

**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS  
FOR CHARLESTON COUNTY**

TONY A. BILLIPS, individually and  
as a derivative shareholder of Alex’s  
Restaurants, Inc.

CASE NO. 2016-CP-10-06265

Plaintiff,

v.

CAROLYN A. BILLIPS, individually  
and as Trustee for the benefit of  
Anthony Billips, William Casey Ivey,  
and Alex Billips, and as controlling  
person of Alex’s Restaurants, Inc.

and

ALEX’S RESTAURANTS, INC.,

Defendants.

**RECEIVED**

**Jan 20 2022**

**SC Court of Appeals**

**ORDER**

The parties have asked this Court, in their Consent Order of Reference filed May 3, 2017, to entertain the accounting action, and place a value on Mr. Tony Billips’ eighteen and one-third percent stake in Alex’s Restaurants Inc. Testimony and exhibits were presented over a two-day trial beginning August 24, 2021. Having heard and considered the evidence, I rule as follows.

**I. Factual Background**

**A. Ownership of Alex’s Restaurants, Inc.**

Alex’s Restaurants Inc. (“Alex’s”) was founded in 1975 by Alex Billips Sr. and Carolyn Billips, whose original ownership percentages were 55% and 45% respectively. Upon Mr. Billips’ death in February 1980, his 55% interest was left to be divided equally among Alex Lee Billips, Jr., William Casey Ivey, and Tony Billips. These shares were held in trust until they came of age, at which point each would receive their eighteen and one-third percent (18.33%) interest. There is no dispute that this occurred, nor that Mr. Ivey’s shares were ultimately

transferred to Ms. Billips. It is likewise undisputed that the ownership interests today are:

- Carolyn Billips – 63.33%
- Alex Billips, Jr. – 18.33%
- Tony Billips – 18.33%

**B. Operations of Alex’s**

At the height of its local market share, Alex’s operated six locations in the Tri-County:

1. 302 Coleman Boulevard, Mt. Pleasant, South Carolina
2. 5503 Rivers Avenue, North Charleston, South Carolina<sup>1</sup>
3. 2623 Ferrara Drive, North Charleston, South Carolina (known as the “Dorchester Road” location)
4. 1644 Savannah Highway, Charleston, South Carolina
5. 315 N Hwy 52, Moncks Corner, South Carolina
6. 132 St. James Avenue, Goose Creek, South Carolina

Alex’s revenues came from food sales and video poker machines located within each restaurant. When video poker was banned in the early 2000s, Alex’s revenues dramatically declined. Following the 2008 Recession, the company faced further difficulties that left it unable to meet its financial obligations. The result was the forced sale of certain locations of Alex’s Restaurants between 2008 and 2013. To stay in business, Ms. Billips contributed some of her personal assets to keep the business operational. The Court is persuaded that, but for Ms. Billips’ efforts, Alex’s would not have survived as an ongoing business enterprise.

As of today, the sole remaining location of Alex’s is located at 132 St. James Avenue in Goose Creek, South Carolina.

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<sup>1</sup> This location was operated as a laundry after it began losing money as a restaurant in the early 2000s.

### **C. Flowertown Restaurant**

Ms. Billips also operated Flowertown Restaurant (“Flowertown”) in Summerville, South Carolina. Flowertown was founded in approximately 1984 and is wholly owned by Carolyn Billips. It keeps separate books and files separate tax returns from Alex’s, although it has faced the same difficulties as Alex’s described *supra*.

Ms. Billips testified that, as the sole owner of Flowertown and the majority shareholder of Alex’s, her inability to meet the obligations of either would result in the closure of both. Accordingly, she has used proceeds from the sale of certain Alex’s locations to satisfy obligations of Flowertown, and she also sold personal assets to satisfy obligations of Alex’s (the accounting of which is presented *infra*).

Flowertown was renamed “Alex’s Restaurant” in about 2013. Ms. Billips testified she did so in order to reduce advertising expense for both Alex’s and Flowertown but that neither business saw a change in revenues as a result. It was later renamed “Family Restaurant.”

## **II. Valuation**

Plaintiff presented evidence and an expert report calculating the value of Alex’s as of 2014. The Court finds that Plaintiff has failed to prove any conduct on the part of Defendants or any other reason that would justify this Court valuing Mr. Billips’ interest of Alex’s Restaurants, Inc. based on its value in 2014 rather than as of today. Plaintiff provided no definite opinion as to its present value, instead leaving that decision to the Court.

Defendants argued that the business has operated at a loss over the past decade and that the value of the business is therefore \$0.00. While I find that the business has not been profitable, as the valuation is for the purpose of setting the price at which Mr. Billips’ 18.3%

interest in the corporation will be repurchased,<sup>2</sup> the question for the Court is what value his shares have based on prospective earnings. This Court's decision on this value follows.

**A. Methodology for Valuing Alex's**

Plaintiff's expert, Mr. Ewart, testified that, while he could not determine a valuation of Alex's, he could calculate the value of the Goose Creek location (the sole remaining location of Alex's) as of 2014 by multiplying its estimated gross revenues over a twelve-month period by a discount multiplier of 0.28. The Court accepts this methodology and this multiplier.

Though Alex's Restaurants, Inc.'s tax year ends on July 31, the most recent annual revenues available to the court are for calendar year 2020, and they show gross revenues of \$392,922.19. The Court also received a profit and loss statement showing \$1,742,553.72 in gross revenues for calendar year 2019. **Pl. Exh. 19**. A review of Alex's tax returns since 2010 shows that 2019 represented Alex's highest gross revenues in the last decade. The 2020 numbers reflect the reality of running a restaurant business during the current COVID-19 pandemic.

To use the numbers from either of these years would not reflect the reality of today – especially in the restaurant industry which businesses have been severely hampered by the effects of the COVID-19 pandemic, continuing labor shortages, and the threat of further COVID-

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<sup>2</sup> A request Plaintiff acknowledged during his testimony:

Q. And you're asking this Court to determine the value of that interest and cash you out on your interest, correct?

A. Yeah, from the – what was given to me when it was given to me.

Q. And that would be based on the value today of –

A. Correct.

Q. – the operations?

A. Yes, sir.

**Exh. 1**, Trial Tr. (Aug. 25, 2021) at 37:1–10.

19-related disruptions.

This Court must consider anticipated future revenues in order to ascribe a present-day value to the business. Accordingly, the Court finds that the average of the gross revenues of calendar years 2019 and 2020, or \$1,067,737.96, represents the likely revenues of Alex's going forward and is the best means of valuing Mr. Billips' interest today.

Using this number and Plaintiff's expert's (James Ewart) multiplier of 0.28, the value of Alex's Restaurants, Inc. as a whole and as of today is \$298,966.63.

### **B. Adjustment Relating to Flowertown**

The Court finds that the use of proceeds from the sale of assets of Alex's in order to satisfy tax obligations for Flowertown requires an adjustment in the valuation of Alex's. Contemporary accounting records show that \$170,277.57 of proceeds from those sales went to satisfying tax obligations for Flowertown. Specifically:

- \$42,037.45 toward state taxes from the sale of Rivers Avenue (**D. Exh. 5**) broken down as follows:
  - a \$27,992.62 countercheck (*id.* at 1);
  - an additional \$14,044.83 from three checks issued to Ms. Billips (*id.* at 2, including handwritten notes); and
- \$128,240.12 from the sale of the properties on Dorchester Road (**Pl. Exh. 2**), as follows:
  - \$21,087.01 toward Flowertown sales tax,
  - \$81,061.15 toward Flowertown's federal taxes,
  - \$19,472.01 toward Flowertown's state taxes,
  - and \$6,619.95 toward Ms. Billips' taxes.

However, contemporary accounting records also establish that Ms. Billips contributed \$168,213.90 in personal assets for the benefit of Alex's during this same time period, as follows:

- \$40,000 from the February 5, 2010 sale of her property ("St. George") to satisfy payroll taxes for Alex's Inc. (**D. Exh. 4**),

- \$70,000 and \$50,000 respectively for the donation of two properties owned by Ms. Billips (2619 and 2621 Ferrara Drive) in order to effectuate the sale of the Dorchester Road location of Alex's (without which the sale would not have closed) (**D. Exh. 3**<sup>3</sup>); and
- \$8,213.90 from the sale of her personal residence (1140 Island View Drive) that was paid to satisfy obligations of Alex's. **D. Exh. 4.**

As the proceeds to Flowertown exceeded Ms. Billips' personal contributions by \$2,063.67, the Court finds that Ms. Billips owes \$2,063.67 to Alex's Inc., increasing the valuation of Alex's Inc. by that amount, for a total of \$301,030.30.

### **C. Valuing Mr. Billips' Interest**

Mr. Billips owns 18.33% of Alex's Restaurants, Inc., valued at \$301,030.30, which amounts to \$55,178.85. I must also account, though, for the judicially noticed fact that Mr. Billips' interest is a minority interest subject to a discount in value ranging from 20-40%, which this Court finds recognizes the discount for less marketable interests in privately held businesses. *See, e.g., Romagnoli, John, Common Discounts Used in Valuations of Closely Held Businesses, available at [https://cst-cpa.com/wp-content/uploads/Common\\_Discounts\\_Romagnoli\\_.pdf](https://cst-cpa.com/wp-content/uploads/Common_Discounts_Romagnoli_.pdf)* (last accessed November 16, 2021).

In its decision, the Court considers:

- (i) the business's lack of profitability;
- (ii) Ms. Billips' submarket salary for operating the business the past four decades; and
- (iii) the risk of capital contributions necessary to keep the business ongoing.

The Court finds a 20% discount on this amount is a conservative reduction to account for Mr. Billips' status as a minority shareholder in a business not readily marketable.

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<sup>3</sup> Of the \$320,000 sale price of the Alex's location and Ms. Billips' properties, \$200,000 was received for the restaurant and parking, and \$120,000 was received for Ms. Billips' properties. *Id.*

Accordingly, the Court finds the value of Mr. Billips' 18.3% interest to be \$44,143.08, (\$55,178.85 – \$11,035.77 = \$44,143.08).

IT IS FURTHER ORDERED that, upon tender of the sum of \$44,143.08 to Mr. Billips, his shares shall be transferred back to the corporation for the benefit of Ms. Billips.

**IT IS SO ORDERED.**

This \_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Mikell R. Scarborough  
Master in Equity  
County of Charleston



Charleston Common Pleas

**Case Caption:** Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

**Case Number:** 2016CP1006265

**Type:** Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062