

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2018-CP-21--02958

Walt ParkerAppellant,

v.

John C. Curl,Respondent.

v.

Palmetto Floor Covering Installation, LLC,
and Florence Custom Countertops, Inc.,Third-Party Defendants.

SUPPLEMENTAL RECORD ON APPEAL

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1 (WHEREUPON, Plaintiff's Exhibits Nos. 1-21 were
2 marked for identification.)

3 THE COURT: Madam court reporter, this is Walt
4 Parker vs. John C. Curl 2018-CP-21-02958. I'm going to
5 ask -- since, you all had an opportunity to prepare this
6 I'm going to ask the plaintiff if you could start with
7 sort of an opening statement talking about the issues that
8 are before the Court and your position.

9 MR. WILLIAMS: Thank you, Your Honor. May it
10 please the Court.

11 THE COURT: Yes.

12 MR. WILLIAMS: I try to not get into
13 overwhelming detail at this point because I know Your
14 Honor is familiar with this case having issued and
15 considered temporary restraining orders that address the
16 key issues in the case, but obviously the overwhelming key
17 issue is what is the ownership of Florence Carpet and
18 Tile. There are two seminal events that we contend are
19 germane to that issue. And it's an issue that the Court
20 should consider within its equity jurisdiction because of
21 the -- for a corporation the written documentation of this
22 company is put it kindly is very sparse. The seminal
23 issues occurred on April the 30th 2007 when the -- when
24 Walt Parker and John Curl appeared for -- well, Mr. Curl
25 appeared for a real estate closing and then Walt Parker

1 appeared for the closing of the purchase of the stock in
2 Florence Carpet and Tile from Mr. Carnell, Charles Carnell
3 who founded the company.

4 The company had been in existence since 1964 as
5 had an earlier name I think it was Florence Carpet and
6 Linoleum, but the same company continuously had existed
7 since sometime in the 1960's and it was known as Florence
8 Carpet and Tile. Mr. Carnell owned 100 percent of the
9 stock. Everybody was operating under -- apparently under
10 oral understandings of what was to occur on that date, but
11 nevertheless on that date the purchase agreement was
12 between Mr. Parker and Mr. Curl on the one hand defined in
13 the purchase agreement as buyers. And Mr. Carnell on the
14 other hand described as the seller. And what was being
15 sold was the stock in Florence Carpet and Tile. It was
16 not an asset purchase, it was a stock transfer. No stock
17 transfer certificates were tendered on that day and none
18 were issued on that date.

19 On the same day, Mr. Parker was presented with
20 the first -- for the first time with a -- the minutes of a
21 shareholders meeting that apparently was to take place on
22 that day immediately after the documentation with
23 Mr. Carnell had been entered. In fact, it was signed
24 after Mr. Carnell had left the building. The
25 documentation -- the minutes for that shared agreement

1 which will become exhibit six in this trial was prepared
2 by Porter Stewart, Mr. Curl's attorney, and Mr. Parker had
3 never met before and presented to him as a
4 take-it-or-leave-it proposition. He signed it and that
5 agreement says that the ownership instead of being 50/50
6 as Mr. Parker had contemplated and as the agreement with
7 Mr. Carnell would apparently contemplate, that it was not
8 50/50, but it was 47 percent for Mr. Parker and 53 percent
9 for Mr. Curl, but that Mr. Parker could earn back up to
10 equal ownership if the corporation operated at a profit
11 during the first -- the complete first five fiscal years
12 following the closing which would be -- we contend and I
13 believe the law's on our side, the facts are on your side,
14 that those first five fiscal years had to be fiscal year
15 2007, 2008, 2009, 2010 and 2011, that Mr. Parker would get
16 one percentage point additional ownership for each
17 profitable year during those first five up to a maximum of
18 them becoming equal owners.

19 Anyway Mr. Parker signed the document for
20 reasons that he will explain and Mr. Curl wanted the
21 document that way for reasons that he will explain. The
22 company was in fact profitable in -- the fiscal year of
23 the company was the calender year always had been and was
24 continued so. So it was profitable for the year ending
25 December 31, 2007, December 31, 2010 and December 31,

1 2011.

2 Now, no stock certificates were issued to
3 reflect the transfer of those shares, just like those
4 stock certificates had been issued to transfer to reflect
5 that the transfer of any shares. Sometime in 2015 a
6 dispute arose or the issue came to ahead with a
7 contentious shareholders meeting that Your Honor will hear
8 testimony about. And after it came to ahead then sometime
9 in 2016, Mr. Parker and Mr. Curl had a conversation in
10 which Mr. Parker was told that if he would wrap up some
11 other businesses that were affiliated with Florence Carpet
12 and Tile, which Your Honor will hear about, but basically
13 it's a granite store -- granite countertop business that
14 Mr. Curl had not wanted Florence Carpet and Tile to be
15 apart of for competitive reasons and for market share
16 reasons Mr. Parker thought that that business needed to be
17 under the control of Florence Carpet and Tile.

18 So he calls friends and relatives to create that
19 business and operate it with Florence Carpet and Tile as
20 he will explain under the supervision and control, that's
21 the way I would explain it of Florence Carpet and Tile.
22 He and Mr. Curl made an agreement that if that granite
23 countertop business would get wrapped into Florence Carpet
24 and Tile, then the ownership would be 50/50 resolving that
25 earlier dispute. Acting in reliance on that promise,

1 Mr. Parker did wrap the business into Florence Carpet and
2 Tile in such a way that all the profits of that business
3 now became Florence Carpet and Tile's profits and have
4 been ever since.

5 Again, no stock certificates were issued,
6 nothing was done to memorialize this. And those are the
7 two seminal events that we would be asking the Court to
8 examine. Some of the questions, of course, will need to
9 answer, I believe, in order to resolve this issue.
10 McGowan Law Firm represent on April 30th 2007, what is the
11 effect of exhibit four is it a binding agreement. And if
12 so, what does its language mean. I think that Your
13 Honor's -- one thing Your Honor is going to have to decide
14 is whether the language is clear an unambiguous or whether
15 it's ambiguous. And if it's ambiguous, how should it be
16 interpreted and what are the legal standards to apply. We
17 contend that if its ambiguous, it should be construed
18 against the person who granted it. I think the language
19 is clear, but if it is ambiguous, that's our contention.
20 I think the -- one seminal issue is whether or not
21 December 31, 2007 is as we contend the end of the first
22 complete fiscal year of operation of the corporation as
23 contemplated by that exhibit or was December 31, 2008 the
24 end of the first such fiscal year as the defendant
25 contends. And, of course, I think the Court's permitted

1 to decide -- if the Court decides that December 31, 2007
2 was not, then I think the Court is going to need to decide
3 the effect of the activity in 2016 to the effect of did
4 Mr. Curl make a promise and did Mr. Parker act in reliance
5 to Mr. Curl's oral promise to assimilate the granite
6 business into Florence Carpet and Tile. And then I think
7 the Court is going to need to decide what is the current
8 composition of the board of directors. I had thought that
9 was -- I thought that was agreed, but then I finally
10 receive some -- not finally -- in a timely manner, I
11 received answers to interrogatories and I find out now
12 that Mr. Curl believes that only he and Mr. Parker are on
13 the board of directors. Mr. Parker and Allison Parker
14 have always believe that they were members of the board of
15 directors, that there was a three person according Curl.
16 And, of course, going to need to resolve that issue.
17 Thank you, Your Honor.

18 THE COURT: Mr. Payne.

19 MR. PAYNE: Thank you, Your Honor. One of the
20 exhibits as you're well familiar with by now is this
21 proposal that was with John Curl had authorize to or
22 agreed to issue additional shares to Mr. Parker should the
23 companies be profitable during three of the first five
24 years, complete five years. As Mr. Williams' noted, we do
25 not think the year 2007 counts. If the agreement or

1 proposal would have said a partial year, they were going
2 to look at 2007. So that obviously would be one of your
3 issues to decide early on. The exhibits, Your Honor, I
4 got a lot of tax returns that are going to be introduced
5 and are already introduced without objection. Every one
6 of those tax returns between 2007 through 2015 indicate
7 that Mr. Curl's -- I mean, Mr. Parker's a minority owner
8 in this business. It has never been challenged. It's
9 never been questioned. There's several documents on those
10 returns and it shows him as a minority owner of this
11 business. The most recent return was filed in 2018. It
12 indicates once again he's the minority owner in this
13 business. The evidence will also show that he's never
14 demanded shares. He's never once asked that these shares
15 be issued, never demanded them. It was only until he
16 filed the lawsuit after we requested a meeting that this
17 issue even come up. And based on what he's saying if the
18 company was profitable, which we disagree, we'll talk
19 about in 2011. He's done nothing for seven years to try
20 to enforce that right that he said he had. And so the
21 statute of limitations is going to be at play here today.
22 You know can somebody just sit idly by for seven years
23 when they had a right supposedly to enforce and just leave
24 us in limbo, leave my client in limbo. So that's going to
25 be a big issue as well. There's not one document that

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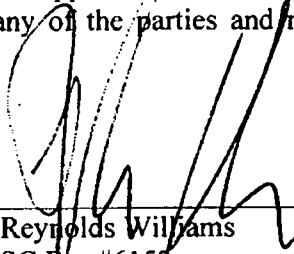
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CERTIFICATE OF COUNSEL

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



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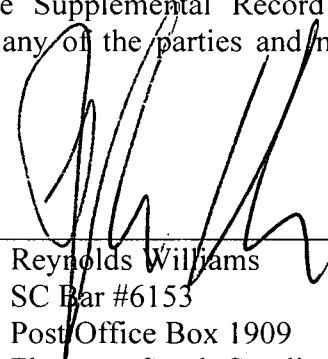
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