. Following the Closing, each Party shall deliver to the other Parties such further information and documents and shall execute and deliver to the other Parties such further instruments and agreements as any other Party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other Party the benefits hereof.

Section 10.12 Transaction Costs. Except as provided above or as otherwise expressly provided herein, (a) the Purchaser shall pay its own fees, costs and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its counsel, and (b) the Seller shall pay the fees, costs and expenses of the Seller incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its counsel to the Seller.

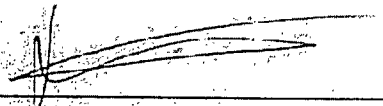
Section 10.13 Legal Representation. The Seller has been represented by Siddons Law Firm, PC in this matter. The Purchaser has been advised that he/she is not represented by Siddons Law Firm, PC in this matter and has been advised to seek representation prior to executing this Agreement.


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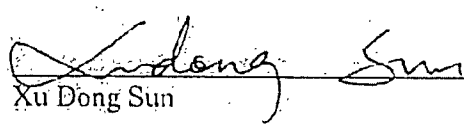
IN WITNESS WHEREOF, the Parties have caused this Amended Purchase Agreement to be duly executed, as of the date first above written and to supersede the Purchase Agreement dated July 13, 2010.

SELLER:

  
\_\_\_\_\_  
Xiaolan M. Wang

  
\_\_\_\_\_  
Rui Cao

PURCHASER:

  
\_\_\_\_\_  
Xu Dong Sun

In addition to the sale and purchase hereunder, the Purchaser agrees to Lease from the Seller, a 2007 Chevrolet Truck for the monthly Lease amount of two hundred dollars (\$200) per month. The Purchaser also agrees to Lease from the Seller, real property located at 5935 McMillan Circle and 1504 Emory Court for the monthly Lease amount of one thousand six hundred dollars (\$1,600) per month.

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**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE §15-48-10. Any dispute, controversy, interpretation of claim including claims for, but not limited to, breach of Agreement, any form of negligence, fraud or misrepresentation arising out of, or relating to this Agreement shall be submitted to final binding arbitration under the appropriate rules governing arbitrations relating to such matters. The decision of the Arbitrator appointed thereunder shall be final and binding and judgment on the award may be entered in any Court of competent jurisdiction.**

**AMENDED PURCHASE AGREEMENT**

by and between

Shengen Sun ("Purchaser")

and

Xiaolan M. Wang and Rui Cao ("Seller")

DATED August 26, 2010

Sun R.C

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE §15-48-10. Any dispute, controversy, interpretation of claim including claims for, but not limited to, breach of Agreement, any form of negligence, fraud or misrepresentation arising out of, or relating to this Agreement shall be submitted to final binding arbitration under the appropriate rules governing arbitrations relating to such matters. The decision of the Arbitrator appointed thereunder shall be final and binding and judgment on the award may be entered in any Court of competent jurisdiction.**

AMENDED PURCHASE AGREEMENT

THIS AMENDED PURCHASE AGREEMENT, dated as of August 26, 2010 to that Purchase Agreement dated July 16, 2010 is made and entered into by and between Shengen Sun (the "Purchaser"), and Xiaolan M. Wang and Rui Cao (collectively the "Seller"). The Purchaser and the Seller are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, the Seller is engaged in the full service restaurant business located at 715 Fashion Drive, Suite 1, Columbia, South Carolina 29229 (the "Business");

WHEREAS, the Seller owns one hundred percent (100%) of the Membership Interests ("Units") of Miyo's at Sandhills, LLC, a South Carolina limited liability company ("LLC") which owns and operates the Business; and

WHEREAS, upon the terms and conditions set forth herein, the Seller proposes to sell to the Purchaser and the Purchaser proposes to purchase from the Seller, all of the Units; and

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, each Party hereby agrees as follows:

ARTICLE I  
PURCHASE AND SALE

Section 1.1 Agreement to Purchase and Sell Units. Subject to the terms and conditions hereof, at the Closing, the Seller shall sell, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Seller, all right, title and interest of the Seller in and to the Units, free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions, and encumbrances of any nature whatsoever (the "Liens").

ARTICLE II  
PURCHASE PRICE

Section 2.1 Purchase Price. The aggregate amount to be paid for the Units (the "Purchase Price") shall be Four Hundred Eighty Thousand Dollars (\$480,000).

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**Section 2.2 Payment of Purchase Price.**

(a) On the date hereof, the Purchaser shall deliver to Seller, a cashier's check in the amount of Eighty Thousand Dollars (\$80,000) along with an additional Twenty Thousand Dollars (\$20,000) as a down payment of the Purchase Price ("Earnest Money").

(b) Commencing September 1, 2010, the Purchaser shall pay or cause to be paid to the Seller the gross monthly profit of the LLC less Eight Thousand Dollars (\$8,000) in monthly payments with interest at the rate of ten percent (10%) per annum on the unpaid balance. Any unpaid balance shall be paid in full no later than September 1, 2012. In the event Purchaser is more than thirty (30) days late on any payments hereunder, the Units sold hereunder shall revert to Seller and Purchaser forfeits all money paid to Seller and his/her ownership in the LLC and Business. Until the Purchase Price is paid in full the Seller shall have a majority vote in the event of any disputes between the Seller and Purchaser.

(c) All payments required under this Section 2.2 or any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Seller.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF  
THE SELLER**

The Seller represents and warrants to the Purchaser as follows as of the date hereof and the Closing Date:

**Section 3.1 Organization.**

(a) LLC is a limited liability company duly formed and validly existing under the Laws of the State of South Carolina and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

(b) LLC does not own, directly or indirectly, any capital stock or other equity, securities or interests in any other corporation or in any limited liability company, partnership, joint venture or other association.

(c) The membership interests in LLC are as follows:

(i) LLC is a limited liability company, with the Seller as the only members. The Seller has good title to, and is the record holder and beneficial owner of one hundred percent (100%) of the membership interests, free and clear of all Liens.

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**Section 3.2 Authorization.**

(a) The Seller has the capacity to execute and deliver this Agreement to which they are a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been and shall be as of the Closing Date, duly executed and delivered by the Seller and do or shall, as the case may be, constitute the valid and binding agreements of the Seller, enforceable against the Seller in accordance with their respective terms.

**Section 3.3 Absence of Restrictions and Conflicts.** The execution, delivery and performance by the Seller of this Agreement, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, (a) contravene or conflict with any term or provision of the articles of organization or operating agreements of LLC, (b) violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel any contract to which LLC is a party, (c) contravene or conflict with any judgment, decree or order of any governmental entity to which LLC is a party or by which LLC is bound, or (d) result in the creation or imposition of any Lien on any asset of the LLC.

**Section 3.4 Real Property Lease.** LLC leases one parcel of real estate located in Richland County and known as 715 Fashion Drive, Suite 1, Columbia, South Carolina 29229, containing an approximate four thousand seven hundred fifty(4,750) square feet building thereon (the "Real Property Lease") as shown on the attached Lease Agreement.

**Section 3.5 Title to Assets.** The LLC owns all of the operating assets and inventory necessary and sufficient to conduct the operations of the Business with the exception of the dishwasher which is leased and the restaurant building under the Real Property Lease.

**Section 3.6 No Undisclosed Liabilities.** There are no liabilities of LLC of any kind whatsoever, whether accrued, contingent, absolute or otherwise, except for:

- (a) Lease payments as disclosed under Sections 3.4 and 3.5; and
- (b) liabilities and obligations incurred in the ordinary course of business, consistent with past practice.

**Section 3.7 Legal Proceedings.** There is no suit, action, claim, arbitration, proceeding or investigation pending or, to the knowledge of the Seller, threatened against LLC, the Business or the LLC's Assets before any governmental entity. No suit, action, claim, proceeding or investigation pending or, to the knowledge of the Seller, threatened against LLC, the Business or the LLC's Assets before any governmental entity, if finally determined adversely, is reasonably likely, individually or in the aggregate, to have a material adverse effect on the financial condition, results of operations, or prospects of the Business or the LLC's Assets. LLC is not subject to any judgment, decree, injunction, rule or order of any court or arbitration panel. There are no suits, actions, claims, proceedings or investigations pending or, to the knowledge of the Seller, threatened against, relating to or involving the Seller which would reasonably be expected

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to adversely affect the Seller's ability to consummate the transactions contemplated by this Agreement.

Section 3.8 Tax Returns; Taxes. All Tax Returns due to have been filed by LLC through the date hereof, in accordance with all applicable Laws have been duly filed and are correct and complete in all respects; and the Tax Return for the year 2010 shall be filed by Purchaser.

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser hereby represents and warrants to the Seller as follows:

Section 4.1 Authorization. The Purchaser has full power and authority to execute and deliver this Agreement, to perform his/her obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been and, as of the Closing Date, shall be duly executed and delivered by the Purchaser and do or shall, as the case may be, constitute the valid and binding agreements of the Purchaser, enforceable against the Purchaser in accordance with their respective terms.

Section 4.2 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and thereby and the fulfillment of, and compliance with, the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, (a) violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel any Contract to which the Purchaser is a party, (b) contravene or conflict with any judgment, decree or order of any governmental entity to which the Purchaser is a party or by which the Purchaser is bound or (c) contravene or conflict with any statute, law, rule or regulation applicable to the Purchaser. No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental entity is required with respect to the Purchaser in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby or thereby.

ARTICLE V  
CERTAIN COVENANTS AND AGREEMENTS

Section 5.1 Conduct of Business by LLC. For the period commencing on the date hereof and ending on the Closing Date, LLC shall, except as expressly required hereby and except as otherwise consented to in advance in writing by the Purchaser:

- (a) conduct the Business in the ordinary course on a basis consistent with past practice;
- (b) use its commercially reasonable efforts to preserve intact the goodwill and business organization of LLC, keep the employees of LLC and preserve the relationships and goodwill of LLC with customers, suppliers, employees and other persons having business relations with LLC;

Sum R.C

- (c) maintain its existence and good standing in its jurisdiction of organization;
- (d) duly and timely file or cause to be filed all reports and returns required to be filed with any Governmental entity and promptly pay or cause to be paid when due all taxes, assessments and governmental charges, including interest and penalties levied or assessed, unless contested in good faith by appropriate proceedings;
- (e) maintain in existing condition and repair (ordinary wear and tear excepted), consistent with past practices, the Real Property Lease, and all equipment, fixtures and other tangible personal property located at the Business;
- (f) not authorize for issuance or issue and deliver any additional units of its securities;
- (g) not amend or modify its articles of organization or operating agreement;
- (h) not declare any distribution, pay or set aside for payment any other distribution or make any payment to the Seller or Purchaser, other than the payment of salaries in the ordinary course of business and consistent with past practice;
- (i) maintain in full force and effect and in the same amounts policies of insurance comparable in amount and scope of coverage to that maintained as of the date hereof by or on behalf of LLC;
- (j) continue to maintain its books and records in accordance with tax basis accounting consistently applied and on a basis consistent with past practice; and
- (k) continue its cash management practices in the ordinary course of business consistent with past practice.

In connection with the continued operation of the Business during the period commencing on the date hereof and ending on the Closing Date, the Seller shall confer in good faith on a regular and frequent basis with the Purchaser regarding operational matters and the general status of on-going operations of LLC. The Seller shall not take any action that is reasonably likely to, directly or indirectly, cause or create events, occurrences or transactions substantially similar to those prohibited by this Section 5.1.

Section 5.2 Tax Matters.

- (a) Tax Periods Ending on or Before the Closing Date. The Purchaser shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for LLC for all periods ending on or prior to the Closing Date which are filed after the Closing Date.
- (b) Tax Periods Beginning Before and Ending After the Closing Date. The Purchaser shall prepare or cause to be prepared and file or cause to be filed any Tax Returns for LLC for Tax periods which begin before the Closing Date and end after the Closing Date.

Sum R.C

(c) Cooperation on Tax Matters. The Purchaser, and the Seller shall cooperate as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns pursuant to this Section and any audit, litigation or other proceeding with respect thereto. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

## ARTICLE VI CONDITIONS TO CLOSING

Section 6.1 Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by the Purchaser) at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Seller set forth in Article III shall have been true and correct in all material respects as of the date hereof and shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that those representations and warranties that by their terms are qualified by materiality shall be true and correct in all respects.

(b) Performance of Obligations of the Seller. The Seller shall have performed in all material respects all covenants and agreements required to be performed by them hereunder at or prior to the Closing.

(c) No Material Adverse Effect. Between the date hereof and the Closing Date, there shall not have occurred any material adverse effect.

Section 6.2 Conditions to Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by the Seller) at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Purchaser set forth in Article IV shall have been true and correct in all material respects as of the date hereof and shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that those representations and warranties that by their terms are qualified by materiality shall be true and correct in all respects.

(b) Performance of Obligations by the Purchaser. The Purchaser shall have performed all covenants and agreements required to be performed by him/her hereunder on or prior to the Closing Date including all licenses necessary to operate the Business.

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ARTICLE VII  
CLOSING

Section 7.1 Closing. Subject to the satisfaction or waiver of the conditions set forth in Article VI, the Closing shall be effective as of August 1, 2010. The Closing shall take place at the office of Siddons Law Firm, PC or at such other place as the Parties may agree.

Section 7.2 Seller Closing Deliveries. At the Closing, the Seller shall deliver to the Purchaser the following:

(a) all documents required to be entered into by the Seller pursuant hereto or reasonably requested by the Purchaser to convey the Units to the Purchaser or to otherwise consummate the transactions contemplated hereby.

Section 7.3 Purchaser Closing Deliveries. On the Closing, the Purchaser shall have delivered, or caused to be delivered, to the Seller the following:

(a) a fully executed License/Management Contract between M Gourmet Group, LLC and Purchaser; and

(b) all other documents required to be entered into by the Purchaser pursuant hereto or reasonably requested by the Seller to convey the Units to the Purchaser or to otherwise consummate the transactions contemplated hereby. The Seller shall transfer all licenses necessary to operate the Business and assist with the assumption and extension of the Real Estate Lease once the Purchase Price has been paid in full.

ARTICLE VIII  
TERMINATION

Section 8.1 Termination. This Agreement may be terminated in writing by mutual consent of the Purchaser and the Seller.

Section 8.2 Remedies. Each Party hereby acknowledges that the rights of each Party to consummate the transactions contemplated hereby are special, unique and of extraordinary character and that, in the event that any Party violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching Party shall be entitled to damages.

ARTICLE IX  
INDEMNIFICATION

Section 9.1 Indemnification Obligations of the Seller. The Seller shall indemnify, defend and hold harmless the Purchaser from, against, and in respect of, any and all claims, liabilities, obligations, damages, losses, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common) and damages whenever arising or incurred (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:

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(a) any breach or inaccuracy of any representation or warranty made by the Seller in this Agreement whether such representation and warranty is made as of the date hereof or as of the Closing Date;

(b) any breach of any covenant, agreement or undertaking made by the Seller in this Agreement.

Section 9.2 Indemnification Obligations of the Purchaser. The Purchaser shall indemnify and hold harmless the Seller from, against and in respect of any and all claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common) and damages whenever arising or incurred (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:

(a) any breach or inaccuracy of any representation or warranty made by the Purchaser in this Agreement, whether such representation and warranty is made as of the date hereof or as of the Closing Date; and

(b) any breach of any covenant, agreement or undertaking made by the Purchaser in this Agreement.

Section 9.3 Survival Period. The representations and warranties of the Parties contained herein shall not be extinguished by the Closing, but shall survive the Closing for, and all claims for indemnification in connection therewith shall be asserted not later than, twenty-four (24) months following the Closing Date.

#### ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.1 Notices. All notices, communications and deliveries required or made hereunder must be made in writing signed by or on behalf of the Party making the same, shall specify the Section hereunder pursuant to which it is given or being made, and shall be delivered personally or by telecopy transmission or by a national overnight courier service or by registered or certified mail (return receipt requested) (with postage and other fees prepaid) as follows:

To the Purchaser: Shengen Sun  
405 Oakbrook Village Road  
Columbia, SC 29229

Sum R-C

To the Seller: Xiaolan M. Wang  
Rui Cao  
209 Wood Moor Place  
Columbia, SC 29212

with a copy to: Siddons Law Firm, PC  
246 Stoneridge Drive, Suite 100  
Columbia, South Carolina 29210

or to such other representative or at such other address of a party as such party may furnish to the other parties in writing. Any such notice, communication or delivery shall be deemed given or made (a) on the date of delivery, if delivered in person, (b) upon transmission by facsimile if receipt is confirmed by telephone, (c) on the first (1st) Business Day following delivery to a national overnight courier service or (d) on the fifth (5th) Business Day following it being mailed by registered or certified mail.

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Section 10.3 Captions. The titles, captions and table of contents contained herein are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

Section 10.4 Controlling Law. This Agreement shall be governed by and construed and enforced in accordance with the internal Laws of the State of South Carolina without reference to its choice of law rules.

Section 10.5 Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Law, each Party hereby waives any provision of law that renders any such provision prohibited or unenforceable in any respect.

Section 10.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts.

Section 10.7 Enforcement of Certain Rights. Nothing expressed or implied herein is intended, or shall be construed, to confer upon or give any person other than the Parties, and their successors or permitted assigns, any right, remedy, obligation or liability under or by reason of this Agreement, or result in such person being deemed a third-party beneficiary hereof.

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Section 10.8 Waiver; Amendment. Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. This Agreement may not be amended, modified or supplemented except by written agreement of the Parties.

Section 10.9 Integration. This Agreement and the documents executed pursuant hereto supersede all negotiations, agreements and understandings among the Parties with respect to the subject matter hereof and constitute the entire agreement among the Parties with respect thereto.

Section 10.10 Interpretation. Where the context requires, the use of a pronoun of one gender or the neuter is to be deemed to include a pronoun of the appropriate gender. References herein to any Law shall be deemed to refer to such Law, as amended from time to time, and all rules and regulations promulgated thereunder.

Section 10.11 Cooperation Following the Closing. Following the Closing, each Party shall deliver to the other Parties such further information and documents and shall execute and deliver to the other Parties such further instruments and agreements as any other Party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other Party the benefits hereof.

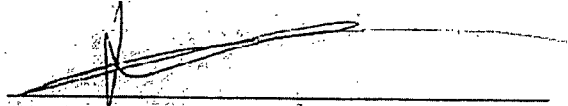
Section 10.12 Transaction Costs. Except as provided above or as otherwise expressly provided herein, (a) the Purchaser shall pay its own fees, costs and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its counsel, and (b) the Seller shall pay the fees, costs and expenses of the Seller incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its counsel to the Seller.

Section 10.13 Legal Representation. The Seller has been represented by Siddons Law Firm, PC in this matter. The Purchaser has been advised that he/she is not represented by Siddons Law Firm, PC in this matter and has been advised to seek representation prior to executing this Agreement.

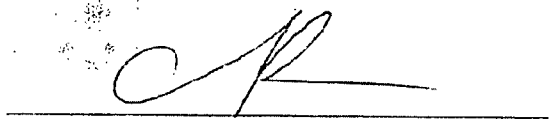
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IN WITNESS WHEREOF, the Parties have caused this Amended Purchase Agreement to be duly executed, as of the date first above written and to supersede the Purchase Agreement dated July 13, 2010.

**SELLER:**

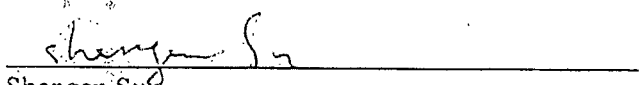


Xiaolan M. Wang



Rui Cao

**PURCHASER:**



Shengen Sun

In addition to the sale and purchase hereunder, the Purchaser agrees to lease a Sandhills Village Apartment from the Seller for the monthly Lease amount of two thousand four hundred dollars (\$2,400) per month plus utilities.



days from the date set forth below.

Respondents object to Claimants' motion because it is not in compliance with S.C. Code Ann. §15-48-140 (a) (1) because the arguments made are mere, unauthorized requests to reconsider findings of fact and conclusions of law, rather than the limited, permitted types of arguments regarding simple, actual miscalculation of figures by the arbitrator. The law does not allow motions or appeals on any and all issues, as would be allowed in court, but is clearly restricted to very narrow circumstances. Arguments of "evident miscalculation of figures" may not consist of arguments that evidence was weighed, found, construed or determined in error, but only that stated figures were added incorrectly. This is an incident of arbitration to which the parties agreed. It works equally as against (and for) both parties herein, as clearly Respondents would have the arbitrator reconsider selected evidentiary findings and conclusions as well, if such were permitted by law.

**I. CLAIMANTS' MOTION TO MODIFY OR CORRECT THE AWARD SHOULD BE DENIED.**

**A. CLAIMANTS' ARGUMENT ON "PROFITS" IS NOT A PROPER BASIS TO MODIFY OR CORRECT THE AWARD.**

The argument that the arbitrator should award "lost profits" is not a question of evident miscalculation of figures. It is a disagreement with the arbitrator's findings of fact and conclusions of law. As such, it is not a legally permitted argument at this stage. Further, the argument is simply wrong legally and factually. Lost profits are not granted in law as a matter of course. *See Drews Co., Inc. v. Ledwith-Wolfe Associates, Inc.*, 296 S.C. 207, 371 S.E.2d 532 (1988)(setting forth a three part test for recovery of lost profits, including that (1) profits must have been prevented or lost "as a natural consequence of"

the breach of contract, (2) must have been foreseeable - reasonably within the contemplation of the parties at the time the contract was made; and (3) be established with reasonable certainty and not conjectural or speculative.) Lost profits must be proven clearly and convincingly and warranted by circumstances and facts. Here, under the only evidence, all profits of the business were to be given to Respondents (not claimants) until the purchase price was paid in full, which it never was. Further, the evidence showed a remarkable and precipitous decline in profits of the businesses, to almost nothing, during the time the Claimants were involved. As a result, the claim for any future "profits" would be unsupported as speculative, as the arbitrator clearly determined.

Additionally, as the arbitrator found, the Claimants were required to pay, but failed to pay, the full amount of profits to Respondents monthly as required by the agreement, by virtue of inappropriate charges to the business, which were not overhead. As a consequence, these findings amount to an overt conclusion that the Claimants were the first to breach the agreement, since these improper deductions from profits, by necessity, pre-dated Respondents' action taken in reverting the shares. Under the law regarding the first to breach, claimants, as first to breach, may not complain about any subsequent breach by Respondents. *See Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008.) It would be clear error to assert that a failure to pay money owed under an agreement is not a breach of that agreement. Respondents ask the arbitrator to so rule with regard to the motion.

B. CLAIMANTS' ARGUMENT DISAGREEING WITH THE ARBITRATOR'S FINDINGS ON THE EVIDENCE CONCERNING SET OFFS IS NOT A PROPER BASIS FOR ITS MOTION.

Claimants' argument that they disagree with the arbitrator's findings and

conclusions about the record evidence on the detailed accounting issues in this case are likewise improper argument at this stage under S. C. Code Ann. §15-48-140 (a) (1) concerning "evident miscalculation of figures." The "Conclusion" of the Claimants' Motion at page 7 reveals this flaw most succinctly. It shows that the asserted "error in miscalculation" is in fact disagreement about the arbitrator's conclusions about the evidence in the "Record," and about concepts of alleged "fairness" and "sweat equity." Such arguments are not arguments of "evident miscalculation of figures," and hence are simply not permitted. Moreover, these arguments are wrong. First, there is no "Record" as the parties did not elect to have the proceedings transcribed. Hence any argument that the Record does not support a conclusion is unfounded and could not be tested. Further, the "Record," such as it was, was replete with contested evidence, in both documents and in testimony, on the issues that were the subject of these setoffs as well as many others that the arbitrator did not accept due to his weighing of the evidence.

Claimants' Motion is wrong and should be denied as Respondents further established:

- That Claimants used the business account for their personal debit card transactions month after month ---which adds up to at least several thousand dollars for each account - all amounts that the Claimants were obligated to pay over to Respondents as profits monthly, but which they did not;
- That Claimants used the Miyo's business accounts to write checks to their own vendors for Yafoods, their business associates of other restaurant (in Atlanta), all amounts that the Claimants were obligated to pay over to Respondents as profits monthly, but which they did not;
- That Claimants claimed their personal rent and car payments as an expense of the business, all amounts that the Claimants were obligated to pay over to Respondents as profits monthly, but which they did not;
- That Claimant, Jack Sun, made at least two illegitimate withdrawals: one for \$8,000 and another for \$12,000 in early and mid-December 2010 and none of

the withdrawals were intended for business purposes, and hence all were amounts that the Claimants were obligated to pay over to Respondents as profits monthly, but which they did not, but instead kept to this day;

- That on top of the \$10,000 monthly allowance Xudong Sun took, he had claimed for himself an average \$5,000--\$7,000 additional salary monthly. To conclude that he was entitled to do so under the agreement would be clear error. To contend that the agreement allowed him to pay himself monthly, multiple amounts in any amount he chose would impermissibly render the contract's requirement that he pay profits to Respondents illusory and meaningless, which would be clear error. In addition, Xudong Sun also paid himself a paycheck on ADP, yet additional salary. To contend that the agreement allowed him to pay himself monthly, multiple amounts in any amount he chose would impermissibly renders the contract's requirement that he pay profits to Respondents illusory and meaningless, which would be clear error; and
- That Claimant Jack Sun used the Miyo's at Sandhill account to purchase goods solely for Yafoods and supplied proof of invoices from US food service, Southern Foods and Nishimoto, all amounts that the Claimants were obligated to pay over to Respondents as profits monthly, but which they did not.

Each of these events of misconduct constitute precedent violations of the agreement by Claimants. Even Claimants testified that each month, Michelle Wang articulated her dissatisfaction with the management of these items, and her expectation that they would be resolved.

Further, the evidence to refute the claims of the Claimants in their briefs is extensive, including the below.

From the charts offered in evidence, Respondents' financial losses are evident. As an initial matter, the monthly profit payments dwindled precipitously:

	<u>Payment from M. Vista</u>	<u>Payment from Sandhill</u>
August:	\$31,062.65	\$19,944.99
September	\$20,781.56	\$7,977.23
October	\$12,755.14	\$11,486.54
Nov.	\$3,680.19	\$807.26

The testimony was clear that the purported November payments from both locations were never paid or received because Respondents refused to acknowledge and consent to the improper numbers claimants presented.

In his brief at p. 4 of 7, Xudong Sun falsely claims he had paid Respondents cash in August in the amount of \$37,154.26 as part of amended purchase agreement. However, his claim ignores the fact that, as testified and conceded, \$37,154 was partially the payback to Respondents for Respondents' payment of \$17,300 for the kitchen staff on August 23<sup>rd</sup>, and the remaining sum was for purchase of inventory, teas and other items such as to-go bags and chopsticks. Michelle Wang's own handwriting on the page so indicates, and such was not denied at the hearing. It is worth noting that much of the cash Xudong Sun used to pay was from the collection of daily cash balance, as shown in the August report of payment forms. This is the functional equivalent of one's child "repaying" her father a dollar borrowed by taking the dollar from the father's own wallet.

Xudong Sun claims in that "[a] review of the costs of the kitchen help in each of the months August through November reveal that Xudong Sun's cash withdrawals were never sufficient to cover the kitchen help and pay himself \$10,000." See Claimants' Brief, p. 4 of 7. It is, however, quite obvious that Xudong Sun not only took \$10,000 for himself first, but cashed his additional paychecks, as well as claiming a separate salary as kitchen /back of house staff. As a result, there were over \$50,000 in bills left unpaid in November ---left to Respondents to pay.

Xudong Sun erroneously asserts that "[t]he declining balance as set forth in Claimant's Exhibit 24 further supports that Ms. Wang acknowledged each month Xudong did not receive his monthly allowance." See Claimants' Brief, p. 4 of 7. However, Exhibit

24 simply calculates the remaining balance plus monthly 10% interest, which the testimony showed that Claimants wanted to defer and to pay at the end of purchase agreement. If Claimants had actually paid the 10% interest, it would not have been added as further interest in the next month, as it was. The interest amounts of \$4,166.67, \$4028.21 and \$3872.81 were calculated by Michelle Wang, but never were paid. No documents or testimony showed that it was paid. To the contrary, the evidence was clear that Claimants never paid a penny of the monthly 10% interest----which is, incidentally, also further proof of Claimants' precedent breach of the purchase agreement's obligation to pay over all profits.

In his brief on page 5 of 7, Claimant Xudong Sun claims he deposited \$5000 and \$2494.37, but neglects to mention the testimony that these funds were from business proceeds and receipts, not Xudong Sun's own money. As such, the money should have been included as part of the "profits" to be paid to Respondents, but it was not, which was a precedent breach.

Lacking a true Record, Claimants apparently feel free to contend anything they want about what the evidence was. This points to one good reason why the law limits the scope of reconsideration so clearly in arbitration. Hence, likewise, the facts asserted by Jack Sun are skewed and false. The 10% interest of \$2916.67, \$2874.47 and \$2802.72 were never paid to Respondents. See Claimants' Brief at p. 6 of 7. Quite simply, if the first month's interest of \$2916.67 had been paid, then the second month interest would not have been \$2874.47. Respondents added all the unpaid accumulated interest to the remaining balance owed based on these numbers. There are invoices showing thousands dollars worth of merchandise were ordered by Jack Sun and transported to Yafoods.

Further, there were numerous debit transactions conducted by both Claimants for their personal usage and expenses. Examples:

M.Vista:

On the August bank statement : There was a \$39.95 MDHP health plan, and almost every month thereafter, there is a \$39.95 charge, for individual health insurance payment.

On the September bank statement: There were four charges to Walmart / Harbison store, for \$75.03, \$102.82 , \$9.47 and \$117.70--- that are all Claimant's family expenses for their apartment in Harbison, far remote from the restaurant. There are two charges to Hess gas station: each time is \$ 48.67, which can only be Claimant's own personal gas expense.. There is also one \$871.47 charge to East Coast Trading--- a company Miyo's never did business with. It appears to be for supplies related to Sun's business involvement in Atlanta at Festival Village Shopping Center. The total non-business charges on the September account are at least \$1273.83

For October, the total charges to Wal-mart were:  $\$90.94 + \$61.65 + \$40.30 = \$192.89$ . On 10-28, \$641.20 was charged to Midas for personal car repair, and on 10-04, 10-14, 10-28 personal gas was purchased as follows:  $\$54.43 + \$54.43 + \$36.17 = \$145.03$ .

The November bank statement shows: \$1902.36 for personal expenses: Publix, Walmart, Gas, Ale house dining and the like, and the December statement: six transactions to gas station and Wal-mart total up to: \$266.34

Evidence and testimony showed that the total non-business expenses added up from September to December to over 5,000.00

Sandhills:

The Sandhill's personal charges through non-business debit transactions were similarly damning:

August 2010

08-18	Kohl's	\$26.54
08-24	Pye Baker	\$625.47
08-24	Levy Diamond Bello Ass.	\$500
08-25	Brown Motor Works	\$400
08-30	Ross clothing store	\$40.64

September 2010

09-01	J&R sound mail order	\$559.44
09-02	AT&T Cingular	\$272.31
09-13	Capital One online payment	\$200.07
09-14	Citicards Payment by phone	\$944.11
09-20	East coast trading	\$681.15
09-20	AT&T Cingular	\$220.84
09-22	Capital one online payment	\$52.79

October 2010

10-1	Hyundai Oriental Market	\$60.06
10-4	FDR Freescore 800-316-8824	\$210
10-8	Capital One online Payment	\$200
10-18	Tian Indemnity Ins.	\$127.25
10-19	Home Depot	\$71.22
10-22	AT&T	\$287.88
10-22	Capital One On-line payment	\$153.13

Total: \$ 1109.54

November 2010

11-1	Travelers Insurance	\$205.27--- personal car insurance
11-02	Bank of America Pay by Phone	\$386.91--- personal car payment
11-08	Capital One online payment	\$100
11-15	Firestone Compl	\$469.77--- car repair
11-15	Walmart	\$23.88
11-17	Walmart	\$93.54
11-17	Hyundai	\$49.56

11-18 Walmart	\$217.34
11-19 Walmart	\$26.16
11-19 Food shop	\$11.09
11-22 AT &T	\$265.82
11-22 Thi Titan Indemnity	\$127.25
11-22 Asian Market	\$66.90
11-24 Capital One on line payment	\$107.33

Total: \$2150.82

These four months total non-business debit transactions amount to \$7783.66. Each and every one of these unauthorized, non-business charges to the accounts of the business over a series of months constitutes an independent (as well as cumulative) precedent breach of the duty to pay all profits to Respondents monthly, not just some.

**II. RESPONDENTS MOVE THAT THE AWARD BE MODIFIED TO CORRECT THE TRUE, EVIDENT MISCALCULATION OF FIGURES.**

The evidence as found by the arbitrator actually supports the following recalculation, based on the actual approach to the issues that the arbitrator took in this case:

	<b>Vista</b>	<b>Sandhills</b>
Cash Withdrawn	105,000	72,500
Cash collected from daily transactions	15,920.25 (8/1-12/6)	53,844 (8/1-12/16)
Unauthorized checks	7,200	5,500
Unauthorized rent	3,240	
Unauthorized car payment		2,368
Unauthorized debit transactions	over \$5,000	over \$8,000
Cash in Drawer	over \$600	
Unauthorized purchase and transfer of Miyo's goods to Yafoods on Dec. 16th alone		2,231 (US Foods) accumulated estimate over 8,000)
Owed payments to kitchen staff	2,300 17,300 back on August 23 <sup>rd</sup> .	4,900
Unpaid Bills after Claimants were no longer at locations	50,593.39	57,330.78
<b>TOTAL WITHDRAWALS BY</b>	<b>207,153.64</b>	<b>214,673.78</b>

CLAIMANTS		
Minus Claimed back house salary which is the only cash Claimants testified they spent	88,080 which consists of: August - 23,580 September - 13,400 October - 25,500 November, - 25,600	79,600 which consists of: August to November 19,900/ month
TOTAL UNSUPPORTED WITHDRAWALS BY CLAIMANTS	119,073.64	135,073.70

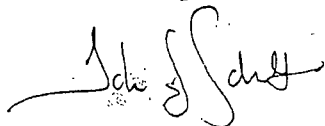
During their four months of occupancy, by expanding labor and material expenses and by their cash and other improper withdrawals and purchases, both Claimants had taken back their \$80,000 initial investment back and well more, in violation of the duty to pay all profits monthly.

Respondents' actions in this matter were a proper, allowable response to the Claimants' multiple material breaches in siphoning money from the business in direct contravention of the agreement terms. However, even if the arbitrator were to determine that Respondents' actions were in breach of the agreement, Claimants were the first to materially breach the agreement and as such should be precluded from having any recovery in this matter. Therefore, the arbitrator should revise the award and grant Respondents the Total Unsupported Withdrawals by Claimants as described in the above chart.

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RESPECTFULLY SUBMITTED,

Schmidt & Copeland LLC



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ATTORNEYS FOR RESPONDENTS AND  
COUNTER-CLAIMANTS

Columbia, South Carolina  
June 16, 2011

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 6, 2013

ALLEN JACKSON BARNES ATTORNEY AT LAW LLC



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Casey L. Manning, Circuit Court Judge

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Appellate Case No. 2013-000386

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Xu Dong Sun,

Appellant.

v.

Xiaolan M. Wang, Rui Cao,  
and M. Vista Restaurant, LLC,

Respondents,

Shengen Sun,

Appellant.

v.

Xiaolan M. Wang, Rui Cao,  
and Miyo's at Sandhills, LLC,

Respondent,

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PROOF OF SERVICE

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I certify that I have served a copy of the Record on Appeal on Respondents by mailing a copy of the same by first class mail, postage prepaid to their attorneys of record, John E. Schmidt, III, Esquire and Melissa J. Copeland, Esquire at Post Office Box 11547, Columbia, South Carolina, 29211 on September 6, 2013.

September 6, 2013

*SIGNATURE PAGE FOLLOWS*

**RECEIVED**

SEP 10 2013

**SC Court of Appeals**

ALLEN JACKSON BARNES ATTORNEY AT LAW LLC

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

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