

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

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

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SC Court of Appeals

Walt Parker Appellant,

v.

John C. Curl, ...Respondent.

v.

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

RECORD ON APPEAL – VOLUME I

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2102958

Walt Parker
PLAINTIFF(S)

John C Curl et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Pursuant to the Court's Order Denying Reconsideration the attached Order is substituted for the Order filed on April 26, 2019.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/06/2019 .

Palmetto Floor Covering Installation

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Florence Common Pleas

Case Caption: Walt Parker VS John C Curl

Case Number: 2018CP2102958

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Walt Parker,)
Plaintiff,)
vs.)
John C. Curl,)
Defendant.)

John C. Curl,)
Third-Party Plaintiff,)
v.)
Palmetto Floor Covering Installation, LLC)
and Florence Custom Countertops, Inc.,)
Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-21-2958

**FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

This matter came before the undersigned to conduct a non-jury trial of the allegations set forth in the plaintiff's complaint pursuant to SCRCF Rule 39(b). The non-jury trial was held on March 20 and March 21, 2019.

After considering all the relevant and admissible evidence, the Court makes the following findings of fact and reaches the related conclusions of law.¹

¹ To the extent that any of the Court's findings of fact constitute conclusions of law, or its conclusions of law constitute findings of fact, they are so adopted.

FINDINGS OF FACT

Curl and Parker Purchase FCT

1. On April 30, 2007, John Curl ("Curl") and Parker ("Parker") purchased 100% of the outstanding stock in Florence Carpet & Tile, Inc. ("FCT") from Charles Carnell ("Carnell") for a purchase price of \$1,080,000 ("Purchase Price"). This purchase occurred four months into the Corporation's fiscal/tax reporting year (the calendar year 2007). At the time of this purchase, Curl and Parker agreed that Curl owned 53% of FCT and Parker owned 47%.

2. This ownership split was memorialized in the minutes of a shareholders meeting for FCT on April 30, 2007.

3. At the time of the purchase, Walt Parker was unemployed and had been unemployed for over a year. Accordingly, the purchase was bankrolled based upon the strength of Curl's financial statements and the new owners planned for Parker to run the Corporation's daily operations. Both Curl and Parker personally guaranteed the loans.

4. Based upon the financial strength of Curl, Charles Carnell owner financed \$540,000 of the Purchase Price and Branch Bank and Trust ("BB&T") loaned FCT the remaining \$540,000.

Daily Operations of FCT and Performance Incentive for Parker

5. As noted, Parker and Curl agreed that Parker would be the President of FCT in charge of the day to day operations. To help incentivize Parker's management of the Corporation, Curl communicated with Porter Stewart, Esquire, before the closing with Carnell and requested that he prepare corporate minutes of the first meeting of the Shareholders of FCT which would contain an incentive proposal.

6. In the first meeting minutes of Curl and Parker as Shareholders, Curl set forth a performance incentive proposal to transfer 3% of his (Curl) shares to Parker if certain conditions were met. Those minutes ("Minutes") specifically state:

At this meeting, in consideration of their mutual promises and the sums of Five (\$5.00) Dollars in hand paid as acknowledged, the shareholders agreed that John C. Curl as fifty three (53%) per cent shareholder and Walter A. Parker as forty seven (47%) per cent shareholder, would agree for a transfer of share ownership from Curl to Parker within the period of the first five years of one per cent of share ownership from Curl to Parker for each complete fiscal year of operation of said corporation at a profit as determined by the accountant for the corporation, up to a total of 3 percentage points, the effect of which would be to allow for an ownership of fifty (50%) per cent to Curl and fifty (50%) per cent to Parker if the corporation operated at such profit for a minimum of three of the first five years.

7. The Minutes (and the incentive proposal therein) set forth the terms of an agreement ("Agreement") between Curl and Parker as to the transfer of additional shares from Curl to Parker.

8. Because Curl unilaterally provided the proposal terms to attorney Porter Stewart and because Stewart acted solely as a scrivener of the Minutes, the Court finds that Curl was the drafter of the Agreement.

9. Both Parker and Curl were directors of FCT. Furthermore, both Parker and Curl were officers of FCT. Parker served as President while Curl served as Secretary.²

10. The Court finds that the terms of the Agreement are ambiguous in two respects. It is ambiguous as to whether the financial results for FCT for the partial fiscal year 2007 are to be included in the incentive formula. The Agreement is also ambiguous as to whether or not Parker was entitled to receive a one percent interest ownership transfer from Curl for each single profitable year regardless of the total number of profitable years or was the transfer of shares by

² There was conflicting testimony as to whether Plaintiff's wife, Allison Parker, was a director of FCT. However, the Court finds this to be largely unimportant to its resolution of the issues before it.

Curl contingent on a minimum total of three years profitability for FCT. The FCT tax returns suggest an operational profit for the years 2007, 2010 and 2011.

Daily Financial Management and Tax Filing

11. As the daily operations manager, Parker was in charge of the finances of FCT and in directing the preparation of the Company's tax returns.

12. Parker and Curl each signed each of FCT's tax returns for those years when they were prepared by FCT's accountant.

13. Parker has failed to have FCT's 2016 and 2017 tax returns prepared.

14. Parker knew the profitability of FCT for the year 2011 on or before September 14, 2011, the date when the 2011 tax return was filed by FCT's accountant following Parker's signature.

15. In May of 2015 Curl informed Parker and his attorney that no additional shares were owed to Parker since FCT was not profitable during the first five years of operation.

16. Until this litigation was filed, Parker never demanded that Curl transfer additional shares in FCT to him.

Competing Businesses and Usurped Opportunities

17. In 2011, Parker created an installation company called Palmetto Floorcovering Installation, LLC ("Palmetto Floor Covering"). Parker co-owned this company with Rob Simmons. Parker had FCT to pay Palmetto Floor Covering for installation services that could have been performed by FCT employees. Moreover, FCT had the necessary employees to install the flooring products it sold.

18. In 2011, Parker created a company called Florence Custom Countertops, Inc. ("FCC") to manufacture and sell natural stone countertops. Curl was not an owner of FCC. Parker operated FCC out of the FCT business location at 1706 Pamplico Hwy., Florence, South Carolina.

19. Although Curl requested that Parker discontinue the operations of FCC, which Curl viewed as a competing business, Parker never closed FCC and it continued to operate as of the trial date.

CONCLUSIONS OF LAW

1. Parker has labeled the first cause of action of his complaint as one for breach of contract and he requests a declaratory judgment pursuant to S.C. Code Ann. Section 15-53-10 et. seq. In the prayer of his Complaint, Parker does not seek damages but rather requests that this Court compel Curl "to sign the necessary papers to reflect the true ownership" of the Corporation. Based upon the requested relief, I find that this is an equitable action for specific performance. In essence Plaintiff request that this Court order Defendant to fulfill his contractual obligation to transfer the 3% interest in FCT.

2. Specific performance is the requirement that a party fulfill a precise contractual obligation. *Time Warner Cable v. Condo Serv., Inc.*, 381 S.C 275, 282, 672 S.E.2d 816, 819 fn. 3 (Ct. App. 2009). While Plaintiff has framed his cause of action as one for breach of contract and requests injunctive relief it is clear that he seeks specific performance. "It is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'" *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (quoting *Standard Fed. Sav. & Loan Ass'n v. Mungo*, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991)).

3. “The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regards to the facts and circumstances of each case.” *Id.* at 281, 672 S.E.2d at 819 (*quoting Guignard v. Atkins*, 282 S.C. 61, 66, 317 S.E.2d 137, 140 (Ct. App. 1984)).

4. “A court may order specific performance if: (1) a valid contract exists between the parties; (2) no adequate remedy at law exists for the breach; (3) specific performance is equitable between the parties; and (4) no fraud, accident, or mistake infects the contract. *Time Warner Cable*, 381 S.C. at 281, 672 S.E.2d at 819. It is undisputed that the parties in this case had a valid contract between them. Furthermore, the Court finds that there was no fraud, accident, or mistake which infects the contract.

5. An action for specific performance is one in equity and should be granted only if there is no adequate remedy at law and a decree of specific performance of the contract would be equitable between the parties. *Ingram v. Kasey's Assocs.*, 531 S.E.2d 287 (S.C. 2000).

6. Defendant has asserted the defense of the statute of limitations found in S.C. Code Ann. § 15-3-530(1). However, as this action sounds in equity as one for specific performance the statute of limitations does not apply. *See Parr v. Parr*, 268 S.C. 58, 67, 231 S.E.2d 695, 699 (1977) (*citing, inter alia, Blackwell v. Ryan*, 21 S.C. 112 (1884))

7. Any ambiguity in the terms of that Agreement will be construed against Curl as he is the party responsible for drafting the contract. “Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.” *Ecclesiastes Prod. Ministries v. Outparcel Assoc., LLC*, 374 S.C.

483, 499-500, 649 S.E.2d 494, 502 (Ct. App. 2007) (quoting *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981)).

8. The Court finds that the terms of the agreement as they relate to the transfer of the shares was that Plaintiff was entitled to 1% for each year that the corporation was profitable and that such transfer was not conditional on there being 3 years of profitability total. Furthermore, the Court finds that the term as to the first fiscal year, when construed against Curl, was the first fiscal year that FCT was owned by Plaintiff and Defendant. Therefore, the first full fiscal year for FCT was 2007.

9. Because the issue in this matter concerns the ownership of 3% of the stock in a closely held company, there is no adequate remedy at law for Parker. See *Stafford v. Southern Vanity Magazine*, 231 S.W.3d 530 (Tex. Ct. App. 2007); and *U.S. Dimension Products, Inc. v. Tassette, Inc.*, 290 A.2d 634 (Del. 1972). It is very difficult to place a value on the 3% of stock at issue in this case since that percentage ultimately determines who controls FCT. See *Lineberger v. Welch*, 290 A.2d 847 (Del. Ch. 1972).

10. Although appropriately raised by Curl at trial, Parker's claim is not barred by the doctrine of laches. "Laches is the neglect for an unreasonable and unexplained amount of time, under circumstances permitting diligence, to do what in law should have been done." *Mid-State Trust, II v. Wright*, 323 S.C. 303, 307, 474 S.E.2d 421, 423 (1996). Whether laches applies in a given case is highly fact-specific so that each case must be judge on its own merits. *Id.*, 474 S.E.2d at 423-24. "[T]he party asserting laches must show it has been materially prejudiced by the other party's delay." *Id.*, 474 S.E.2d at 423.

11. Any delay by Parker in bringing this action to demand the issuance of the 3% from Curl was reasonable under the circumstances. Both parties failed to pay attention to corporate

formalities and it is unclear as to whether Curl or Parker were ever issued any shares of stock. Furthermore, Curl has been unable to demonstrate any material prejudice.

12. After having listened to the evidence, observing the demeanor of the parties, and their testimony, I find that it would be inequitable to order specific performance – a transfer of the Curl shares to Parker. This conclusion is based upon the unclean hands of Parker as the Court finds in the following respects (all such actions are a breach of his fiduciary duty and duty of loyalty to FCT and Curl³):

- a. Parker breached the fiduciary duty that he owed to his fellow shareholder Curl by operating FCC and Palmetto Floor Covering, competing businesses to FCT;
- b. Parker usurped corporate opportunities available to FCT;
- c. Parker and FCC acted as a wholesaler to FCT which amounted to self-dealing;
- d. Parker allowed FCT's employee Lisa Shelton to work for FCC while FCT paid her;
- e. Parker had his business Palmetto Floor Covering charge FCT for installation services that could have been performed by FCT employees.
- f. Parker has failed to timely file the tax returns for FCT despite his position as the daily operations manager with the ability to provide the supporting documentation necessary for the preparation of FCT's tax returns. As of the day of the trial Parker had still failed to have the 2016 and 2017 tax returns prepared;

³ Parker as both an officer and director of FCT owed fiduciary duties to both FCT and to Curl individually. *See* S.C. Code Ann. § 30-8-300, -420; *see also* § -420 South Carolina Reporters' Comments ("After detailed discussion and analysis, the decision was made to retain mention in this provision of a direct duty owed to shareholders."). These duties are the statutory codification of common law duties that long been recognized in South Carolina. *See Black v. Simpson*, 94 S.C. 312, 77 S.E. 1023 (1913).

- g. Parker has failed to provide required documentation to FCT's creditor Synovus Bank who has repeatedly requested that Parker provide FCT's tax returns;
- h. Parker has failed to timely pay FCT vendors and its lessor Curl Properties, LLC while at the same time continuing to pay himself and his wife's salary and benefits.

In sum, Parker has come into this Court seeking equity but he has done so with "unclean hands." As such he is barred from obtaining the requested equitable relief of specific performance and for a permanent injunction.

12. "A party with unclean hands is precluded from recovering in equity." *Anderson County v. Preston*, 420 S.C. 546, 578, 804 S.E.2d 282, 298 (Ct. App. 2017) *cert. granted* March 29, 2018. "A party will have unclean hands where the party behaves 'unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.'" *Anderson v. Buonforte*, 365 S.C. 482, 493, 617 S.E.2d 750, 756 (Ct. App. 2005) (internal citations omitted).

13. Specific performance is not a remedy that either party can demand as of right, but instead is one that will only be granted when strictly equitable and just. *Kirkley v. Jones*, 550 S.E.2d 686, 690 (Ga. Ct. App. 2001). "Specific performance is an equitable remedy, committed to the [trial] court's sound discretion. As an equitable remedy, it may be denied to a party whose own conduct is inequitable." *United States v. Bedford Assoc.*, 657 F.2d 1300, 1314 (2nd Cir. 1981). "This is so even though the plaintiff's conduct was not so egregious as to constitute a defense in law." *Id.*

14. Here Plaintiff has acted unfairly towards Defendant by breaching the fiduciary duties he owed to him and to FCT. He who seeks equity must come in equity to gain relief. Therefore,

considering all the facts and circumstances of this case, it would be inequitable of this Court to order specific performance of the contract.

15. The preliminary injunction in this case being no longer necessary ought to be, and hereby is, dissolved.

CONCLUSION

For the foregoing reasons, it is therefore **ORDERED, ADJUDGED, AND DECREED** that the Plaintiff's request for specific performance for the transfer of shares from the Defendant to the Plaintiff is **DENIED**. The Plaintiff's request for a permanent injunction is likewise **DENIED**. The preliminary injunction issued by this Court on November 19, 2018, is hereby dissolved effective immediately.

AND IT IS SO ORDERED!

Dated April 25, 2019

/s/ Michael G. Nettles

Florence, South Carolina

Presiding Judge, Twelfth Judicial Circuit



Florence Common Pleas

Case Caption: Walt Parker VS John C Curl

Case Number: 2018CP2102958

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Walt Parker,
Plaintiff,

C/A No.: 2018-CP-21-02958

v.

John C. Curl,
Defendant/Third-Party Plaintiff,

**ORDER DENYING
RECONSIDERATION**

v.

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

This matter came before the Court by way of Plaintiff's Motion for Reconsideration of the Court's April 26, 2019, Order denying Plaintiff's requested relief. The Court finds that for the reasons stated below that the Court will delete certain scrivener's errors in its prior order, and will substitute an amended order to that effect, but will leave the substance of its prior order in place. Therefore, the Court grants Plaintiff's motion in part and denies Plaintiff's motion in part.

FACTUAL AND PROCEDURAL HISTORY

The Court will not dwell long on the factual background which was adequately addressed in the Court's April 26 order. However, this case concerns a business relationship between

Plaintiff and Defendant which soured. Plaintiff and Defendant had agreed to purchase 100% of the outstanding stock of Florence Carpet & Tile, Inc. (FCT) a South Carolina corporation. At the close of the stock purchase Plaintiff and Defendant agreed to split the ownership of the stock with Defendant owning 53% of the stock and Plaintiff owning 47%. The parties further agreed by way of a shareholders meeting that should certain financial benchmarks be met that Plaintiff would be entitled to receive up to 3% interest in FCT. This would have brought the parties to a 50/50 stock split between them. The parties disputed whether or not the benchmarks had been met and, therefore, whether Plaintiff was entitled to have a transfer of the 3% interest from the Defendant. Plaintiff initiated this case requesting for a declaratory judgment that Plaintiff was entitled to the 3% ownership of the stock and an injunction stating that Defendant was enjoined from denying Plaintiff ownership interest of 50% in FCT. Furthermore, Plaintiff filed for a temporary restraining order and temporary injunction prohibiting the call of a shareholders meeting until the issue of the ownership of FCT's stock could be resolved. On November 9, 2018, the Court issued its temporary restraining order to that effect and November 19, 2018, the Court converted the temporary restraining order to a temporary injunction. The parties proceeded to a bench trial on the issue of the stock ownership. The trial was held on March 20-21 before the undersigned. At the conclusion of the trial the undersigned ruled from the bench that Plaintiff was not entitled to the relief he requested and the Court entered its written order on April 26, 2019. Plaintiff moved for reconsideration pursuant to Rule 59, SCRPC, on May 8, 2019, and the Court convened a hearing on the Motion to Reconsider on June 19, 2019.

LEGAL STANDARD

There is no South Carolina case law concerning the correct standard to be used when considering a motion to alter or amend a judgment pursuant to Rule 59(e). However, "Since our

Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.” *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). The Fourth Circuit has laid out three grounds for federal district courts to consider when applying Rule 59(e), FRCP. “Although Rule 59(e) does not itself provide a standard under which a district court may grant a motion to alter or amend a judgment, we have previously recognized that there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Pacific Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

ANALYSIS

A. Scrivener Error

The Court finds that the order did contain one scrivener’s error in the findings of fact. At paragraph 17 the Court stated “In 2011, Parker created an installation company called Palmetto Floorcovering Installation, LLC (“Palmetto Floor Covering”). Curl co-owned this company with Rob Simmons.” This is incorrect. Palmetto Floor Covering was instead owned by Plaintiff, Walt Parker, and by Rob Simmons. The Court will amend the order to so reflect the true ownership of Palmetto Floor Covering. The Court grants Plaintiff’s Motion to Reconsider as to this ground.

B. Failure of Defendant to Pled Unclean Hands

Plaintiff argues that the Court erred in denying relief due to the inequitable conduct that the Court found to have been committed by the Plaintiff. Plaintiff argues that as this is an affirmative defense the Court should not have considered the issue as Defendant failed to raise it in his

answer. The Court disagrees with Plaintiff in several regards.¹ As a first matter the Court's order, while using the phrase "unclean hands" to denote the inequitable conduct that Plaintiff engaged in, was not based on the affirmative defense of unclean hands.

As was noted in the Court's April 26 order this case is, in essence, one for specific performance. The Court devoted great detail to the legal requirements in order for a Plaintiff to be entitled to specific performance.² "The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regards to the facts and circumstances of each case." *Time Warner Cable v. Condo Serv., Inc.*, 381 S.C. 275, 281, 672 S.E.2d 816, 819 (Ct. App. 2009) (quoting *Guignard v. Atkins*, 282 S.C. 61, 66, 317 S.E.2d 137, 140 (Ct. App. 1984)). The special rules of equity surrounding specific performance require that the order be equitable when considering all of the fact and circumstances of the transaction. "A court may order specific performance if: (1) a valid contract exists between the parties; (2) no adequate remedy at law exists for the breach; **(3) specific performance is equitable between the parties**; and (4) no fraud, accident, or mistake infects the contract. *Time Warner Cable*, 381 S.C. at 281, 672 S.E.2d at 819 (emphasis added). Here the Court did indeed find that Plaintiff had met requirements 1, 2, and 4. There was indeed a valid contract between the parties, the Court found that there was no adequate remedy at law, and the Court found no fraud, accident, or mistake. However, the Court explicitly found that, under these circumstances, to order specific performance would inequitable as between these parties. This requirement that specific performance be equitable under the circumstances is separate and distinct from the

¹ Defendant has argued that this ground is not properly before the Court since it was not fully raised until Plaintiff filed his Supplemental Memorandum in Support of Plaintiff's Motion for Reconsideration. However, the Court finds that Plaintiff fifth ground for reconsideration in his Motion for Reconsideration was sufficient to bring this issue before the Court.

² While Plaintiff did not style his complaint as one for specific performance this is essentially the relief he requested by asking the Court to order the Defendant to comply with the contract and to convey the 3% interest to the Plaintiff.

defense of unclean hands. It is an obligation imposed on the Plaintiff, as the party bearing the burden of proof for specific performance, to prove and not one on the Defendant.

Consideration of Plaintiff's inequitable conduct is fully in accord with the law of this state. As explained by the Supreme Court "For many years it has been held that the Court of Equity will refuse to lend its aid to one who has been guilty of inequitable conduct in the subject matter. We think that this maxim aptly fits the present case. The equitable status of the [plaintiff] is the primary consideration." *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 18 S.E.2d 584, 591 (1942). The Supreme Court again used this maxim to deny a plaintiff's request for specific performance where his conduct was inequitable vis-à-vis the defendant and where the defendant had not pled unclean hands. *See Flowers v. Roberts*, 220 S.C. 110, 66 S.E.2d 612 (1951). Plaintiff's invitation is for the Court to ignore his inequitable conduct, his breach of his fiduciary duties to FCT, and would essentially convert the granting of specific performance into a remedy as of right. However, "The rule is well settled 'that specific performance is not a matter of absolute right, but rests in the sound discretion of the Court, guided by established principles, and is exercised by a consideration of all the circumstances of each particular case.'" *Masonic Temple*, 199 S.C. 5, 18 S.E.2d at 590; *see also Wright v. Patrick*, 262 S.C. 434, 441, 205 S.E.2d 175, 179 (1974).

Furthermore, the overwhelming weight of authority in this country is that a Court of Equity may take cognizance of a Plaintiff's inequitable conduct when deciding whether to grant specific performance. *See, e.g., Lee v. Crane*, 120 So.2d 720, 703-04 (Ala. 1960) (Specific performance may be denied based on inequitable conduct); *Quinn v. Mar-Lees Seafood, LLC*, 871 N.E.2d 511, 525 (Mass. App. Ct. 2007) (Judge may refuse specific performance if there is a finding of inequitable conduct on the part of the Plaintiff); *Polonsky v. McIlwaine*, 324 A.2d 729, 731-32 (N.H. 1974) ("It is well established law that if plaintiff's conduct in obtaining a contract 'has

been unconscientious, inequitable or characterized by bad faith, a court of equity will refuse him the remedy of specific performance.”); *Kilarjian v. Vastola*, 877 A.2d 372, 376 (N.J. Super. Ct. Ch. Div. 2004) (“The party seeking specific performance must ‘stand in conscientious relation to his adversary; his conduct in the matter must have been fair, just and equitable, not sharp or aiming at unfair advantage.’”); *Oliver v. Ball*, 136 A.3d 162, 166 (Pa. Super. Ct. 2016) (“Inequity or hardship may be a valid defense in an action for specific performance and such decree refused if in the exercise of a sound discretion it is determined that, under the facts, specific performance would be contrary to equity or justice.”).

C. Trial by Consent

In any event the Court expressly finds that the issue of unclean hands was tried by implied consent of the parties. “When issues not raised by the pleadings are tried by the express or implied consent of the parties they are to be treated in all respects as if they had been raised in the pleadings; and such amendment of pleadings as may be necessary to conform them to the evidence and raise such issues may be made upon motion of any party at any time, even after judgment.” *Woods v. Rabon*, 295 S.C. 343, 347, 368 S.E.2d 471, 473-74 (Ct. App. 1988). “If neither party timely objects to evidence raising issues not pleaded, each is deemed impliedly to consent to the trial of such issues.” *Id.*

Here it is plain that this issue was tried by consent. After a careful review of the undersigned’s notes from the trial it seems that the issue of unclean hands was first raised in the Defendant’s summation. While this is not evidence it clearly shows that Plaintiff was on notice that Defendant was seeking to interject the issue of unclean hands into the trial. Furthermore, it was Plaintiff himself who brought forward the issue in the evidentiary stage of the trial. During Plaintiff’s direct testimony he testified that Defendant had asked him not to participate in the

granite countertop business, at least separately, as it competed against FCT. Plaintiff testified on direct that part of the reason he created the other business was to create a job for Lisa Shelton to work at the granite countertop business while being paid by FCT. These are just two examples and again these were elicited by Plaintiff's counsel on direct examination. The Court found that both of these were breaches of Plaintiff's fiduciary duties. Clearly Plaintiff opened the door to the issue of whether he had unclean hands in regards to this case. "The door-opening doctrine applies in both criminal and civil cases." *Gibson v. Wright*, 403 S.C. 32, 43, 742 S.E.2d 49, 55 (Ct. App. 2013). Having put the issue of his own inequitable conduct in front of the Court the Plaintiff may not now complain that he has been prejudiced. "A litigant cannot complain of prejudice by reason of an issue he has placed before the court." *Frazier v. Badger*, 361 S.C. 94, 104, 603 S.E.2d 587, 592 (2004).

The Court finds that the issue of unclean hands, specifically whether Plaintiff's own inequitable conduct would bar specific performance, was tried with the implied consent of all the parties. Therefore, it was totally proper for the Court to have considered the defense of unclean hands and deny equitable relief on that ground.

D. Unclean Hands as it Relates to the Subject Matter

Plaintiff also asserts that even if the defense of unclean hands was properly before the Court that none of the actions complained of went to the subject matter of the contract. The Court finds that this point is not persuasive. It is indeed true that the unclean hands which are complained of must be related in some way to the subject matter of the lawsuit. *Anderson County v. Preston*, 420 S.C. 546, 578, 804 S.E.2d 282, 298-99 (Ct. App. 2017) *cert. granted* Mar. 29, 2018. However, the Court believes that Plaintiff reads the rule in too restrictive of a manner. Plaintiff's logic runs something like this, the contract was between Plaintiff and Defendant and any

inequitable conduct was direct towards FCT (a third party at least for purposes of this order) and therefore any inequitable conduct was not directed towards the Defendant. This fails because Plaintiff fails to mention that he also owed fiduciary duties directly to the Defendant. As the Court explained in its order Plaintiff owed fiduciary duties not only to FCT but also to Defendant individually. *See* S.C. Code Ann. § 30-8-300, -420; *see also* § 420 South Carolina Reporters' Comments. Plaintiff cannot complain that he *only* breached his fiduciary duties to the corporation because by virtue of doing so he also breached them to Defendant. Simply because Defendant must bring these claims in a shareholders derivative action does not overcome the fact that such fiduciary duties were owed to Defendant directly. There was sufficient evidence that Plaintiff breached fiduciary duties between himself and Defendant. Therefore, the unclean hands that Defendant complained of were directed towards Defendant and not towards a third-party. *See Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735, 738 (1943).

CONCLUSION

The Court finds that as a first matter that Plaintiff's inequitable conduct would bar the awarding of specific performance in this case regardless of whether Defendant pled unclean hands. Furthermore, the Court finds that the parties did indeed try the issue of unclean hands by implied consent and it was thus wholly appropriate for the Court to consider the defense. Finally, the Court finds that as Plaintiff did breach his fiduciary duties to the Defendant that he cannot complain that his inequitable conduct was wholly directed to a third-party. Therefore, the Court **GRANTS** Plaintiff's motion insofar as it relates to the scrivener's errors mentioned above and **DENIES** Plaintiff's motion in all other respects.

AND IT IS SO ORDERED!

August 6, 2019
Florence, South Carolina

/s/ Michael G. Nettles
Circuit Judge



Florence Common Pleas

Case Caption: Walt Parker VS John C Curl

Case Number: 2018CP2102958

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2018-CP-21-2958
	)	
Walt Parker,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FINDINGS OF FACTS AND
	)	CONCLUSIONS OF LAW
John C. Curl,	)	
	)	
Defendant.	)	
	)	
John C. Curl,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Palmetto Floor Covering Installation, LLC	)	
and Florence Custom Countertops, Inc.,	)	
	)	
Third-Party Defendants.	)	
	)	

This matter came before the undersigned to conduct a non-jury trial of the allegations set forth in the plaintiff's complaint pursuant to SCRCF Rule 39(b). The non-jury trial was held on March 20 and March 21, 2019.

After considering all the relevant and admissible evidence, the Court makes the following findings of fact and reaches the related conclusions of law.¹

¹ To the extent that any of the Court's findings of fact constitute conclusions of law, or its conclusions of law constitute findings of fact, they are so adopted.

FINDINGS OF FACT

Curl and Parker Purchase FCT

1. On April 30, 2007, John Curl ("Curl") and Parker ("Parker") purchased 100% of the outstanding stock in Florence Carpet & Tile, Inc. ("FCT") from Charles Carnell ("Carnell") for a purchase price of \$1,080,000 ("Purchase Price"). This purchase occurred four months into the Corporation's fiscal/tax reporting year (the calendar year 2007). At the time of this purchase, Curl and Parker agreed that Curl owned 53% of FCT and Parker owned 47%.

2. This ownership split was memorialized in the minutes of a shareholders meeting for FCT on April 30, 2007.

3. At the time of the purchase, Walt Parker was unemployed and had been unemployed for over a year. Accordingly, the purchase was bankrolled based upon the strength of Curl's financial statements and the new owners planned for Parker to run the Corporation's daily operations. Both Curl and Parker personally guaranteed the loans.

4. Based upon the financial strength of Curl, Charles Carnell owner financed \$540,000 of the Purchase Price and Branch Bank and Trust ("BB&T") loaned FCT the remaining \$540,000.

Daily Operations of FCT and Performance Incentive for Parker

5. As noted, Parker and Curl agreed that Parker would be the President of FCT in charge of the day to day operations. To help incentivize Parker's management of the Corporation, Curl communicated with Porter Stewart, Esquire, before the closing with Carnell and requested that he prepare corporate minutes of the first meeting of the Shareholders of FCT which would contain an incentive proposal.

6. In the first meeting minutes of Curl and Parker as Shareholders, Curl set forth a performance incentive proposal to transfer 3% of his (Curl) shares to Parker if certain conditions were met. Those minutes ("Minutes") specifically state:

At this meeting, in consideration of their mutual promises and the sums of Five (\$5.00) Dollars in hand paid as acknowledged, the shareholders agreed that John C. Curl as fifty three (53%) per cent shareholder and Walter A. Parker as forty seven (47%) per cent shareholder, would agree for a transfer of share ownership from Curl to Parker within the period of the first five years of one per cent of share ownership from Curl to Parker for each complete fiscal year of operation of said corporation at a profit as determined by the accountant for the corporation, up to a total of 3 percentage points, the effect of which would be to allow for an ownership of fifty (50%) per cent to Curl and fifty (50%) per cent to Parker if the corporation operated at such profit for a minimum of three of the first five years.

7. The Minutes (and the incentive proposal therein) set forth the terms of an agreement ("Agreement") between Curl and Parker as to the transfer of additional shares from Curl to Parker.

8. Because Curl unilaterally provided the proposal terms to attorney Porter Stewart and because Stewart acted solely as a scrivener of the Minutes, the Court finds that Curl was the drafter of the Agreement.

9. Both Parker and Curl were directors of FCT. Furthermore, both Parker and Curl were officers of FCT. Parker served as President while Curl served as Secretary.²

10. The Court finds that the terms of the Agreement are ambiguous in two respects. It is ambiguous as to whether the financial results for FCT for the partial fiscal year 2007 are to be included in the incentive formula. The Agreement is also ambiguous as to whether or not Parker was entitled to receive a one percent interest ownership transfer from Curl for each single profitable year regardless of the total number of profitable years or was the transfer of shares by

² There was conflicting testimony as to whether Plaintiff's wife, Allison Parker, was a director of FCT. However, the Court finds this to be largely unimportant to its resolution of the issues before it.

Curl contingent on a minimum total of three years profitability for FCT. The FCT tax returns suggest an operational profit for the years 2007, 2010 and 2011.

Daily Financial Management and Tax Filing

11. As the daily operations manager, Parker was in charge of the finances of FCT and in directing the preparation of the Company's tax returns.

12. Parker and Curl each signed each of FCT's tax returns for those years when they were prepared by FCT's accountant.

13. Parker has failed to have FCT's 2016 and 2017 tax returns prepared.

14. Parker knew the profitability of FCT for the year 2011 on or before September 14, 2011, the date when the 2011 tax return was filed by FCT's accountant following Parker's signature.

15. In May of 2015 Curl informed Parker and his attorney that no additional shares were owed to Parker since FCT was not profitable during the first five years of operation.

16. Until this litigation was filed, Parker never demanded that Curl transfer additional shares in FCT to him.

Competing Businesses and Usurped Opportunities

17. In 2011, Parker created an installation company called Palmetto Floorcovering Installation, LLC ("Palmetto Floor Covering"). Curl co-owned this company with Rob Simmons. Parker had FCT to pay Palmetto Floor Covering for installation services that could have been performed by FCT employees. Moreover, FCT had the necessary employees to install the flooring products it sold.

18. In 2011, Parker created a company called Florence Custom Countertops, Inc. ("FCC") to manufacture and sell natural stone countertops. Curl was not an owner of FCC. Parker operated FCC out of the FCT business location at 1706 Pamplico Hwy., Florence, South Carolina.

19. Although Curl requested that Parker discontinue the operations of FCC, which Curl viewed as a competing business, Parker never closed FCC and it continued to operate as of the trial date.

CONCLUSIONS OF LAW

1. Parker has labeled the first cause of action of his complaint as one for breach of contract and he requests a declaratory judgment pursuant to S.C. Code Ann. Section 15-53-10 et. seq. In the prayer of his Complaint, Parker does not seek damages but rather requests that this Court compel Curl "to sign the necessary papers to reflect the true ownership" of the Corporation. Based upon the requested relief, I find that this is an equitable action for specific performance. In essence Plaintiff request that this Court order Defendant to fulfill his contractual obligation to transfer the 3% interest in FCT.

2. Specific performance is the requirement that a party fulfill a precise contractual obligation. *Time Warner Cable v. Condo Serv., Inc.*, 381 S.C 275, 282, 672 S.E.2d 816, 819 fn. 3 (Ct. App. 2009). While Plaintiff has framed his cause of action as one for breach of contract and requests injunctive relief it is clear that he seeks specific performance. "It is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'" *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (quoting *Standard Fed. Sav. & Loan Ass'n v. Mungo*, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991)).

3. “The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regards to the facts and circumstances of each case.” *Id.* at 281, 672 S.E.2d at 819 (quoting *Guignard v. Atkins*, 282 S.C. 61, 66, 317 S.E.2d 137, 140 (Ct. App. 1984)).

4. “A court may order specific performance if: (1) a valid contract exists between the parties; (2) no adequate remedy at law exists for the breach; (3) specific performance is equitable between the parties; and (4) no fraud, accident, or mistake infects the contract. *Time Warner Cable*, 381 S.C. at 281, 672 S.E.2d at 819. It is undisputed that the parties in this case had a valid contract between them. Furthermore, the Court finds that there was no fraud, accident, or mistake which infects the contract.

5. An action for specific performance is one in equity and should be granted only if there is no adequate remedy at law and a decree of specific performance of the contract would be equitable between the parties. *Ingram v. Kasey's Assocs.*, 531 S.E.2d 287 (S.C. 2000).

6. Defendant has asserted the defense of the statute of limitations found in S.C. Code Ann. § 15-3-530(1). However, as this action sounds in equity as one for specific performance the statute of limitations does not apply. *See Parr v. Parr*, 268 S.C. 58, 67, 231 S.E.2d 695, 699 (1977) (citing, *inter alia*, *Blackwell v. Ryan*, 21 S.C. 112 (1884))

7. Any ambiguity in the terms of that Agreement will be construed against Curl as he is the party responsible for drafting the contract. “Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.” *Ecclesiastes Prod. Ministries v. Outparcel Assoc., LLC*, 374 S.C.

483, 499-500, 649 S.E.2d 494, 502 (Ct. App. 2007) (quoting *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981)).

8. The Court finds that the terms of the agreement as they relate to the transfer of the shares was that Plaintiff was entitled to 1% for each year that the corporation was profitable and that such transfer was not conditional on there being 3 years of profitability total. Furthermore, the Court finds that the term as to the first fiscal year, when construed against Curl, was the first fiscal year that FCT was owned by Plaintiff and Defendant. Therefore, the first full fiscal year for FCT was 2007.

9. Because the issue in this matter concerns the ownership of 3% of the stock in a closely held company, there is no adequate remedy at law for Parker. See *Stafford v. Southern Vanity Magazine*, 231 S.W.3d 530 (Tex. Ct. App. 2007); and *U.S. Dimension Products, Inc. v. Tassette, Inc.*, 290 A.2d 634 (Del. 1972). It is very difficult to place a value on the 3% of stock at issue in this case since that percentage ultimately determines who controls FCT. See *Lineberger v. Welch*, 290 A.2d 847 (Del. Ch. 1972).

10. Although appropriately raised by Curl at trial, Parker's claim is not barred by the doctrine of laches. "Laches is the neglect for an unreasonable and unexplained amount of time, under circumstances permitting diligence, to do what in law should have been done." *Mid-State Trust, II v. Wright*, 323 S.C. 303, 307, 474 S.E.2d 421, 423 (1996). Whether laches applies in a given case is highly fact-specific so that each case must be judge on its own merits. *Id.*, 474 S.E.2d at 423-24. "[T]he party asserting laches must show it has been materially prejudiced by the other party's delay." *Id.*, 474 S.E.2d at 423.

11. Any delay by Parker in bringing this action to demand the issuance of the 3% from Curl was reasonable under the circumstances. Both parties failed to pay attention to corporate

formalities and it is unclear as to whether Curl or Parker were ever issued any shares of stock. Furthermore, Curl has been unable to demonstrate any material prejudice.

12. After having listened to the evidence, observing the demeanor of the parties, and their testimony, I find that it would be inequitable to order specific performance – a transfer of the Curl shares to Parker. This conclusion is based upon the unclean hands of Parker as the Court finds in the following respects (all such actions are a breach of his fiduciary duty and duty of loyalty to FCT and Curl³):

- a. Parker breached the fiduciary duty that he owed to his fellow shareholder Curl by operating FCC and Palmetto Floor Covering, competing businesses to FCT;
- b. Parker usurped corporate opportunities available to FCT;
- c. Parker and FCC acted as a wholesaler to FCT which amounted to self-dealing;
- d. Parker allowed FCT's employee Lisa Shelton to work for FCC while FCT paid her;
- e. Parker had his business Palmetto Floor Covering charge FCT for installation services that could have been performed by FCT employees.
- f. Parker has failed to timely file the tax returns for FCT despite his position as the daily operations manager with the ability to provide the supporting documentation necessary for the preparation of FCT's tax returns. As of the day of the trial Parker had still failed to have the 2016 and 2017 tax returns prepared;

³ Parker as both an officer and director of FCT owed fiduciary duties to both FCT and to Curl individually. *See* S.C. Code Ann. § 30-8-300, -420; *see also* § -420 South Carolina Reporters' Comments ("After detailed discussion and analysis, the decision was made to retain mention in this provision of a direct duty owed to shareholders."). These duties are the statutory codification of common law duties that long been recognized in South Carolina. *See Black v. Simpson*, 94 S.C. 312, 77 S.E. 1023 (1913).

- g. Parker has failed to provide required documentation to FCT's creditor Synovus Bank who has repeatedly requested that Parker provide FCT's tax returns;
- h. Parker has failed to timely pay FCT vendors and its lessor Curl Properties, LLC while at the same time continuing to pay himself and his wife's salary and benefits.

In sum, Parker has come into this Court seeking equity but he has done so with "unclean hands." As such he is barred from obtaining the requested equitable relief of specific performance and for a permanent injunction.

12. "A party with unclean hands is precluded from recovering in equity." *Anderson County v. Preston*, 420 S.C. 546, 578, 804 S.E.2d 282, 298 (Ct. App. 2017) *cert. granted* March 29, 2018. "A party will have unclean hands where the party behaves 'unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.'" *Anderson v. Buonforte*, 365 S.C. 482, 493, 617 S.E.2d 750, 756 (Ct. App. 2005) (internal citations omitted).

13. Specific performance is not a remedy that either party can demand as of right, but instead is one that will only be granted when strictly equitable and just. *Kirkley v. Jones*, 550 S.E.2d 686, 690 (Ga. Ct. App. 2001). "Specific performance is an equitable remedy, committed to the [trial] court's sound discretion. As an equitable remedy, it may be denied to a party whose own conduct is inequitable." *United States v. Bedford Assoc.*, 657 F.2d 1300, 1314 (2nd Cir. 1981). "This is so even though the plaintiff's conduct was not so egregious as to constitute a defense in law." *Id.*

14. Here Plaintiff has acted unfairly towards Defendant by breaching the fiduciary duties he owed to him and to FCT. He who seeks equity must come in equity to gain relief. Therefore,

considering all the facts and circumstances of this case, it would be inequitable of this Court to order specific performance of the contract.

15. The preliminary injunction in this case being no longer necessary ought to be, and hereby is, dissolved.

CONCLUSION

For the foregoing reasons, it is therefore **ORDERED, ADJUDGED, AND DECREED** that the Plaintiff's request for specific performance for the transfer of shares from the Defendant to the Plaintiff is **DENIED**. The Plaintiff's request for a permanent injunction is likewise **DENIED**. The preliminary injunction issued by this Court on November 19, 2018, is hereby dissolved effective immediately.

AND IT IS SO ORDERED!

Dated April 25, 2019

/s/ Michael G. Nettles

Florence, South Carolina

Presiding Judge, Twelfth Judicial Circuit



Florence Common Pleas

Case Caption: Walt Parker VS John C Curl

Case Number: 2018CP2102958

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2019-04-26 17:27:30 page 11 of 11

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2102958

Walt Parker
PLAINTIFF(S)

John C Curl et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's motions for summary judgment and for dissolution of the temporary injunction are DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/22/2019 .

Palmetto Floor Covering Installation
Florence Custom Countertops Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Florence Common Pleas

Case Caption: Walt Parker VS John C Curl

Case Number: 2018CP2102958

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C/A NO. 2018-CP-21-02958
	)	
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER FOR
	)	PRELIMINARY INJUNCTION
JOHN C. CURL,	)	
	)	
Defendant.	)	
	)	

This matter came on before me to be heard the 13th day of November 2018 in open court. The parties were present and appeared through their attorneys. The presentations included affidavits from the parties, attachments thereto, certain corporate records, and the representations and arguments of counsel.

The immediate issue before this Court is whether to grant a preliminary injunction pending a trial on the merits of the Declaratory Judgment action filed by Plaintiff.

THE CASE

Plaintiff filed his Complaint for a Declaratory Judgment on November 8, 2018, along with a Motion for Temporary Restraining Order and Memo in Support. Further supported with the Affidavit of Plaintiff, after notice to the Defendant's attorney, this Court granted a Temporary Restraining Order on November 9, from which this hearing followed.

Service was formally accomplished by acceptance filed November 15, 2018. No answer yet being due, none has been filed.

FINDINGS OF FACT

On January 14, 1964 Florence Carpet and Linoleum, Inc. was formed as a South Carolina corporation with an authorized capital of 200 shares. On September 3, 1969, at which time it had issued 30 shares of capital stock, the Company changed its name to Florence Carpet & Tile, Inc. On April 30, 2007, the Carnell family sold all the stock of the Company and all its assets to the parties hereto, Messrs. Parker and Curl.

Contemporaneous with that purchase, the parties had a "Shareholders Meeting" and agreed that Mr. Curl would be a 53% shareholder and Mr. Parker a 47% shareholder; they also agreed to "a transfer of share ownership from Curl to Parker within the period of the first five years of 1% of share ownership from Curl to Parker for each complete fiscal year of operation of said corporation at a profit as determined by the accountant for the corporation, up to a total of 3 percentage points, the effect of which would be to allow for an ownership of fifty (50%) percent to Curl and fifty (50%) percent to Parker if the corporation operated at such profit for a minimum of three of the first five years." No shares have ever been issued to Curl; no shares have ever been issued to Parker. Florence Carpet & Tile, Inc. has not observed the corporate formalities.

The Federal tax returns and the Company financial records, all prepared by the Company's accountant, Ann Marie Hanna, reflect that the Company made approximately \$153,000 income before taxes for the fiscal year ending December 31, 2007, \$127,657 for the year ending December 31, 2010, and \$22,119 for the fiscal year ending December 31, 2011.

The officers of the Company are Walt Parker, President, John C. Curl, Vice President, and Allison Parker, Secretary. The same three individuals comprise the Board of Directors.

This Court has not been furnished with any minutes of Shareholders or Directors Meetings reflecting the formal election of any directors or officers, and is informed that no such minutes exist. The Affidavit of Parker, undisputed in this regard, the tax returns, and other paperwork of the Company are consistent with these *de-facto* officers and directors serving.

The Defendant Curl, through a corporation entirely owned by him, is the Landlord for Florence Carpet & Tile, Inc. The Tenant has not paid rent for several months, going back into 2017. The Tenant contends that the Landlord has not maintained the facility as it should. No litigation has been filed by Curl Properties, Inc. or Florence Carpet & Tile, Inc. with respect to their Landlord/Tenant issues in dispute.

The principal creditors of Florence Carpet & Tile, Inc. are a purchase money note to the former owner and a note to the Company's primary lender, Synovus Bank. The parties hereto are each a guarantor of the Carnell and Synovus obligations.

The Defendant contends the monthly payments to these primary creditors are delinquent; the Plaintiff denies the delinquency. There is no evidence before the Court allowing it to evaluate what the creditors believe to be the case.

The State and Federal income tax returns for 2016 and 2017 have not been filed. The Defendant argues this is the fault of the Plaintiff, but the Plaintiff argues that it is the fault of the Company accountant selected by the Defendant. There is no evidence before this Court as to whether extensions have been granted or otherwise addressing the obligations of the accountant.

The Defendant, as "majority shareholder", has called a Shareholders Meeting for the purpose of enacting by-laws and electing directors. The Plaintiff contends that the Defendant is not a majority shareholder not only because the Company was profitable in three of its first five full fiscal

years following April 30, 2007, but also because the Defendant agreed to waive compliance with that provision upon the absorption into Florence Carpet & Tile, Inc. of the Plaintiff's granite business. The Plaintiff contends there was a *quid pro quo* for that absorption, equal ownership.

The Plaintiff has made *prima facie* showing that he is likely to succeed on the merits:

1. Florence Carpet & Tile, Inc. appears to have been profitable in 3 of the first 5 full fiscal years following April 30, 2007;
2. The Plaintiff's action in reliance upon the agreement to equalize the ownership in exchange for an absorption of the granite business into Florence Carpet & Tile, Inc. would be a sufficient *quid pro quo*;
3. If the result of the Corporation's failure to observe any corporate formalities results in a *de jure* partnership, then a majority vote of the partners in some circumstances and a unanimous vote of the partners in other circumstances is required to effect partnership action.

John Curl's intentions at the Shareholders Meeting are to install himself, Plaintiff Parker, and his own nephew on the Board of Directors. It is also his intention to thereafter to conduct a Board of Directors meeting at which he and his nephew will assume full control of the conduct and affairs of the Corporation, as majority Directors, including the installation of new corporate officers.

If the Plaintiff prevails in this litigation, a court would declare him the owner of 50% of the shares of the Corporation. At all future shareholders meetings following such a successful outcome in the litigation, the practical effect is the same as if the Plaintiff were to lose the litigation: an irreplaceable, unremovable majority of the directors of the Corporation would be in place, free to direct action of the Corporation in all its ways. Over-reaching or unlawful decisions could be subject to remedies at law, but most of the other decisions would not. All action taken in that vast middle

ground occupied by business judgment and discretion would be beyond the control or influence of one 50% shareholder in the Corporation and totally within the domination of the other 50% shareholder in the Corporation. This Plaintiff would then be without an adequate remedy at law for the frustration of his ownership interest: an equal voice in judgment calls .

CONCLUSIONS OF LAW

An action for an injunction is equitable. Blanks v. Rawson, 296 S.C. 110, 370 S.E.2d 890 (Ct. App. 1988); accord Richland County v. Kaiser, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002). An injunction is not granted as a matter of legal right but is granted when a review of all of the evidence establishes that it is necessary to prevent irreparable harm. Metts v. Wenberg, 158 S.C. 411, 155 S.E. 734 (1930); Transcontinental Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 167 S.E.2d 313 (1969); see also Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc., 360 S.C. 473, 602 S.E.2d 83 (Ct. App. 2004).

Ordinarily the purpose of a temporary injunction is merely to preserve the existing status during the litigation, and as a rule, subject to some exceptions, it will not be allowed to have the effect of transferring the possession of property from a litigant in possession to another who claims the right to possession. Atlantic Coast Lumber Corp. v. E.P. Burton Lumber Co., 89 S.C. 143, 145, 71 S.E. 820, 820 (1911). "In case of property rights the purpose is to preserve the *status quo* pending litigation." County Council of Charleston v. Felkel, 244 S.C. 480, 484, 137 S.E.2d 577, 578 (1964). See also, ODS Tech., L.P. v. Marshall, 832 A.2d 1254 (Del. Ch. Ct. 2003) which found where the purpose of the shareholders meeting is designed to frustrate the ownership interest of a shareholder,

this constitutes irrevocable injury for which a preliminary injunction is appropriate. Rule 65, SCRCP, now governs injunctions.

Transcontinental Gas Pipe Line Corporation v. Porter, 252 S.C. 478, 167 S.E.2d 313 (1969),

is the leading South Carolina case on temporary injunctions. There, our Supreme Court held:

The two essential conditions to the granting of a temporary injunction were thus stated in Childs v. City of Columbia, 87 S.C. 566, 568, 70 S.E. 296, 297, 34 L.R.A., N.S., 542: 'First, the complaint must allege facts which appear to be sufficient to constitute a cause of action for injunction; and, second, on the entire showing from both sides it must appear, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation.'

It is well settled that, in determining whether a temporary injunction should issue, the merits of the case are not to be considered, except in so far as they may enable the court to determine whether a prima facie showing has been made. **When a prima facie showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.** Alderman & Sons Co. v. Wilson, 69 S.C. 156, 48 S.E. 85 (1904).

(emph. supp.)

In Helsel v. City of North Myrtle Beach, 307 S.C. 29, 413 S.E.2d 824 (1992), the South Carolina Supreme Court held:

The sole purpose of a temporary injunction is to avoid irreparable injury to a plaintiff pending final adjudication of a case. Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. Roberts v. Union County Board of School Trustees, 284 S.C. 299, 301, 326 S.E.2d 163, 164 (Ct. App. 1985). Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits. Columbia Broadcasting System, Inc. v. Custom Recording Co., Inc., 258 S.C. 465, 471-72, 189 S.E.2d 305, 308 (1972).

307 S.C. at 32, 413 S.E.2d at 826.

Under the Uniform Partnership Act, all partners have equal rights in the management and conduct of the partnership business and any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but action in contravention of any agreement between the partners may not be done without the consent of all the partners. S.C. Code Ann. § 33-41-510(5)(8).

A temporary injunction may issue only upon the giving of security by the applicant in such sum as the court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. Rule 65(c) SCRPC.

Plaintiff Parker has made *prima facie* showing that he is entitled to injunctive relief. Of the two essential conditions stated in *Childs v. City of Columbia*, supra, (1) the complaint alleges facts which appear to be sufficient to constitute a cause of action for injunction and (2) on the entire showing from both sides it appears, in view of all the circumstances, that an injunction is reasonably necessary to protect the legal rights of the Plaintiff pending the litigation. *Op. cit.* at S.C. 568. The preliminary injunction to be granted here will have the effect of preserving the *status quo* pending the outcome of the litigation.

It is therefore **ordered** as follows:

1. The Parties shall refrain from taking any action to disturb or change the current composition of the Board of Directors, the management, or the operation of Florence Carpet & Tile, Inc. without the consent of the other party.
2. The Parties are further enjoined and restrained from taking any action to add a director, to remove or replace officers, or to take any material action relating to the management or

operation of Florence Carpet & Tile, Inc. without the consent of the other party.

3. It is further ordered that the Plaintiff shall give security in the amount of \$30,000 for the payment of such costs and damages as may be incurred or suffered by the Defendant if the Defendant is hereafter found to have been wrongfully enjoined or restrained.

IT IS SO ORDERED.

/s/ Michael G. Nettles
Presiding Judge, Twelfth Judicial Circuit

November 19, 2018

Florence, South Carolina



Florence Common Pleas

Case Caption: Walt Parker VS John C Curl

Case Number: 2018CP2102958

Type: Order/Temporary Injunction

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2018-11-19 09:57:45 page 9 of 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	Case No.: 2018-CP-21-02958
	)	
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TEMPORARY RESTRAINING ORDER
	)	
JOHN C. CURL,	)	
	)	
Defendant.	)	
	)	

This matter came before me to be heard, *ex parte*, on the 9th day of November 2018, in Chambers. The Plaintiff appeared by and through his attorney, representing to the Court that he had attempted to give notice of the application for a temporary restraining order to the Defendant, through his attorney, Jeffrey L. Payne, by voice mail and by e-mail. The Defendant did not appear.

In his application for this Order, the Plaintiff exhibited his Complaint, the Affidavit of Walt Parker, and the attachments to the Affidavit of Walt Parker.

Based upon the representations made to the Court and the filings of record, it appears that the Company has a shareholders meeting scheduled for Tuesday, November 13 for the purpose of adopting by-laws and electing directors. It appears that no shares have been issued but that there is a dispute between the only two (2) existing shareholders, this Plaintiff and this Defendant, as to the ownership. The Plaintiff contends that the ownership is equally divided; the Defendant has asserted in the notice of the shareholders meeting that he owns a "majority" of the shares in the Company.

For the purposes of considering this Order, the Plaintiff has clearly established a

shareholder right in need of protection, that irrevocable injury will occur to him in the absence of an injunction, that there is no adequate remedy at law, and a likelihood of success on the merits. *See Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

The Affidavit of the Plaintiff and the documentary evidence attached to it are strong evidence that the Plaintiff is a shareholder. Similarly, if his testimony is accepted by the trier of fact at the hearing scheduled for November 13, and the shareholder meeting does occur, and if the Defendant acts as his attorney has stated he intends to act, then the Plaintiff will be a minority director (1 of 3) in a company of which he owns half. If the Plaintiff owns only half, he will be without power to ever change the number or composition of the Board of Directors because all votes after November 13 will be deadlocked. Thus, the harm to the Plaintiff would be irrevocable and irreparable. *See ODS Tech., L.P. v. Marshall*, 832 A.2d 1254 (Del. Ch. Ct. 2003) (Finding that where the purpose of a shareholders meeting is designed to frustrate the ownership interest of a shareholder this constitutes irreparable injury for which a preliminary injunction is appropriate).

The Plaintiff's showing has established his entitlement to a temporary restraining order and he will be granted one pending a hearing on a preliminary injunction. The hearing for the preliminary injunction will occur on November 13, 2018 at 1:30 p.m. in the Court of Common Pleas, Florence County.

Until further order of the Court,

THEREFORE, the Defendant is hereby temporarily restrained and enjoined from taking any action injurious to the current state of affairs of Florence Carpet & Tile, Inc. relating to its management, administration, and operation.

The Defendant is further enjoined and shall refrain from taking any action disputing the Plaintiff's claim to ownership of 50% in the Company, to add a director, to remove or replace officers, or to take any material action in the management or operation of the Company without the consent of the Plaintiff. It goes without saying the Plaintiff has no power to take any such action, but in an abundance of caution, he is identically enjoined and restrained.

IT IS SO ORDERED.

/s/ Michael G. Nettles
Presiding Judge, Twelfth Judicial Circuit

November 9, 2018
Florence, South Carolina



Florence Common Pleas

Case Caption: Walt Parker VS John C Curl
Case Number: 2018CP2102958
Type: Order/Temporary Restraining Order

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2018-11-09 11:27:41 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Case No.: 2018-CP-21-_____
WALT PARKER,	)	
	)	
Plaintiff,	)	MOTION FOR TEMPORARY
	)	RESTRAINING ORDER AND
vs.	)	TEMPORARY INJUNCTION
	)	
JOHN C. CURL,	)	PRIORITY MATTER
	)	
Defendant.	)	
_____	)	

The Plaintiff hereby moves for a Temporary Restraining Order, based upon the Complaint and the Affidavit of Walt Parker, restraining and enjoining the Defendant from doing changing the Board of Directors of the Corporation or changing the Officers of the Corporation and/or voting to effect any such changes.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: s/Reynolds Williams
 Reynolds Williams #006153
 PO Box 1909
 Florence, S C 29503-1909
 (843) 662-3258 - Tel.
 (843) 662-1342 - Fax
 Email: Reynolds@WillcoxLaw.com
 Attorney for Plaintiff

November 8, 2018
 Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C/A NO. 2018-CP-21-_____
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(DECLARATORY JUDGMENT)
JOHN C. CURL,	)	
	)	(NON-JURY TRIAL DEMANDED)
Defendant.	)	
_____	)	

Plaintiff complains of the Defendant as follows:

1. The Plaintiff, Walt Parker ("Parker") is a citizen and resident of Florence County, South Carolina, as is the Defendant, John C. Curl ("Curl").
2. The Plaintiff is the President of Florence Carpet & Tile, Inc. (the "Company") and a Director in that Company. The Defendant is also a Director in the Company, along with Allison Parker.
3. The Company was originally incorporated under the laws of the State of South Carolina, on January 14, 1964, under the name "Florence Carpet and Linoleum, Inc." with an authorized capital of 200 shares. Its name was changed to "Florence Carpet & Tile, Inc." on September 2, 1969, at which time it issued thirty shares.
4. On the 30th day of April 2007, the Plaintiff and the Defendant purchased all of the shares in the Company from Mr. and Mrs. Charles W. Carnell.
5. On April 30, 2007, the Parties agreed that John C. Curl (a 53% shareholder in the Company) and Walter A. Parker (a 47% shareholder in the Company) would agree for a transfer

of share ownership from Curl to Parker within the period of the first five (5) years of 1% of share ownership from Curl to Parker for "each complete fiscal year of operation of said corporation at a profit as determined by the accountant for the corporation, up to a total of 3 percentage points," the effect of which would be 50/50 percent ownership "if the corporation operated at such profit for a minimum of three of the first five years."

6. The Certified Public Accountant for the Company, Anne Marie Hanna, determined that it was profitable for fiscal/calendar year 2007, 2010, and 2011.

7. The Plaintiff started a granite business that showed early success. John Curl offered to make an early conveyance of three percent of the Company shares if Plaintiff would incorporate the granite business into the Company. Acting, in reliance on the oral promise, Plaintiff did incorporate the business into the Company, where it has operated ever since.

8. John C. Curl contends that he still the "majority shareholder" of the Company; the Plaintiff contends that he and Curl are each 50% shareholders.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

9. This action is brought in part pursuant to S.C. Code Ann. 15-53-10 et seq., the Uniform Declaratory Judgments Act. Plaintiff seeks a declaration of the parties' rights and obligations under the transactions between them, specifically the Purchase Agreement dated April 30, 2007 and/or the oral contract described in Paragraph 7. Further, this is an action for breach of contract and permanent injunctive relief.

10. The Defendant has failed to transfer or to direct or authorize the appropriate Corporate Officers to transfer, 3% of his ownership in the Company to Walter A. Parker.

11. That failure constitutes a material breach of the contract memorialized in the Purchase Agreement dated April 30, 2007 and otherwise.

**FOR A SECOND CAUSE OF ACTION
(Permanent Injunction)**

12. The Plaintiff is entitled to an order from the court permanently enjoining the Defendant from acting in a way which contravenes, diminishes, repudiates, disparages, or otherwise denies the Plaintiff's ownership of 50% of the Company.

WHEREFORE, the Plaintiff prays the Defendant be compelled to sign the necessary papers to reflect the true ownership, or consent to such action by the Company officers, and to refrain from otherwise disputing the Plaintiff's 50% ownership of the Company.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: s/Reynolds Williams
Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiff

Florence, SC
November 8, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	CIVIL ACTION NO. 2018-CP-21-2958
Walt Parker	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT
	)	
John C. Curl	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, John C. Curl, who being duly sworn deposes and says as follows:

1. On April 30, 2007, pursuant to a Stock Sale Agreement ("Stock Sale Agreement"), John Curl and Walter Parker purchased the stock ("Stock") of Florence Carpet & Tile, Inc. from Charles W. Camell, with John Curl acquiring a 53% interest in FCT while Walt Parker acquired a 47% interest. The total purchase price was \$1,080,000 with the seller financing \$530,000 and BB&T financing the remaining 47%. My company Curl Properties, Walt Parker and I had to personally guarantee both loans.
2. As part of the consideration for the purchase of the Stock, Carnell was required to continue to work for FCT as a consultant until October 30, 2017. His compensation was factored into the purchase price and it was valued at \$95,000 per year or \$260.27 per day.
3. It was specifically agreed on April 30, 2007 at a meeting on the Shareholders of FCT that I would own 53% of the Stock while Walt Parker would own 47%. See minutes attached hereto as Exhibit A.
4. As is set forth in the attached minutes from the April 30, 2007 shareholder meeting, Walt Parker was only entitled to additional shares of my stock if (a) FCT made a profit for a "complete year of operation"; and (2) the FCT profit occurred for a minimum of three of the first five years.
5. After we purchased the Stock in April 2007, according to the FCT accountant, Anne Marie Hanna, the only profitable years for FCT "for a complete fiscal year of operation" occurred in 2010. Thus, no additional shares were ever issued by FCT or me to Walt Parker and that is why Mr. Parker has been unable to provide any shares or other document that indicates that he now owns 50% of the FCT stock.
6. Since I purchased the 53% interest in FCT in 2007, FCT lost almost \$500,000 during 2008-2013. Walt Parker was in charge of running the business during all of these years. I believe that FCT has also lost money in 2016 and 2017 but Walt Parker has failed to provide the

FCT accountant with the necessary information to allow her to complete the financial statements and tax returns for those years.

7. Despite numerous requests by me and our bank Synovus, Walt Parker has failed to have the tax returns FCT prepared for the years 2016 and 2017.

8. A company that I own, Curl Properties, LLC, is the owner of the building from which FCT operates. FCT has been leasing this building since April 2007. A true and correct copy of the lease ("Lease") is attached hereto as Exhibit B. In April 2012, FCT and Curl Properties signed a First Amendment to the Commercial Real Estate Lease which provided a five year extension for the Lease and it further provided that it would automatically extend for an additional 5 years unless either party terminated it. See Exhibit B. Neither party has terminated the Lease and it is still in effect.

9. Walt Parker and FCT have failed to pay Curl Properties rent for approximately 10 months with approximately \$125,000 currently owed to Curl Properties, without any late fees added thereto.

10. Under Walt Parker's supervision, FCT now lacks the necessary capital to conduct its business. In October 2018, FCT's business manager Mike Barker contacted me and informed me that FCT was unable to purchase \$40,000 worth of materials needed for a large job. FCT's lender Synovus refused to loan it the \$40,000 since FCT was past due on its loan payments to the bank and it had failed to provide the bank with its 2016 and 2017 tax returns despite repeated requests. As a consequence, I was forced to borrow \$40,000 in November 2018 and then loan it to FCT so that it could purchase the needed materials.

11. Walt Parker did not loan FCT the necessary \$40,000 in November 2018 and thus, I was forced to loan this money to the company.

12. Despite being unable to pay FCT's rent or pay for needed supplies, Walt Parker has continued to retain his wife and his son as employees and to keep them on the FCT payroll. I have also recently learned that he has also continued to use FCT money to purchase health insurance for his family at a cost of approximately \$1,500 a month despite my instructions to him to cease this benefit, which he promised that he would do. In addition to these personal benefits Walt Parker also supplies each of his family members including non-employees such as his father and his children with cell phones, all of which are paid by FCT.

13. I have never agreed to provide any additional shares of FCT to Walt Parker as a result of any granite business. In 2011 or 2012, Walt began allowing a company called Florence Custom Countertops, Inc to operate at the FCT location. Walt denied that he had any ownership in FCC and informed me that it would be paying rent and overhead. I subsequently learned in 2012 from the Secretary of State's website that Walt was the registered agent of FCC. I emailed him the letter attached hereto as Exhibit C on July 8, 2012 and demanded that FCC cease its operations at FCT.

14. In 2011 or 2012, I discovered that Walt Parker, while supposedly devoting 100% of his efforts to operating FCT, also owned and operated a business called Palmetto Floor Covering Installation, LLC which handled flooring installations. FCT made money handling installations I

was outraged when I discovered this. I confronted Walt Parker immediately of this conflict of interest and wrote him the letter attached as Exhibit C to address this conflict of interest issue.

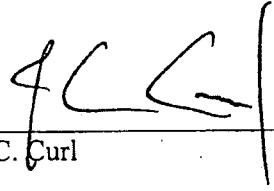
15. I will be the one that will suffer irreparable damage, loss and harm should I as the majority shareholder be prevented from changing the management of FCT. I have personally guaranteed the following debts for FCT which as of October 5, 2018 have the outstanding balances indicated below:

- a. Synovus - Bank Note - \$110,441 ("Synovus Note")
- b. Synovus - Credit Line - \$74,882
- c. Carnell Note - \$364,551

16. FCT also owes Curl Properties, as of October 5, 2018, the following sums that my company has been forced to loan FCT:

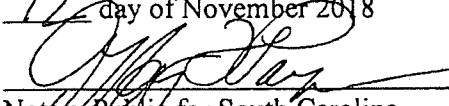
- a. Refinance of BB&T Loans (May 2011) - \$164,613
- b. Credit Card Charges for Materials \$ 21,000
- c. Synovus Loan (November 2018) \$ 40,000
- Total \$225,613

17. FCT, under Mr. Parker's guidance and control, has failed to timely make the two most recent payments on the Synovus Note. If Synovus calls the Note or its Credit Line, I am the one that will be forced to pay. These are significant sums and would cause me much financial harm. Mr. Parker has nothing to lose in this situation. He continues to pay himself, his wife and son and receives the other benefits from FCT. The longer he drags this out the more he receives. I, on the other hand, have never received a salary or other benefit from FCT. No cash, no vehicles, no cell phones, nothing. Yet, I am the one that will suffer significant losses if something does not change immediately with the operation of FCT.


John C. Curl

SWORN to before me this

12 day of November 2018


Notary Public for South Carolina

My Commission Expires: 4-11-2020

FLORENCE CARPET & TILE, INC.

MINUTES OF CALLED MEETING

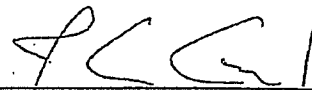
OF SHAREHOLDERS

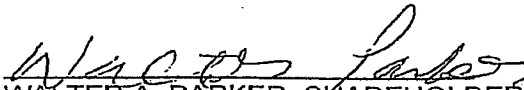
APRIL 30th, 2007

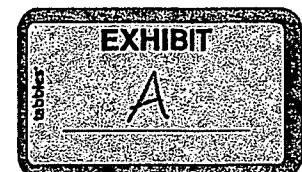
John C. Curl and Walter A. Parker, being the sole shareholders of this corporation convened in a called meeting on the above date. Notice was waived.

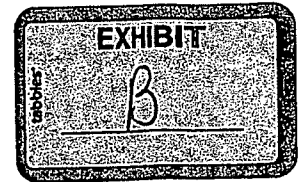
At this meeting, in consideration of their mutual promises and the sums of Five (\$5.00) Dollars in hand paid as acknowledged, the shareholders agreed that John C. Curl as fifty three (53%) per cent shareholder and Walter A. Parker as forty seven (47%) per cent shareholder, would agree for a transfer of share ownership from Curl to Parker within the period of the first five years of one per cent of share ownership from Curl to Parker for each complete fiscal year of operation of said corporation at a profit as determined by the accountant for the corporation, up to a total of 3 percentage points, the effect of which would be to allow for an ownership of fifty (50%) per cent to Curl and fifty (50%) per cent to Parker if the corporation operated at such profit for a minimum of three of the first five years.

The shareholders agreed also that the corporation would take out a life insurance policy upon each shareholder in a face amount of \$1,080,000.00, each naming as primary beneficiaries the creditors related to the purchase by the shareholders of the corporation, that is, Branch Banking and Trust Company of South Carolina first and Charles W. Carnell and Barbara E. Carnell second; as overall secondary beneficiaries after such creditors, the corporation itself would be the remaining beneficiary. The intent is that insurance proceeds would be available to pay any sums then owing to such creditors and no more. All remaining policy benefits would, as stated hereinabove, be made payable to the corporation itself as the secondary beneficiary.


JOHN C. CURL, SHAREHOLDER


WALTER A. PARKER, SHAREHOLDER





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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

LEASE

THIS AGREEMENT MADE AND ENTERED INTO THIS ^{30th} 6th day of April, 2007 ^E
between Curl Properties, LLC, hereinafter known as Lessor and Florence Carpet and Tile, Inc., hereinafter
known as Lessee:

WITNESSETH:

1. That the Lessor, for and in consideration of the rents, covenants and agreements
hereinafter set out, have this day demised, leased and rented unto the Lessee, for the term stated, the
following described property: 1706 Pamplico Highway in Florence, SC.

Together with all and singular the rights, privileges and appurtenances thereunto
belonging.

2. TO HAVE AND TO HOLD the above described property with the rights, privileges
and appurtenances thereunto belonging unto the Lessee upon payment of rents as below described for the
term of five (5) year(s), beginning on April ^{30th} 9th, 2007 and ending on April ^{24th} 8th, 2012,

3. In consideration of the lease of the above described property to the Lessee by the
Lessor, the Lessee promises to pay for the first year (12 months) of the within lease the sum of Eleven
Thousand and Three Hundred Dollars (\$11,300.00) per month. Thereafter, the annual rent shall be
increased by two percent (2%) for each twelve month period of the lease term. The first such amount shall
be payable upon the signing of the within lease, beginning April ^{30th} 9th, 2007 and continuing each month
thereafter for the balance of the leased term. All payments are to be made on the first day of each and
every month of the term of the within lease. If said monthly payments as set out above are in default for
more than fifteen (15) days following due date, the Lessor may declare the within lease canceled and
collect for the term, together with costs and attorney's fees. Failure to exercise option by the Lessor in case
of default in the payment of any monthly installment shall not constitute a waiver of their rights to exercise
the same in the event of any subsequent default. In event of default as aforesaid, the Lessor reserves the

right to forthwith take possession of said property with or without legal action without waiving any rights of collection of all delinquent rents and other damages due to Lessor by virtue of breach of this agreement.

4. That upon signing of the within lease by the Lessee, the Lessee agrees to pay an additional sum of \$() as damage deposit. Upon the expiration of within lease, said damage deposit shall be returned to Lessee less the cost of any damage to said property over and above normal wear and tear in the condition in which said property were received.

5. The Lessee agrees to pay for all services and utilities including lights, heat, air-conditioning, water, gas, electricity, etc., required in the operation of the property. Lessee agrees to keep up all plumbing, electrical or any other interior or exterior portions of the building and to pay for any and all repairs thereto. The Lessee shall also be responsible for the timely payment of all property taxes and property insurance related to and necessary for the protection of the property and all improvements thereon. The Lessee agrees to pay for and maintain general liability insurance for the property with limits comparable to those required by other similar businesses and Lessee shall insure that the Lessor is named as an "additional insured" party to the subject policy.

6. The Lessee shall not sublet the property or assign the within lease without the prior written consent of the Lessor, which consent shall not be arbitrarily withheld.

7. The Lessee shall be responsible for all repairs and renovations, decorations and upkeep to said property. The Lessor shall be responsible only for repairs to the roof of the leased building or any structural portion thereof, and agrees to pay for any necessary repairs to keep roof in good condition and to repair all roof leaks in a reasonable time after notice from the Lessee. The Lessor shall not be responsible to the Lessee for any loss or damage due to leakage from the roof or from any leakage or seepage whatsoever.

8. The Lessee agrees to accept the within described property in its "as-is" condition and shall make all repairs at his/her own expense. Any and all alterations, renovations, remodeling improvements and structural changes desired by the Lessee shall be at Lessee's own expense. Any structural changes desired by the Lessee shall be made by Lessee at his/her own expense and only upon written approval of Lessor.

9. The Lessee further agrees to carry on no form of business constituting a nuisance or involving illegal transaction on the property or in connection therewith; in case illegal business or a nuisance is engaged in on the property or in connection therewith, the within rentals shall accrue and the Lessor may forthwith eject the Lessee from the property and collect for the term including attorney's fee.

10. The Lessor shall not be responsible for injuries or damages to the Lessee, his agents, servants, customers, employees, or assigns, occurring on the property during the term of the within lease, or any renewal thereof, and the Lessee shall hold the Lessor harmless and shall assume full responsibility for all such injuries or damages to property or persons occurring on the property during the term of the within lease or for any damages or injuries of any nature or kind in connection with the use and occupancy of the property from any cause whatsoever.

11. The Lessee shall be responsible for any damages to the said property whether by himself, his agents, servants, customers, employees and assigns, and shall repair such damages at his own expense.

12. The Lessee at his/her own expense will be responsible for contents insurance and general liability insurance.

13. In case of injury or damage to the building from fire or other casualty, the rent shall be abated from time the above described property are not suitable for occupancy, but the Lessor shall have the option to promptly repair the property, or to cancel the within lease, or rebuild if practicable.

14. The air-conditioning and heating equipment are the property of the Lessor and shall not be removed from the premises. The Lessee shall maintain an ongoing preventive maintenance contract with a reputable, insured and bonded contractor and shall be responsible for any and all repairs or replacements that may be required.

15. The Lessee agrees to abide by any rules and plans set forth by the Lessor for the exterior sign in front of the within designated storebuilding and agrees not to place or erect any signage on or around the property without Lessor's prior approval.

16. The Lessee agrees to require all his employees to park in the parking lot in an area located away from the front of said store. The purpose being to leave front parking spaces open and available for customers.

17. The Lessee agrees to keep the front of within leased premises clean, free and clear of trash.

18. Lessee agrees to make all rental checks payable to Curl Properties, LLC and send to the following mailing address: P.O. Box 4815, Florence, SC 29502.

19. The Lessor guarantees the peaceful occupation and enjoyment of the premises to the Lessee during the term hereby provided.

20. The Lessee promises to pay the said rent at the times and in the manner above set out and to quit and deliver up the premises above described to the Lessor peaceably and quietly at the end of the said term in the same condition in which they were received, ordinary wear and tear accepted.

THIS AGREEMENT SHALL be binding upon the parties, hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Lessor and Lessee have hereunto set their hands and seals on the day and in the year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Jim P. Poulas

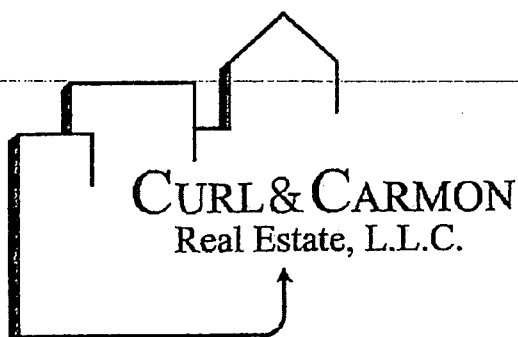
Brendall Hilly
For Lessor

Jim P. Poulas

Brendall Hilly
For Lessee

FCCL
Lessor: Curl Properties, LLC

Walter B. B. B.
Lessee: Florence Carpet and Tile, Inc.



CURL PROPERTIES, LLC

**FIRST AMENDMENT TO
COMMERCIAL REAL ESTATE LEASE**

WHEREAS Curl Properties, LLC, (Lessor) and Florence Carpet and Tile, Inc., (Lessee) executed a Lease Agreement dated April 6th, 2007 for the following property:

1706 Pamplico Highway in Florence, SC and

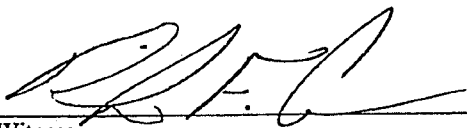
WHEREAS the parties now wish to Amend the subject Lease, then

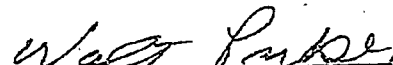
THEREFORE the parties agree to the following Amendments:

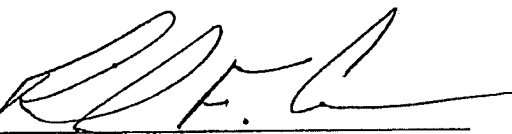
1. Beginning on April 9th, 2012, this lease shall renew for another five (5) year term and the new expiration date shall become April 8th, 2017.
2. Upon expiration of the above renewal term (April 8th, 2017) and each and every renewal term thereafter, provided neither party has notified the other in writing a minimum of ninety (90) days in advance of their desire to terminate, this lease shall automatically renew for consecutive five (5) year terms.

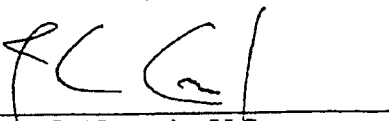
All other terms and provisions of the original Lease Agreement dated April 6th, 2007 shall remain unchanged and in effect.

Agreed to this 16 day of April, 2012.


Witness


Lessee: Florence Carpet and Tile, Inc.


Witness


Lessor: Curl Properties, LLC

Walt,

I have a large number of concerns about the current condition and the future of Florence Carpet & Tile. As you know, I have never had any desire to be involved in the day to day operations of the business, it was agreed that you would be hired as the full time general manager and be responsible for all day to day operations, but as the majority owner and guarantor of the debt I fully expected to be involved and included in any and all decisions requiring capital investment, expansion, or changes to the existing business model or structure.

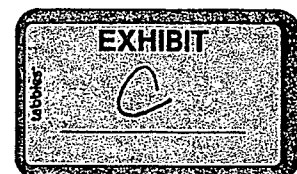
My first and biggest concern is renewing or replacing the current debt with BB&T and Charles Carnell, I have expressed repeatedly for the past two years how important this is and now our options are few. BB&T nor any other bank is willing to take the debt Charles Carnell is owed but Charles has agreed that he would be willing to work with me (but not with you) on refinancing his note if we can work out something with other debt. BB&T "may" be willing to extend the maturity with some additional collateral but will NOT improve the terms. I have talked to multiple banks regarding refinancing and they have all had similar concerns i.e. massive inventory shrinkage (without good explanation) / inventory controls, large losses, and increasing accounts payables. The only bank that is still considering replacing the debt is NBSC in large part because I have a very long relationship with them and I will agree to guarantee the business debt with the real estate. If NBSC commits to loaning the money the underwriting process will be thorough, (not just a real estate appraisal) a complete business evaluation including inventory, receivables, business management, policies & procedures, as well as overall appearance.

Time is of the essence that is why I have been trying to help by asking Kathleen to work the floor while FC&T is under staffed and by getting Burt to help oversee rearranging, cleaning up, and an overall freshening up that is way overdue and either completing or putting away half finished projects (that have been that way for 2+ years). As a favor to me and to help repay some debt, Robert agreed to come out and help get the business office in order, help write some policies & procedures, and create a business plan that the bank will need.

Needless to say I have been very disappointed at the lack of cooperation and willingness to help Burt and Robert accomplish the goal of improving the appearance and financial operations which will make it possible for us to get a new loan.

Next I need to address Florence Custom Countertops, Inc. . When we last spoke about this you told me that you did not own any of this business but according to the SC Secretary of State you are the registered agent and an officer as well as the one that filled the paperwork on 9/27/11. The business arrangement between FC&T and FCC is not working for the following reasons:

- 1) FCC is not reimbursing FC&T the rent being paid for the space its using.
- 2) FCC is not paying its use of power, water, or telephone



3) FCC uses FC&T employees on a regular basis without reimbursement and even causing harm to FC&T i.e. on multiple occasions warehouse staff were working on moving granite and unable to perform tasks needed for Florence Carpet and Tile. Just this week, Kathleen was unable to get Kerdi cut for a customer who walked out since he couldn't wait for Mickey to finish moving granite. The biggest unknown is how much time both you and Lisa spend taking care of granite issues and angry customers of FCC while being paid by FC&T

4) The three partners of FCC are all employees of FC&T two of which are involved in FC&T business decisions and there are no controls in place to monitor an arm's length relationship.

Given all of these factors it is evident that the granite business is increasing risk, liability exposure, and adding costs with small returns for Florence Carpet and Tile. As the majority investor in Florence Carpet and Tile, I feel it is imperative to remove our association with Florence Custom Countertops as soon as possible.

Florence Custom Countertops cannot continue to operate in its current location nor will the two companies continue to share employees. Florence Custom Countertops must relocate by the end of August, 2012. Also, the other business you set up 10/13/11 Palmetto Floor Covering Installation, LLC creates a serious conflict of interest. No FC&T employee should have any ownership interest in any other business doing business with FC&T or in the same type business as FC&T nor should they take any kind of payment from customers, subcontractors, vendors or suppliers in any way shape or form, other than from FC&T. If this has not been understood in the past, I am documenting this in writing with the expectation that you will take immediate action to resolve this issue.

Some of my other concerns includes the large number (at least 7 that I know of) of employees that have left FC&T in the past year, I have talked to most of them and it seems like they all have the same concerns i.e. lack of organization, lack of supervision and training, and a unrealistic expectation of everyone being able to do everything.

While I do not wish to micro manage the business I do feel like an increase of accountability is necessary. My goal is to restore the good reputation and image of FC&T and to make the business successful one again. My hope is that you are willing to address my concerns and come up with a plan to make this happen. Please know that I do appreciate the long hours and hard work that you and others have put in during these tough times.

John Curl

P.S. Ericson is coming in Monday, 7/9 around 10AM to start work. He received another job offer last week and he needed an immediate decision as to whether he had this job. Knowing we are so short handed I thought it best to hire him on a trial basis.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No.: 2018-CP-21-02958
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF WALT PARKER
	)	
JOHN C. CURL,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, WALT PARKER., who first being duly sworn deposes and states as follows:

1. I am a citizen and resident of Florence County and the President, Shareholder, and Director of Florence Carpet & Tile, Inc.
2. Attached to this Affidavit is a copy of the Articles of Incorporation. Also attached is an Agreement made between the other Shareholder, John C. Curl, and me at or about the time the Corporation was formed.
3. The Directors of the Corporation are John C. Curl, Allison Parker, and me. I am the President of the Corporation and the other officer is Allison Parker, Secretary/Treasurer.
4. The Corporation has rarely had formal board meetings but has often operated by unanimous consent of the Shareholders and/or executive action by its Officers.
5. In October, I was served with a Notice of a Shareholders Meeting for the Corporation, a copy of which is attached. The meeting was postponed by agreement of all the Shareholders, but is now scheduled for November 13, 2018. The Notice of the Meeting itself includes a claim by John C. Curl that he is the "Majority Shareholder."
6. The Corporation has been in existence since 1964. John Curl and I became shareholders On May 1, 2007.
7. According to the records maintained by the Corporation's accountant, Anne Marie Hanna, the Corporation was profitable in three (3) of the first five full fiscal years

following the day John Curl and I became shareholders. The fiscal year of the Corporation is a calendar year, and it was profitable in calendar years 2007, 2010, and 2011.

8. According to the Purchase Agreement attached hereto, the determinations having been made by the CPA of the Corporation, John Curl and I are now equal shareholders. No actual share certificates have been issued since the date of the Purchase Agreement.

9. Additionally, John C. Curl agreed to transfer to me 3% of his original ownership in the Company in exchange for me agreeing to transfer into the Company the Granite Store which I had started and owned in September 2011. Acting in reliance upon his promise, I did make that transfer and since 2011, the Granite Store has operated as part and parcel of the Company. The result is that even had the Company not had three (3) profitable years out of its first five once we owned it, there was an independent and separate transaction equalizing the ownership in the Company.

10. Upon information and belief, based upon conversations between my attorney and John Curl's attorney, it is his intention to place his nephew and himself on the Board of Directors, along with me and at some point thereafter to terminate my employment with the Corporation.

11. There is a genuine dispute between John Curl and myself over the ownership of the Corporation. He contends that he owns 53% of the Corporation and that I own 47%. According to the Purchase Agreement, however, we are equal owners in the Corporation.

12. I would be irrevocably harmed were he to elect Directors and cause the Directors thereafter to vote to terminate me. I say irrevocably harmed because when I am shown to be correct, I will have only 50% of the shares of the Company and John Curl will have 50% of its shares, yet his action in contravention of that ownership will have already occurred and I will not thereafter be able to reverse it with my non-majority vote. The result, therefore, will be a permanent, unchangeable adverse result in that I will no longer have my proper share on the Board of Directors and will be out of a job with no chance of overturning the improper decisions.

13. I have filed litigation to resolve these disputes and seek only to preserve the *status quo* until the outcome of the litigation.

FURTHER AFFIANT SAYETH NOT.

Walt Parker
Walt Parker

Sworn to and subscribed before me this
8 day of November, 2018.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/24/26

FILED HEREIN AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

OCT 10 2018

REFERENCE ID: 223369

Mark Hammond
RECEIVED BY STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF INCORPORATION

OF
FLORENCE CARPET AND
LINOLEUM, INC.

For Use By The Secretary of State	
File No.	11
Fee Paid \$	45
C. D.	62
Date	JAN 14 1964

(File This Form in
Duplicate Originals)

(Sect. 4.3 etc. Act of 1002 12-14.1 etc.
Supplement Code 1002)

This Space For Use By The Secretary of State	
SECRETARY OF STATE	
FILED	
JAN 14 1964	
A.M.	P.M.
7/8	9/10/11/12/1/2/14/15/16

- The name of the proposed corporation is Florence Carpet and Linoleum, Inc.
- The initial registered office of the corporation is Route 3, Pamplico Highway
located in the city of _____, county of Florence and
the State of South Carolina and the name of its initial registered agent at such address is George W. Jordan, Jr.
- The period of duration of the corporation shall be perpetual ~~(XXXXXXXXXXXX)~~
- The corporation is authorized to issue shares of stock as follows:

Class of shares	Authorized No. of each class	Per Value
Common	200 Shares	\$100 per share

If shares are divided into two or more classes or if any class of shares is divided into series within a class, the relative rights, preferences, and limitations of the shares of each class, and of each series within a class, are as follows:

- Total authorized capital stock Twenty Thousand (\$20,000.00) Dollars
- It is represented that the corporation will not begin business until there has been paid into the corporation the minimum consideration for the issue of shares, which is \$1,000.00 of which at least \$200.00 is in cash.
- The number of directors constituting the initial board of directors of the corporation is 2, and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify are:

George W. Jordan, Jr., Route 3, Pamplico Highway, Florence, S. C.
Charles W. Carnell, Route 3, Pamplico Highway, Florence, S. C.

THIS DOCUMENT IS A COPY OF THE
ORIGINAL ON FILE IN THIS OFFICE

Oct 19 2018

REFERENCE ID: 223369

Mike Hammond
OFFICE OF THE CLERK

8. The general nature of the business for which the corporation is organized is (it is not necessary to set forth in the purposes powers enumerated in Section 2.2) (12-122 Supplemental Code 1902) to engage in the buying, selling, retailing and installing of carpet, countertops, tile and linoleum and to generally deal in floor covering of any type or nature and to carry on any other acts incident to and connected with this business.

9. Provisions which the incorporators elect to include in the articles of incorporation are as follows:

NONE

ORIGINAL ON FILE IN THIS OFFICE

ARTICLES OF INCORPORATION (Continued)

Oct 10 2018
 REFERENCE TO: 223369

10. The name and address of each incorporator is:

Mark Howard Name Street & Box No. City County State
 George W. Jordan, Jr. Route 3, Pamplico Hyway, Florence, S. C.
 Charles W. Carnell Route 3, Pamplico Hyway, Florence, S. C.

Date January 10, 1964

George W. Jordan Jr
 (Signature of Incorporator)

GEORGE W. JORDAN, JR.
 (Type or Print Name)

Charles W. Carnell
 (Signature of Incorporator)

CHARLES W. CARNELL
 (Type or Print Name)

(Signature of Incorporator)

(Type or Print Name)

CERTIFICATE OF ATTORNEY

11. I, Ralph K. Anderson, Jr., an attorney licensed to practice in the State of South Carolina, certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of chapter 4 of the South Carolina Business Corporation Act of 1962, relating to the organization of corporations, and that in my opinion, the corporation is organized for a lawful purpose.

Date January 10, 1964

Ralph K. Anderson Jr.
 (Signature)

Ralph K. Anderson, Jr.
 (Type or Print Name)

Address 401 South Dargan Street

Florence, South Carolina

SCHEDULE OF FEES

(Payable at time of filing Articles of With Secretary of State)

Fee for filing Articles 5.00
 In addition to the above, \$40 for each
 \$1,000.00 of the aggregate value of shares
 which the Corporation is authorized to
 issue, but in no case less than 40.00
 nor more than 1,000.00

NOTE: THIS FORM MUST BE COMPLETED IN ITS ENTIRETY BEFORE IT WILL BE ACCEPTED FOR FILING.

TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Oct. STATE OF SOUTH CAROLINA

REFERENCE ID: 223369

OF FLORENCE

89:

Mark H. ...
Secretary of State of South Carolina

The undersigned George W. Jordan, Jr. and Charles W. Carnell do hereby certify
that they are the incorporators of Florence Carpet and
Linoleum, Inc. corporation and are authorized to
execute this verification; that each of the undersigned for himself does hereby further certify that he has
read the foregoing document, understands the meaning and purport of the statements therein contain-
ed and the same are true to the best of his information and belief.

Dated at Florence, S. C. this 10th day of January, 1964.

George W. Jordan, Jr.
(Signature of Incorporator)

Charles W. Carnell
(Signature of Incorporator)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE) **STOCK SALE AGREEMENT**

AGREEMENT made effective the 30 day of April, 2007, by and between Charles W. Carnell ("Seller"), owner of all shares of Florence Carpet & Tile, Inc. with its principal place of business in Florence, South Carolina and John C. Curl and Walter A. Parker of Florence, South Carolina ("Buyer") and Barbara E. Carnell.

WITNESSETH:

WHEREAS, Seller, is the owner of all stock in Florence Carpet & Tile, Inc., said corporation owning the furniture, fixtures, furnishings, equipment and appliances and the resaleable inventory of said business and all monies, goodwill, telephone numbers and all other assets; and,

WHEREAS, the Corporation has utilized the aforementioned goodwill, telephone numbers, monies, furniture, furnishings, fixtures, equipment, appliances, supplies, personal property and inventory in the operation of a carpet and flooring and floor covering business located and situate in Florence County, South Carolina; and

Now, therefore, for and in consideration of the mutual covenants, agreements, representations and warranties herein contained, the parties hereto agree as follows:

1. SALE AND PURCHASE OF BUSINESS ASSETS

1.1 Transfer of Stock. Subject to the terms and conditions of this Agreement, Buyer, in reliance upon the representations and warranties of Seller herein made will at the Closing acquire from Seller, and Seller, in reliance upon the representations and warranties of Buyer herein made will at the Closing transfer and convey to Buyer, all stock in Florence Carpet & Tile, Inc., with a leasehold address of 1706 Pamplico Highway, Florence, South Carolina upon certain terms and conditions, as set forth more fully hereinafter.

1.2 Excluded Assets. There shall be excluded from this sale the following: company personal vehicle of each Seller and also a truck situate at Sellers' residence, but titled to the Corporation. The Sellers will be given bills of sale for these vehicles at closing and they will pay off the existing indebtedness on such vehicle from sale proceeds. The parties agree that any insurance upon such vehicles provided by the Corporation will be removed as of closing.

1.3 Encumbrances. The within sale and transfer of corporate stock and Assets shall, at the time of Closing, be free and clear of all obligations, security interests, liens and encumbrances whatsoever, except as described in the Schedule of Encumbrances, and other schedules attached hereto, or unless expressly assumed in writing by Buyer.

defense thereof, the Buyer or escrow agent shall not have the authority to pay such claim as herein above provided, unless and until the claim, in whole or in part, is finally determined to be due and owing, in which event the Buyer and the Seller shall be bound by the foregoing provisions with respect to the payment of claims.

E. FURTHER CONSIDERATION

1. Seller Barbara E. Carnell agrees to continue work with the Corporation, at the option of the Buyer, for up to 6 months at a compensation equal to 10% gross of rug department sales, only. In consideration hereof, Barbara E. Carnell further agrees to execute a non-competition agreement similar to that set forth at paragraph 5(c) below.
2. While Charles W. Carnell and Barbara E. Carnell are working, as set out above, they shall retain coverage under the Corporation's group health insurance program.
3. Following their work, set out above, Charles W. Carnell and Barbara E. Carnell may continue to work as at-will with the Corporation as independent contractor consultants as mutually agreed upon by them, or either of them, and the Buyer and/or Corporation. No health insurance shall be provided by Buyer or Corporation.
4. Charles W. Carnell and Barbara E. Carnell will be reimbursed at the South Carolina rate for corporate vehicle mileage from the business location to and from customer sites and back.

1.5 Closing. The completion of the within contemplated transactions is herein designated as the "Closing." The Closing shall take place no later than Monday, April 9, 2007 at the offices of McGowan, Rogers, Attorneys at Law, in Florence, South Carolina, or on such other date as the parties shall mutually agree upon.

1.6 Conduct of Business. Seller covenant, represent and warrant in favor of Buyer that pending completion of the Closing since December 21, 2006, unless otherwise agreed to in writing by Buyer:

- (a) Seller has not engaged in any sale or entered into any transaction, contract or commitment, or incurred any liability or obligation, or made any disbursement, not in the ordinary course of business.
- (b) Seller carried in force through Closing fire and extended coverage insurance, and theft and general liability insurance covering the Corporate Assets.
- (c) Seller did not amend, modify or terminate any agreement pertaining to the Seller's business being sold to which it is a party, without first notifying Buyer.

(d) Seller shareholders used their best efforts to preserve the business organization and all equipment and records thereof in good order, and used their best efforts to keep available for the Buyer all of the present employees of Seller and preserved for the Buyer the good will of suppliers, customers and others having business relationships with Seller.

(e) The Seller gave Buyer prompt notice of any and all events prior to Closing that materially relate to any term of this paragraph 1.6.

(f) Buyer shall be allowed to take over the operation of the business effective as of the time of Closing at to this transaction.

2. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants as of Closing of Buyer as follows:

2.1 Corporate Organization. The corporation is duly organized, validly existing and in good standing under the laws of the State of South Carolina, and is duly qualified to do business in the State of South Carolina.

2.2 Corporate Authority. The execution and delivery of this Agreement to Buyer and the carrying out of the provisions hereof are in compliance with all corporate requirements.

2.3 Compliance. Neither the execution and delivery of this Agreement, nor any instrument or agreement to be delivered by Seller to Buyer at the Closing pursuant to this Agreement, nor the compliance with the terms and provisions thereof by Seller, will result in the breach of any applicable statute or regulation promulgated thereunder, or any administrative or court order or decree, nor will such compliance conflict with any agreement or other instrument to which Seller or Corporation is a party, or by which Seller is or may be bound, or constitute an event of default or default thereunder, or with the lapse of time or the giving of notice or both constitute an event of default thereunder. Furthermore, the shares sold hereby are not pledged or restricted in any manner at all.

2.4 Litigation. There is no suit or action, or legal, administrative, arbitration or other proceeding or governmental investigation, affecting the Corporation pending, or to the knowledge of Sellers, threatened against Seller or the Corporation which might materially or adversely affect the Corporation. Seller further represents that there is no outstanding judgment, decree or order against the Seller or Corporation which affects the Corporation. The Corporation is not in immediate danger of bankruptcy or other insolvency proceeding, and is able to meet its current obligations as they come due.

2.5 Effect of Agreement. The terms and conditions of this Agreement and all other instruments and agreements to be delivered by Seller to Buyer pursuant to the terms of this Agreement are valid, binding and enforceable against Seller in accordance with their terms.

2.6 Good Title and Condition of Equipment. The assets owned by the Company and reflected on the Company's balance sheet are free and clear of any and all security interests, encumbrances or liens, except as may be reflected as liabilities on the Company's balance sheet, and subject to matters set forth in the annexed Exhibit (Permitted Encumbrances).

2.7 Inventory. In addition to other provisions concerning inventory, Seller warrants that entire inventory is saleable and marketable in the general retail market for general customers.

2.8 Representations and Warranties. To the best of its knowledge and belief, no representation or warranty by Seller in this Agreement or any documents provided hereunder contains or will contain any untrue statement or omits or will omit to state any material fact necessary to make the statements contained herein not misleading. All representations and warranties made by Seller in this Agreement and any documents provided hereunder shall be true and correct as of the date of Closing with the same force and effect as if they had made on and as of such date and unless otherwise stated such representations and warranties will survive Closing.

2.9 OSHA and DHEC. Corporation has not received any notice of any violations under the Occupational Safety and Health Act of 1970 or the South Carolina Department of Health and Environmental Control, and have no knowledge of any violations.

2.10 Ownership. Charles W. Carnell is the only Shareholder.

2.11 Leases. True and complete copies of all written lease agreements are attached.

2.12 Complying Leases. To the best of the Seller's knowledge and belief all leases and tenancies are in conformance with all applicable governmental statutes, laws, ordinances, rules and regulations. The Corporation is not in default under said leases.

2.13 Tax Matters. Seller represents and warrants that all taxes related to the Corporation and its business operations have been fully paid.

3. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

3.1 Binding Nature. This Agreement shall be, when duly executed and delivered, a legal and binding obligation of Buyer, enforceable in accordance with its terms.

3.2 Representations and Warranties. To the best of Buyer's knowledge and belief, no representation or warranty by Buyer in this Agreement contains or will contain any untrue statement or omits or will omit to state a material fact necessary to make the Statements contained herein not misleading. All representations and warranties made by Buyer in this Agreement shall be true and correct as of closing with the same force and effect as if they had been made on and as of such date.

3.3 No Litigation. There are no pending or threatened actions or proceedings before any court or administrative agency or other authority which might or will materially or adversely affect Buyer's ability or right to perform all Buyer's obligations hereunder.

4. CONDITIONS

4.1 Conditions to Seller's Obligation. The obligations of Seller to complete the Closing hereunder are, at Seller's option, subject to the following conditions:

(a) All representations and warranties by Buyer contained in this Agreement shall

be true in all material respects as of and at the Closing.

(b) Buyer shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Buyer on or before the Closing.

(c) Buyer shall not be in bankruptcy or similar proceedings or under threat thereof.

4.2 Conditions to Buyer's Obligations. The obligations of Buyer to complete the Closing under this Agreement are, at Buyer's option, subject to each of the following conditions:

(a) That all the material assets to be acquired as set out on the Schedules attached hereto are verified as still in the possession of the Seller on the date of Closing.

(b) All representations and warranties of Seller contained in this Agreement shall be true in all material respects as of and at the Closing date with the same effect as if said representations and warranties had been made on and as of Closing, except as otherwise contemplated or specifically permitted by the terms of this Agreement.

(c) Seller shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by the Seller on or before the Closing date.

(d) Seller shall have delivered to Buyer such other instruments and documents as Buyer shall reasonably request.

(e) The Seller shall not be in bankruptcy or similar proceedings or under threat thereof.

4.3 Failure to Meet Conditions Precedent to Closing. If the above conditions precedent to Closing are not met through no fault of the Buyer or Seller, this Agreement will be null and void and of no further force or effect.

5. CLOSING OBLIGATIONS

5.1 Seller's Obligations at Closing. At the Closing, Seller shall execute and deliver to Buyer:

(a) The shares of stock being sold hereunder.

(b) Such other instruments and documents as may be elsewhere herein required.

(c) Non-Competition Agreement of the Shareholders satisfaction to Buyer's counsel covering an area within a radius of 150 miles of the business location set forth in 1.1 for a term of five years. Consideration for the agreement shall be Fifteen Thousand and No/100's (\$15,000.00) Dollars to be paid to the Seller at closing.

5.2 Buyer's Obligations at Closing. At Closing, Buyer shall execute and deliver to

Seller the payment provided for herein in cash or certified funds, together with the note to Seller for the balance owed and any security agreements to secure Buyer's obligations under its Note to Seller and any Guarantees required of Buyer by Seller.

6. EMPLOYEES

6.1 Continuity. Buyer shall use reasonable efforts to retain the Employees of Corporation, but shall have no legal obligation to do so. Seller shall use reasonable efforts to encourage the Employees of the Corporation to remain.

7. MISCELLANEOUS

7.1 Brokerage. Each party hereto represents and warrants to the other that no broker is entitled to any commission, or similar fee, in connection with the making and carrying out of this Agreement and the parties agree to indemnify and hold harmless the other party from any claims, demands, or causes of action in connection with same.

7.2 Effectiveness. This Agreement supersedes any and all agreements, if any, previously made between the parties relating to the subject matter hereof, and there are no understandings or agreements other than those included herein.

7.3 Notices and communications. Any notice, payment, request, instruction, or other document to be delivered hereunder shall be deemed sufficiently given if in writing and delivered personally or mailed by certified mail, postage prepaid, if to Buyer, addressed to Buyer at the following address:

1706 Pamplico Highway, Florence, SC 29505

and if addressed to Seller, addressed to:

3810 Claussen Road, Florence, SC 29501

unless in each case Buyer or Seller shall have notified the other in writing of a different address.

7.4 Non-Waiver. No delay or failure on the part of either party in exercising any right hereunder, and no partial or single exercise thereof, will constitute a waiver of such right or of any other right hereunder.

7.5 Headings. Headings in this Agreement are for convenience only and are not to be used for interpreting or construing any provision hereof.

7.6 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina.

7.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

7.8 Binding nature. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, successors and assigns.

7.9 Survival of Representations and Warranties. Except as otherwise expressly limited in this Agreement or the Schedules annexed hereto, the representations, warranties and covenants of indemnification of Buyer and Seller extended hereunder shall survive the Closing. Each party against whom liability is asserted under the provisions of this Agreement shall be given the opportunity to participate, directly or through its/his authorized representative at its/his cost and expense, in the conduct of any negotiations relating to the settlements of any liability or any other proceeding instituted by any third party against either Seller or Buyer, as the case may be, giving rise to the alleged breach.

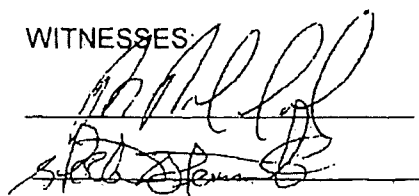
7.10 Expenses. Each party shall pay all of their own expenses relating to this Agreement and for entering into and carrying out the terms and conditions of this Agreement.

7.11 Amendment; Successors and Assigns. This Agreement shall not be altered or otherwise amended except pursuant to any instrument in writing signed by all of the affected parties hereto. Neither party may assign any of its/his rights, obligations, or liabilities arising hereunder without the prior written consent of the other, except as otherwise provided herein, any such assignment or attempted assignment shall be null and void.

7.12 Third party beneficiaries. Except for their proper heirs, successors, and assigns, the parties hereto intend that no third party shall have any rights or claims by reason of this contract.

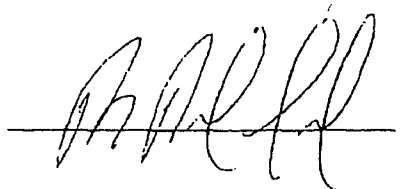
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date first above written.

WITNESSES:

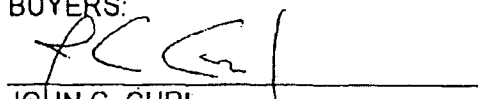


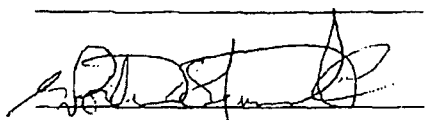

CHARLES W. CARNELL, SHAREHOLDER

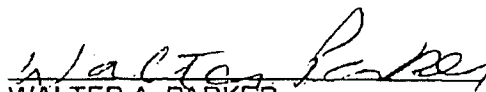

BARBARA E. CARNELL



BUYERS:


JOHN C. CURL




WALTER A. PARKER

FLORENCE CARPET & TILE, INC.

MINUTES OF CALLED MEETING

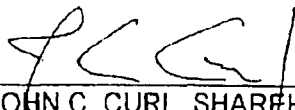
OF SHAREHOLDERS

APRIL 30th, 2007

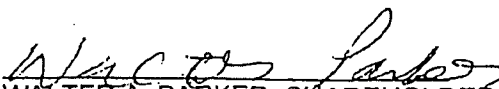
John C. Curl and Walter A. Parker, being the sole shareholders of this corporation convened in a called meeting on the above date. Notice was waived.

At this meeting, in consideration of their mutual promises and the sums of Five (\$5.00) Dollars in hand paid as acknowledged, the shareholders agreed that John C. Curl as fifty three (53%) per cent shareholder and Walter A. Parker as forty seven (47%) per cent shareholder, would agree for a transfer of share ownership from Curl to Parker within the period of the first five years of one per cent of share ownership from Curl to Parker for each complete fiscal year of operation of said corporation at a profit as determined by the accountant for the corporation, up to a total of 3 percentage points, the effect of which would be to allow for an ownership of fifty (50%) per cent to Curl and fifty (50%) per cent to Parker if the corporation operated at such profit for a minimum of three of the first five years.

The shareholders agreed also that the corporation would take out a life insurance policy upon each shareholder in a face amount of \$1,080,000.00, each naming as primary beneficiaries the creditors related to the purchase by the shareholders of the corporation, that is, Branch Banking and Trust Company of South Carolina first and Charles W. Carnell and Barbara E. Carnell second; as overall secondary beneficiaries after such creditors, the corporation itself would be the remaining beneficiary. The intent is that insurance proceeds would be available to pay any sums then owing to such creditors and no more. All remaining policy benefits would, as stated hereinabove, be made payable to the corporation itself as the secondary beneficiary.



JOHN C. CURL, SHAREHOLDER



WALTER A. PARKER, SHAREHOLDER

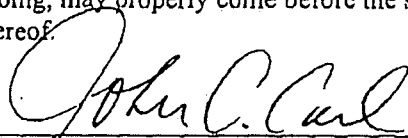
FLORENCE CARPET & TILE, INC.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD FRIDAY OCTOBER 19, 2018 - 11:30 am

Notice is hereby given that a special meeting of shareholders of Florence Carpet & Tile, Inc. called by majority Shareholder John C. Curl is to be held at the offices of Turner Padgett Graham & Laney, PA, 319 S. Irby Street, Florence SC 29501 on Friday October 19, 2018 at 11:30 am. for the purpose of considering and acting upon the following:

- (a) Adoption of By-Laws attached hereto; and
- (b) The Election of the Board of Directors

No other business, unrelated to the foregoing, may properly come before the special meeting or any adjournment or adjournments thereof.



John C. Curl
Majority Shareholder of Florence Carpet & Tile,
Inc.

Mailing/Service date: October 8, 2015

BYLAWS OF FLORENCE CARPET & TILE, INC.

These Bylaws contain the agreement as to the governance and operation of the corporation as of the date set forth herein, and do hereby replace any and all previous bylaws of the corporation.

ARTICLE I

NAME, REGISTERED OFFICE, AND REGISTERED AGENT

Section 1. Name. The name of this corporation is: Florence Carpet & Tile, Inc., a South Carolina corporation.

Section 2. Registered Office. The registered office of the corporation shall be 1706 Pamplico Highway, Florence, SC 29501.

Section 3. Business Office. The principal office of the corporation shall be in the State of South Carolina at such location as shall be determined from time to time by the board of directors. The corporation may have such other offices, either within or without the State of South Carolina, as the board of directors may designate or as the business of the corporation may require from time to time.

ARTICLE II

CORPORATE MATTERS

Section 1. Seal. The seal of this corporation shall have inscribed on it the name of this corporation, the date of its organization, and the words "Corporate Seal."

Section 2. Fiscal Year. The fiscal year of this corporation shall begin January 1 and end on December 31.

ARTICLE III

SHAREHOLDER MATTERS

Section 1. Place of Meeting. Meetings of the shareholders shall be held at the principal office of the corporation or at any other place (within or without the State of South Carolina) the shareholders may from time to time select or if a Special Meeting at the place selected by the person authorized to call the meeting. If no designation is made for any annual or special meeting of the shareholders, the place of meeting shall be the principal office of the corporation.

Section 2. Annual Meeting. The annual meeting of the shareholders shall be held at such day and hour, not later than one hundred twenty (120) days after the end of the

fiscal year of the corporation, as may be determined by the board of directors and designated in the notice of such meeting. In the absence of such a determination, the annual meeting shall be held at 10:00 a.m. on the first Tuesday in the fourth month after the end of the fiscal year of the corporation each year. The business to be transacted at such meeting shall be the election of directors and such other business as may be properly brought before the meeting. In the event such annual meeting is omitted by oversight or otherwise on the date herein provided for, the directors shall cause a meeting in lieu thereof to be held as soon thereafter as conveniently may be, and any business transacted or elections held at such meeting shall be as valid as if transacted or held at the annual meeting. If an annual meeting has not been called and held within six months after the time designated for it, any shareholder may call it.

Section 3. Special Meeting. Special meetings of the shareholders may be called for any purpose or purposes by the President, by a majority of the board of directors or by the holders of one-tenth or more of the shares outstanding and entitled to vote.

Section 4. Notice of Meeting. A written or printed notice of each shareholders' meeting, stating the place, day and hour of the meeting, and in case of a special meeting the purpose or purposes of the meeting shall be given by the Secretary of the corporation or by the person authorized to call the meeting, to each shareholder of record entitled to vote at the meeting. This notice shall be sent at least ten (10) days and not more than fifty (50) days before the date named for the meeting (unless another period of notice is required by law in a particular case) to each shareholder, in person, by United States mail, by facsimile or by email, any charges prepaid, to his address appearing on the books of the corporation.

Section 5. Waiver of Notice. A shareholder, either before or after a shareholders' meeting, may waive notice of the meeting; and his waiver shall be deemed the equivalent of giving notice. Attendance at a shareholders' meeting, either in person or by proxy, of a person entitled to notice shall constitute a waiver of notice of the meeting unless he attends for the express purpose of objecting to the transaction of business on the ground that the meeting was not lawfully called or conveyed.

Section 6. Voting Rights. Except as otherwise provided by the laws of South Carolina, each holder of capital stock in this corporation shall be entitled at each shareholders' meeting to one vote for every share of stock standing in his name on the books of the corporation; but, transferees of shares that are transferred on the books of the corporation within ten (10) days next preceding the date set for a meeting shall not be entitled to notice of, or to vote at the meeting.

Section 7. Proxies. A shareholder entitled to vote may vote in person or by proxy executed in writing by the shareholder or by such shareholder's attorney-in-fact. A proxy shall not be valid after eleven months from the date of its execution unless a longer period is expressly stated in it.

Section 8. Quorum. The presence, in person or by proxy, of the holders of one-half or more of the shares outstanding and entitled to vote shall constitute a quorum at meetings of

shareholders. At a duly organized meeting shareholders present can continue to do business until adjournment even though enough shareholders withdraw to leave less than a quorum.

Section 9. Adjournments. Any meeting of shareholders may be adjourned. Notice of the adjourned meeting or of the business to be transacted thereat, other than by announcement at the meeting at which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present or represented, any business may be transacted which could have been transacted at the meeting originally called.

Section 10. Informal Action by Shareholders. Any action that may be taken at a meeting of shareholders may be taken without a meeting if a consent in writing setting forth the action shall be signed by all of the shareholders entitled to vote on the action and shall be filed with the Secretary of the corporation. This consent shall have the same effect as a unanimous vote at a shareholders' meeting.

ARTICLE IV

THE BOARD OF DIRECTORS

Section 1. Number, Qualifications and Term of Office. The business and affairs of the corporation shall be managed by a board of not less than two nor more than five directors, none of whom need be a resident in the State of South Carolina or hold shares in this corporation. The number of directors for a corporate year shall be fixed by vote at the meeting for election of directors, but the shareholders may, at any special meeting held for the purpose during any such year, increase or decrease (within the limits above specified) the number of directors thus fixed. In the absence of a resolution of the shareholders altering the number of directors, the number of directors shall be the same as the number previously serving. Each director, except one appointed to fill a vacancy, shall be elected to serve for the term of one year and until his successor shall be elected and shall qualify.

Section 2. Vacancies. Vacancies on the board of directors shall be filled by a majority of the remaining members of the board, though less than a quorum. Each director so selected shall serve until his successor is elected by the shareholders at the next annual meeting or at a special meeting earlier called for that purpose. The other members of the board of directors may declare vacant the office of a director who is convicted of a felony or who is declared of unsound mind by an order of the court.

Section 3. Compensation of Directors. By resolution of the board of directors, the directors may be paid their expenses, if any, of attendance at each meeting of the board, and may be paid a fixed sum for attendance at meetings or a stated salary paid directors. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 4. Removal. At a meeting of shareholders called for that purpose the entire board of directors or any individual director may be removed from office without assignment of cause by the vote of a majority of the shares entitled to vote at an election of directors.

ARTICLE V

MEETINGS OF THE BOARD

Section 1. Place of Meeting. The meetings of the board of directors may be held at the principal office of the corporation or (subject to Section 2 of Article V of these Bylaws) at any place within or without the State of South Carolina that a majority of the board of directors may from time to time by resolution appoint.

Section 2. Annual Meeting. The board of directors shall meet each year immediately after the annual meeting of the shareholders at the place that meeting has been held, to elect officers and consider other business.

Section 3. Special Meeting. Special meetings of the board of directors may be called at any time by the President or by any member of the board.

Section 4. Notice of Meetings. Notice of the annual meeting of the board of directors need not be given. Written notice of each special meeting, setting forth the time and place of the meeting shall be given to each director at least twenty-four hours before the meeting. This notice may be given either personally or by sending a copy of the notice through the United States mail, by facsimile or by email, any charges prepaid, to the address of each director appearing on the books of the corporation.

Section 5. Waiver of Notice. A director may waive in writing notice of a special meeting of the board either before or after the meeting; and his waiver shall be deemed the equivalent of giving notice. Attendance of a director at a meeting shall constitute waiver of notice of that meeting unless he attends for the express purpose of objecting to the transaction of business because the meeting has not been lawfully called or convened.

Section 6. Quorum. At meetings of the board of directors a majority of the directors in office shall be necessary to constitute a quorum for the transaction of business. If a quorum is present, the acts of a majority of the directors in attendance shall be the acts of the board.

Section 7. Adjournment. A meeting of the board of directors may be adjourned. Notice of the adjourned meeting or of the business to be transacted there, other than by announcement at the meeting at which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

Section 8. Telephone Meetings. Any director may participate in a meeting of the directors by means of communication by which all persons participating in the meeting can hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 9. Informal Action. If all the directors severally or collectively consent in

writing to any action taken or to be taken by the corporation and the writing or writings evidencing their consent are filed with the Secretary of the corporation, the action shall be as valid as though it had been authorized at a meeting of the board.

ARTICLE VI

OFFICERS AGENTS, AND EMPLOYEES

Section 1. Number: The principal officers of the corporation shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Treasurer, and a Secretary. In addition, there may be such subordinate officers as the board of directors may deem necessary. Any two or more offices may be held by the same person.

Section 2. Term of Office: The principal officers shall be appointed by the board of directors at any regular annual meeting or at a special meeting of the board of directors, but such officers may be appointed to serve until removed by the board of directors. Subordinate officers may be appointed by the board of directors from time to time. Each officer shall serve until a successor shall have been appointed and qualified, or until the officer's death, resignation or removal.

Section 3. Removal: Any officer may be removed from office, with or without cause, at any time by the board of directors whenever in its judgment the best interests of the corporation will be served thereby. Said removal shall not prejudice the contract rights, if any, of the person so removed.

Section 4. Vacancies: Any vacancy in an office from any cause may be filled for the unexpired portion of the term by the board of directors.

Section 5. Duties:

(a) Chairman of the Board: The Chairman of the Board shall preside at all meetings of the shareholders and at all meetings of the board of directors. Except where, by law, the signature of the President is required, the Chairman shall possess the same power as the President to sign all certificates, contracts, and other instruments of the corporation which may be authorized by the board of directors.

(b) President: The President shall be the chief executive officer of the corporation. In the absence of the Chairman of the Board, the President shall preside at all meetings of the shareholders and at all meetings of the board of directors. Subject to direction of the board of directors, the President shall have general supervision of the affairs of the corporation, shall sign or countersign all certificates, contracts or other instruments of the corporation as authorized by the board of directors, shall make reports to the board of directors and shareholders, shall fix the compensation of all other employees of the corporation, and shall perform such other duties as are incident to the President's office or are properly required of the President by the board of directors.

(c) Vice President: Each Vice President shall have such powers and discharge such duties as may be assigned from time to time by the board of directors.

(d) Secretary: The Secretary shall issue notices for all meetings of the directors and shareholders and shall cause the minutes of the same to be recorded in books provided for that purpose. The Secretary shall have charge of the corporate seal and of the corporate records, and shall make such reports and perform such other duties as the board of directors shall from time to time direct and, in general, perform all duties incident to the office of Secretary.

(e) Treasurer: The Treasurer shall have the custody of all monies and securities and financial records of the corporation. The Treasurer shall perform such other duties as the board of directors shall from time to time direct and, in general, perform all duties incident to the office of Treasurer.

(f) Other Officers: Other subordinate officers appointed by the board of directors shall exercise such powers and perform such duties as may be delegated to them by the resolutions appointing them, or by subsequent resolutions adopted from time to time.

(g) Absence or Disability: In case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in the officer's place during such period of absence or disability, the board of directors may from time to time delegate the powers and duties of such officer to any other officer, or any director, or any other person whom it may select.

Section 6. Salaries: The salaries of all elected officers of the corporation shall be fixed by the board of directors. No officer shall be ineligible to receive a salary by reason of the fact that he is also a director of the corporation and receiving compensation therefor.

Section 7. Bonds: The board of directors may require any officer, agent or employee of the corporation to give bond to the corporation with sufficient surety or sureties, to insure the faithful performance of such officer's, agent's, or employee's duties.

Section 8. Delegation of Duties. Whenever an officer is absent or whenever for any reason the shareholders or board of directors may deem it desirable, the board of directors may delegate the powers and duties of an officer to any other officer or officers or to any director or directors.

ARTICLE VII

SHARE CERTIFICATES AND THE TRANSFER OF SHARES

Section 1. Share Certificates. The share certificates shall be in a form approved by the board of directors. Each certificate shall be signed by the Chairman or the President and the Secretary, and shall be stamped with the corporate seal.

Section 2. Registered Shareholders. The corporation shall be entitled to treat the holder of record of shares as the holder in fact and, except as otherwise provided by the laws of South Carolina, shall not be bound to recognize any equitable or other claim to or interest in the shares.

Section 3. Transfers of Shares. Shares of the corporation shall only be transferred on its books upon the surrender to the corporation of the share certificates duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer. In that event, the surrendered certificates shall be canceled, new certificates issued to the person entitled to them, and the transaction recorded on the books of the corporation.

Section 4. Lost Certificates. The board of directors may direct a new certificate to be issued in place of a certificate alleged to have been destroyed or lost if the owner makes an affidavit that it is destroyed or lost. The board of directors, in their discretion, may as a condition precedent to issuing the new certificate, require the owner to give the corporation a bond as indemnity against any claim that may be made against the corporation on the certificate allegedly destroyed or lost.

ARTICLE VIII

SPECIAL CORPORATE ACTS

Section 1. Execution of Written Instruments. Contracts, deeds, and any documents or instruments required in the normal course of business of the corporation shall be executed by the Chairman or the Secretary unless the board of directors shall in a particular situation designate another procedure for their execution.

Section 2. Signing of Checks and Notes. Checks, notes, drafts, and demands for money shall be executed by the Chairman under the seal of the corporation affixed and attested by the Secretary unless the board of directors shall in a particular situation designate another procedure for their execution.

Section 3. Voting Shares Held in Other Corporations. In the absence of other arrangements by the board of directors, shares of stock issued by any other corporation and owned or controlled by this corporation may be voted at any shareholders' meeting of the other corporation by the Chairman of this corporation or, if the Chairman is not present at the meeting, by the President of this corporation; and in the event neither the Chairman nor the President is to be present at a meeting, the shares may be voted by such person as the Chairman and Secretary of the corporation shall by duly executed proxy designate to represent the corporation at the meeting.

ARTICLE IX

AMENDMENTS

The power to amend or repeal the Bylaws or to adopt a new code of Bylaws is reserved to the shareholders, the affirmative vote of holders of a majority of the total number of shares issued and outstanding being necessary to exercise that power.

I, _____, as Secretary of Florence Carpet & Tile, Inc., hereby certify that the foregoing constitute the bylaws of this corporation and in force and effect on this the _____ day of _____, 2018.

_____, Secretary

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	Docket No.: 2018-CP-21-02958
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	THIRD PARTY SUMMONS
v.	)	
JOHN C. CURL,	)	
	)	
Defendant.	)	
JOHN C. CURL,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
PALMETTO FLOOR COVERING	)	
INSTALLATION, LLC AND	)	
FLORENCE CUSTOM	)	
COUNTERTOPS, INC.,	)	
	)	
Third-Party Defendants.	)	

TO: THE THIRD PARTY DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Third Party Complaint set forth in the Answer and Counterclaim and Third Party Complaint, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Third Party Complaint on the subscribers at their address at P.O. Box 5478, Florence, South Carolina 29502, within thirty (30) days after the service thereof; and if you fail to answer the Third Party Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Third Party Complaint.

TURNER PADGET GRAHAM & LANEY, P.A.

s/ Jeffrey L. Payne

Jeffrey L. Payne

P.O. Box 5478

Florence, South Carolina 29502

Telephone: (843) 662-9008

Fax: (843) 667-0828

jpayne@turnerpadget.com

Florence, South Carolina

December 13, 2018

ATTORNEYS FOR DEFENDANT/THIRD-PARTY
PLAINTIFF JOHN C. CURL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	Docket No.: 2018-CP-21-02958
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER AND COUNTERCLAIM
	)	AND THIRD PARTY COMPLAINT
	)	(Jury Trial Demanded)
JOHN C. CURL,	)	
	)	
Defendant.	)	
JOHN C. CURL,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
PALMETTO FLOOR COVERING	)	
INSTALLATION, LLC AND	)	
FLORENCE CUSTOM	)	
COUNTERTOPS, INC.,	)	
	)	
Third-Party Defendants.	)	

The Defendant, John C. Curl, answers the Plaintiff's Complaint and Counterclaims thereto and asserts as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. The Defendant admits the allegations contained in paragraph 1.
3. Answering the allegations contained in paragraph 2, the Defendant admits that the Plaintiff is a director of the Company. The Defendant lacks

sufficient information upon which to form a belief as to the remaining allegations and therefore deny same.

4. Answering the allegations contained in paragraph 3, the Defendant admits all allegations except that it lacks sufficient information and belief as to the allegation, "at which time it issued 30 shares," and therefore it denies that allegation and demands strict proof thereof.

5. The Defendant admits the allegations contained in paragraphs 4 and 5.

6. The Defendant denies the allegations contained in paragraph 6.

7. Answering the allegations of paragraph 7, the Defendant admits that the Plaintiff wrongfully and deceptively created a competing business called Florence Custom Countertops, Inc. All remaining allegations are denied.

8. Answering the allegations contained in paragraph 8, the Defendant admits that he is the majority shareholder of the company, with a 53% interest. All remaining allegations are denied.

9. Answering the allegations contained in paragraph 9, the assertions do not require a response from the Defendant. To the extent that they do, the Defendant denies that the Plaintiff is entitled to any such rights.

10. Answering the allegations contained in paragraph 10, the Defendant admits that he has not transferred 3% of his ownership in the company to Walter A. Parker since the Defendant has no such obligation to transfer any further shares to the Plaintiff.

11. The Defendant denies the allegations contained in paragraph 11.

12. The Defendant denies the allegations contained in paragraph 12.

FOR A SECOND DEFENSE

13. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against the Defendant therefore pursuant to SCRCP Rule 12 (b)(6) the Complaint should be dismissed with prejudice.

FOR A THIRD DEFENSE

14. The Plaintiff failed to timely file and serve its Complaint within the applicable statute of limitations for his claim. Consequently the Complaint should be dismissed with prejudice.

**AS A FOURTH DEFENSE AND FOR A FIRST CAUSE OF ACTION
AGAINST PLAINTIFF
("Breach of Fiduciary Duty")**

15. The Defendant is a citizen and resident of Florence County, South Carolina.

16. Palmetto Floor Covering Installation, LLC is a South Carolina Limited Liability Company organized and existing under the laws of this State with a principal place of business in Florence County, South Carolina.

17. Florence Custom Countertops, Inc. is a South Carolina Corporation organized and existing under the laws of this State with a principal place of business in Florence County, South Carolina.

18. The Defendant brings this Counterclaim and Third Party Complaint derivatively in the right and for the benefit of Florence Carpet & Tile, Inc. ("FCT")

to redress injuries suffered and to be suffered by FCT as a direct result of the Plaintiff's actions.

19. Defendant has suffered losses as a direct and proximate result of the actions of the Plaintiff as more fully complained of herein, for which the Defendant is entitled to actual, compensatory, and punitive damages against the Plaintiff. A recovery to FCT would not fully compensate the Defendant for his injury.

20. On April 30, 2007, Plaintiff and the Defendant purchased all of the shares in the Company from Mr. and Mrs. Charles W. Carnell. The Plaintiff acquired a 47% interest in FCT, while the Defendant acquired a 53% interest in the Company.

21. FCT is in the business of selling and installing floor coverings, including carpet and tile, and countertops of all types.

22. The Plaintiff has created and owns two companies, Florence Custom Countertops, Inc. ("FCC") and Palmetto Floor Covering Installations, LLC ("PFCI") that provide goods and services that compete directly with those offered by FCT.

23. The Plaintiff, without any approval from the Defendant, has been secretly operating the competing companies FCC and PFCI from the FCT business operation which is located at 1706 Pamplico Highway, Florence, South Carolina.

24. The Plaintiff has allowed FCC and PFCI to use the resources of FCT to operate their businesses. FCC and PFCI have not made any contributions to FCC for the overhead of FCC while they have enjoyed free rent and free use of utilities

etc. All of the actions have been done to allow the Plaintiff to siphon money and resources from FCC for his personal benefit.

25. The Plaintiff, through his competing companies, FCC and PFI, have entered into numerous transactions that could have been completed by FCT.

26. The Plaintiff intentionally usurped FCT's opportunities for his personal benefit and for those of the Third Party Defendants.

27. The Plaintiff, without any approval from the Defendant and despite instructions from the Defendant not to do so, has been paying health insurance benefits to himself and to his family with the funds of FCT.

28. The Plaintiff, without any approval or authorization from the Defendant, has been paying for the cell phones and cell phone charges of certain family member(s) of the Plaintiff with FCT funds.

29. The Plaintiff owes a duty of loyalty to the Defendant and FCT to refrain from competing with FCT in the conduct of FCT's business, to not usurp business opportunities, to deal in good faith with the Defendant and FCT and to use FCT's resources and funds for the benefit of FCT and not for the benefit of the Plaintiff.

30. Plaintiff intentionally, knowingly, willfully, and wantonly breached his fiduciary duties to FCT and Defendant by engaging in self-dealing, which were designed for his own benefit and gain in contravention of the rights of FCT and Defendant.

31. As a direct and proximate result of Plaintiff's actions, Defendant is entitled to recover both actual and punitive damages in a sum sufficient to compensate the Defendant for monetary loss and devaluation of his interest in FCT, as well as compensation to FCT for its damages for the Plaintiff's wrongful acts.

**AS A FIFTH DEFENSE AND AS A SECOND CAUSE OF ACTION AGAINST
PLAINTIFF
(Derivative Action)**

32. The above allegations are set forth herein by reference as if the same were made a part an parcel of this Second Cause of Action.

33. The Plaintiff has mismanaged and misappropriated assets and opportunities of FCT.

34. Any demand upon FCT to pursue this action against the Plaintiff would be futile, as the Plaintiff contends that it owns 50% of FCT and he is in control of the corporate books and records and the court has entered an temporary injunction in this matter which required that the status quo of FCT be maintained.

35. As a direct and proximate result of Plaintiff's mismanagement, misappropriation, self-dealing, and unjust personal enrichment, the Defendant, on behalf of FCT, is entitled to judgment against the Plaintiff in a sum sufficient to compensate FCT for the value of the improperly-conferred benefits and that the Plaintiff pay the Defendant's attorneys' fees and costs.

**AS A SIXTH DEFENSE AND AS A THIRD CAUSE OF ACTION AGAINST
PLAINTIFF AND FIRST CAUSE OF ACTION AGAINST THIRD PARTY
DEFENDANTS
(Misappropriation of Corporate Opportunity)**

36. The above allegations are set forth herein by reference as if the same were made a part an parcel of this Third Cause of Action.

37. The Plaintiff and Third Party Defendants misappropriated FCT's opportunity to sell the goods and services that Plaintiff and Third Party Defendants were selling, to the detriment of the Defendant and FCT and deprived FCT of revenues and profits it is due. As a result of Plaintiff's and Third Party Defendants' misappropriation of corporate opportunities, the Defendant is entitled to an Order of the Court disgorging from said Plaintiff and Third Party Defendants, all assets, profits and opportunities that were obtained through the misappropriation, together with legal interest therein.

WHEREFORE, the Defendant having answered the Plaintiff's Complaint, would request that the same be dismissed with prejudice and that the Defendant be awarded its costs and expenses in defending this action. The Defendant further prays for judgment against the Plaintiff and Third Party Defendants as follows:

1. actual and punitive damages, together with legal interest, for the breach of fiduciary duties as alleged in the First Cause of Action.
2. actual damages and attorneys' fees as allowed by South Carolina law, together with legal interest, in connection with the derivative suit as alleged in the Second Cause of Action;

3. an Order from the Court disgorging all corporate assets and profits which the Plaintiff and Third Party Defendants misappropriated;
4. actual and punitive damages as may be allowed for any of the causes of action alleged herein;
5. for an Order directing that the Plaintiff and Third Party Defendants pay the attorneys' fees incurred by the Defendant in this action to the extent allowed by South Carolina law; and
6. for such other and further relief as this Court may deem just and proper.

TURNER PADGET GRAHAM & LANEY, P.A.

/Jeffrey L. Payne

Jeffrey L. Payne

P.O. Box 5478

Florence, South Carolina 29502

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jpayne@turnerpadget.com

Florence, South Carolina

December 13, 2018

ATTORNEYS FOR DEFENDANT/THIRD-PARTY
PLAINTIFF JOHN C. CURL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	Docket No.: 2018-CP-21-02958
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
JOHN C. CURL,	)	
	)	
Defendant.	)	
JOHN C. CURL,	)	
	)	
Third-Party Plaintiff,	)	
	)	PLAINTIFF'S ANSWER TO THE THIRD-
v.	)	PARTY COMPLAINT AND
	)	COUNTERCLAIM
PALMETTO FLOOR COVERING	)	
INSTALLATION, LLC AND FLORENCE	)	
CUSTOM COUNTERTOPS, INC.,	)	
	)	
Third-Party Defendants.	)	

The Plaintiff, Walt Parker, answers the number paragraphs of the Defendant's Counterclaim and Third-Party Complaint as follows:

15. Admitted.

16. It is admitted that Palmetto Floor Covering Installation, LLC ("PFC") was a South Carolina limited liability company organized and existing on October 13, 2011 until June 9, 2016, at which point it was dissolved.

17. It is admitted that Florence Customs Countertops, Inc. ("FCC") was a South Carolina corporation organized and existing from September 27, 2011 until October 25, 2013, at which point its corporate charter was forfeited.

18. No answer to this paragraph is necessary, but it is denied that the Defendant has the power, duty, or ability to bring this Counterclaim and Third-Party Complaint in the capacity described.

19. Denied.

20. Admitted.

21. Admitted.

22. It is admitted that the Plaintiff created and owned two companies, FCC and PFC in order to augment, supplement, and enhance the goods and services offered by FCT. It is denied that either company has ever competed directly with services offered by FCT; as previously stated, neither such company exists now. It is denied that the Plaintiff has secretly operated FCC or PFC, that any such operation has occurred without the approval from the Defendant, or that either company competes with FCT. At one point, the Defendant withdrew his approval of PFC which is the reason that the Plaintiff dissolved that company as of June of 2016.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. The Plaintiff, as the Chief Executive Officer of FCT, has authorized the payment by FCT of cell phone charges to employees and other persons who performed beneficial services for FCT, including family members.

29. Admitted.

- 30. Denied.
- 31. Denied.
- 32. No further answer necessary.
- 33. Denied.
- 34. Denied.
- 35. Denied.
- 36. No further answer necessary.
- 37. Denied.

FOR A SECOND DEFENSE

- 38. The Defendant's Counterclaim and Third-Party Complaint fail to state facts sufficient to constitute a cause of action against the Plaintiff.

FOR A THIRD DEFENSE

- 39. The Defendant's purported claim for breach of fiduciary duty relating to the conduct of PFC and FCC are barred by the applicable statutes of limitation.

**FOR A FOURTH DEFENSE AND FOR
A FURTHER CAUSE OF ACTION AGAINST
THE DEFENDANT BY WAY OF COUNTERCLAIM
(BREACH OF FIDUCIARY DUTY)**

- 40. The Defendant is an equal shareholder in FCT and a member of its Board of Directors.

- 41. The Defendant owes a duty of loyalty to the Plaintiff and to FCT to not abuse certain business opportunities, to deal in good faith with the Plaintiff and FCT, and to place the interest of FCT and its shareholders above his own interest.

- 42. The Defendant is the sole or substantial sole owner of Curl Properties, Inc. which is the landlord to FCT.

43. Curl Properties, Inc. is in default of its obligations under that lease and the Defendant knows that Curl Properties, Inc. is in default. The default consists in the breach of the landlord obligations to repair and maintain the roof of the building in good operating condition, preventing it from leaking particularly in such a way that the leaking makes broad, substantial portions of the premises unfit for the purposes of the tenancy and deleterious to the Plaintiff's goods and displays offered up to the public in the facility.

44. Upon information and belief, Curl Properties, Inc. has leased a portion of the Plaintiff's tenancy to a third party for the purpose of a tower used for a transmission of electronic signals. The Defendant is fully aware of that lease because he has described the rent as "ridiculously high", or words to that affect. The Defendant has controlled, acquiesced in, or otherwise benefited from Curl Properties' receipt of rental proceeds which rightfully belong to FCT.

45. The Plaintiff has been damaged by the Defendant's breach of his fiduciary duties and is entitled to recover damages including lost profits, lost business opportunities, lost rent, and the frustration of the expressed intentions of the landlord and tenant under the lease described above.

**FOR FURTHER DEFENSE AND
AS A SECOND COUNTERCLAIM
(TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP)**

46. In the manner described above, the Defendant has interfered with the contract between Curl Properties, Inc. and FCT by directing that Curl Properties not maintain the roof of the FCT premises in good operating condition, by not repairing it when it leaked, and otherwise directing Curl Properties, Inc. to apply pressure to FCT, with subsequent pressure to the Plaintiff, so as to gain manipulative bargaining leverage over the Plaintiff while the Defendant has attempted to force the Plaintiff out of the FCT business.

47. The Plaintiff is entitled to damages at the hand of the Defendant for his tortious interference with such contract, the lease.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: s/Reynolds Williams
Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiff

Florence, SC
January 18, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2018-CP-21-2958
	)	
Walt Parker,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMMENDED MOTION TO DISSOLVE
	)	PRELIMINARY INJUNCTION
	)	
John C. Curl,	)	
	)	
Defendant.	)	
	)	
John C. Curl,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Palmetto Floor Covering Installation, LLC	)	
and Florence Custom Countertops, Inc.,	)	
	)	
Third-Party Defendants.	)	
	)	

The Defendant, John Curl, hereby moves this Court for an Order dissolving the Preliminary Injunction entered by the Court on November 19, 2018. In support of the amended motion the Defendant offers his affidavit. The grounds for this motion are:

1. Since the court issued the injunction, the Plaintiff has intentionally failed to pay monthly rent of \$11,811.65 that is due to the Defendant's company Curl Properties, LLC for the use of the land and building ("Building") from which FCT operates its business. While he has made periodic payments of \$2,000, the Plaintiff has intentionally refused to pay the entire amount of the monthly rent in an effort to cause financial harm to the Defendant. The Plaintiff can manage to pay himself, his wife and his company with FCT funds but he refuses to pay the entire rent for the Building. This is causing financial harm to the Defendant who has a monthly mortgage payment that he is obligated to make for the loan he received when he purchased the Building.

2. The Plaintiff has failed to have the 2016 and 2017 tax returns prepared despite repeated requests from the Defendant and FCT's lender Synovus Bank. The Plaintiff has failed to pay the Company accountant Anne Marie Hanna her outstanding bill so that returns can be prepared.
3. The Plaintiff has failed to provide John Curl with income statements and financial statements so that John Curl can review the financial operations of the company. John Curl has been requesting this information for many weeks and as of January 23, 2019, the Plaintiff cannot provide it to him.
4. John Curl has learned that the Plaintiff is paying his company Florence Custom Countertops, a competing company, for work that could and should be performed by Florence Carpet and Tile, Inc. The Plaintiff has made the following payments:
 - a. Check No. 100697 dated November 23, 2018 in the amount of \$1,571.00
 - b. Check No. 100771 dated December 14, 2018 in the amount of \$1,919.25
 - c. Check No. 100797 dated December 27, 2018 in the amount of \$1,121.75.
 - d. Check No. 100801 dated December 28, 2018 in the amount of \$3,509.50
 - e. Check No. 100862 dated January 11, 2019 in the amount of \$1,003.25.

The Plaintiff can't pay the rent to the Defendant's company Curl Properties but he can pay his company for work that should be performed by FCT.
5. Since the injunction was filed, the Plaintiff has paid himself and his wife the following non-payroll checks from FCT's operating account:
 - a. Check no. 100738 dated Dec. 7, 2018 to Allison Parker -\$586.51.
 - b. Check No. 100765 dated December 14, 2018 to Allison Parker- \$1,134.20
 - c. Check No. 100782 dated December 21, 2018 to Allison Parker - \$586.51
 - d. Check No. 100845 dated January 11, 2019 to Allison Parker - \$586.00
 - e. Check No 100738 dated December 7, 2018 to Walt Parker - \$1,134.20.
 - f. Check No 100765 dated December 14, 2018 to Walt Parker - \$1,134.20.
 - g. Check No 100738 dated December 7, 2018 to Walt Parker - \$1,134.20.
 - h. Check No 100781 dated December 21, 2018 to Walt Parker - \$1,500.00.
 - i. Check No. 100846 dated January 11, 2019 to Walt Parker - \$1,135.00
6. The Plaintiff, without any authorization from Curl Properties or its owner John Curl, on January 15, 2019, fraudulently filed a Real Property Valuation Appeal form with the Florence County Tax Assessor's office in an effort to change the value of the

building rented by FCT. The Plaintiff fraudulently represented to the Tax Assessor's office that the lease payments due on the building had been reduced which is false.

For the foregoing reasons John Curl requests that the Court terminate the preliminary injunction. The Plaintiff as the minority shareholder has demonstrated that he is incapable of managing this business. He is unable to get the tax returns prepared and filed for the years 2016 and 2017 despite of numerous requests from the Defendant, he is unable to provide timely financial statements to the Defendant so that he can monitor the activities of the business and he can't pay the rent for the Building while favoring himself and his wife with the corporate funds, among other things.

TURNER PADGET GRAHAM & LANEY, PA

/s Jeffrey L. Payne

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Post Office Box 5478 (29502)
Florence, South Carolina 29501
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jpayne@turnerpadget.com

January 24, 2019

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	CIVIL ACTION NO. 2018-CP-21-2958
Walt Parker	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT
	)	
John C. Curl	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, John C. Curl, who being duly sworn deposes and says as follows:

1. On April 30, 2007, pursuant to a Stock Sale Agreement ("Stock Sale Agreement"), Walter Parker and I purchased the stock ("Stock") of Florence Carpet & Tile, Inc. from Charles W. Carnell. I acquired a 53% interest in FCT while Walt Parker acquired a 47% interest. The total purchase price was \$1,080,000 with the seller financing \$530,000 and BB&T financing the remaining balance. My company Curl Properties, Walt Parker and I had to personally guarantee both loans.
2. As part of the consideration for the purchase of the Stock, Carnell was required to continue to work for FCT as a consultant until October 30, 2007. His compensation was factored into the purchase price and it was valued at \$95,000 per year or \$260.27 per day.
3. It was specifically agreed on April 30, 2007 at a meeting on the Shareholders of FCT that I would own 53% of the Stock while Walt Parker would own 47%. See minutes attached hereto as Exhibit A.
4. As is set forth in the attached minutes from the April 30, 2007 shareholder meeting, Walt Parker was only entitled to additional shares of my stock if (a) FCT made a profit for a "complete year of operation"; and (2) the FCT profit occurred for a minimum of three of the first five years.
5. The phrase "complete year of operation" as set forth in the attached minutes did not include the year 2007 since Walt and I did not acquire the company until April 2007 and Charles Carnell, the former owner of FCT remained with the company and he continued to manage the business through October 2007. The first "complete year of operation" that was to be considered under the minutes was the year 2008, which was the first complete year that Walt and I owned FCT.
6. FCT never experienced three profitable years during the first five complete years of operation which were the years 2008-2012. Thus, no additional shares were ever issued by FCT

or me to Walt Parker and that is why Mr. Parker has been unable to provide any shares or other document that indicates that he now owns 50% of the FCT stock as he claims.

7. At no time between April 30, 2007, the date we purchased shares in FCT and November 8, 2018, the date Walt Parker filed this lawsuit, has Walt Parker (or anyone on his behalf) ever requested in any manner any additional shares from me or FCT. During this 11 and one half year period, he never asked me in person, contacted me by phone, wrote me a letter or emailed me with any demand that he is entitled to any additional shares in FCT. I have always been considered by Walt to be the majority shareholder in FCT.

8. FCT's loan agreement with Synovus Bank which currently has an outstanding balance of approximately \$110,000, requires FCT to provide the bank annually with its tax returns. Despite numerous requests by Synovus and me, Walt Parker has failed to have the FCT tax returns prepared for the years 2016 and 2017. Anne Marie Hanna, CPA has prepared the FCT tax returns for over 12 years. She is ready to prepare the 2016, 2017 and 2018 returns if her outstanding bill of \$4500 is paid. Walt Parker continues to pay himself and his wife with FCT funds but he refuses to pay the accountant to prepare the needed tax returns. I do not want Synovus to declare a default on its loan and thus the tax returns must be prepared immediately!!!

9. A company that I own, Curl Properties, LLC, is the owner of the building from which FCT operates. FCT has been leasing this building since April 2007. A true and correct copy of the lease ("Lease") is attached hereto as Exhibit B. In April 2012, FCT and Curl Properties signed a First Amendment to the Commercial Real Estate Lease which provided a five year extension for the Lease and it further provided that it would automatically extend for an additional 5 years unless either party terminated it. See Exhibit B. Neither party has terminated the Lease and it is still in effect.

10. FCT owes Curl Properties \$11,811.65 a month in rent. Since the Court issued its injunction on November 18, 2018, Walt Parker has never paid the entire monthly rent. In November he paid a total of \$4,000 in rent, while in December he paid a total of \$2,000. In January 2019 to date he has paid \$8,000. These outstanding payments coupled with the other numerous months of outstanding rent has left Curl Properties owed approximately \$129,229.55.

11. Walt Parker is intentionally refusing to pay Curl Properties the monthly rent in an effort to cause me financial harm. While refusing to pay Curl Properties rent I have discovered that Walt Parker issued the following checks to his Company Florence Custom Countertops for work that FCT could perform and should perform:

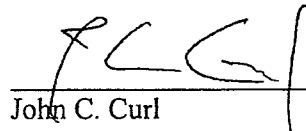
- a. Check No. 100697 dated November 23, 2018 in the amount of \$1,571.00
- b. Check No. 100771 dated December 14, 2018 in the amount of \$1,919.25
- c. Check No. 100797 dated December 27, 2018 in the amount of \$1,121.75.
- d. Check No. 100801 dated December 28, 2018 in the amount of \$3,509.50
- e. Check No. 100862 dated January 11, 2019 in the amount of \$1,003.25.

12. I have also discovered that Walt Parker issued the following non-payroll checks from the FCT operating account to his wife and himself: (Walt Parker pays his wife and his salary from the FCT payroll account and not the operating account.)

- a. Check no. 100738 dated Dec. 7, 2018 to Allison Parker -\$586.51.
- b. Check No. 100765 dated December 14, 2018 to Allison Parker- \$1,134.20
- c. Check No. 100782 dated December 21, 2018 to Allison Parker - \$586.51
- d. Check No. 100845 dated January 11, 2019 to Allison Parker - \$586.00
- e. Check No 100738 dated December 7, 2018 to Walt Parker - \$1,134.20.
- f. Check No 100765 dated December 14, 2018 to Walt Parker - \$1,134.20.
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- h. Check No 100781 dated December 21, 2018 to Walt Parker - \$1,500.00.
- i. Check No. 100846 dated January 11, 2019 to Walt Parker - \$1,135.00

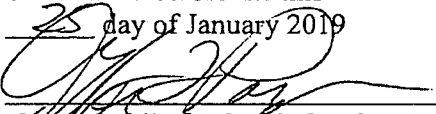
13. Walt Parker continues to use FCT funds to purchase family health insurance despite my specific instructions not to purchase this insurance.

14. Recently, I learned that Walt Parker without any authorization from me, fraudulently filed the attached Real Property Valuation Appeal form on January 15, 2019 with the Florence County Tax Assessor's office in an effort to change the value of the building rented by FCT. The Plaintiff fraudulently represented to the Tax Assessor's office that the lease payments due on the building had been reduced which is false, among other things.


John C. Curl

SWORN to before me this

25 day of January 2019


Notary Public for South Carolina

My Commission Expires: 4-20-2020

FLORENCE CARPET & TILE, INC.

MINUTES OF CALLED MEETING

OF SHAREHOLDERS

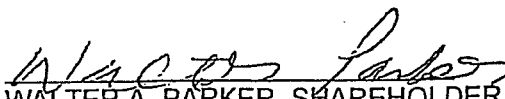
APRIL 30¹², 2007

John C. Curl and Walter A. Parker, being the sole shareholders of this corporation convened in a called meeting on the above date. Notice was waived.

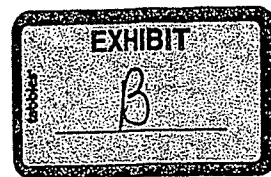
At this meeting, in consideration of their mutual promises and the sums of Five (\$5.00) Dollars in hand paid as acknowledged, the shareholders agreed that John C. Curl as fifty three (53%) per cent shareholder and Walter A. Parker as forty seven (47%) per cent shareholder, would agree for a transfer of share ownership from Curl to Parker within the period of the first five years of one per cent of share ownership from Curl to Parker for each complete fiscal year of operation of said corporation at a profit as determined by the accountant for the corporation, up to a total of 3 percentage points, the effect of which would be to allow for an ownership of fifty (50%) per cent to Curl and fifty (50%) per cent to Parker if the corporation operated at such profit for a minimum of three of the first five years.

The shareholders agreed also that the corporation would take out a life insurance policy upon each shareholder in a face amount of \$1,080,000.00, each naming as primary beneficiaries the creditors related to the purchase by the shareholders of the corporation, that is, Branch Banking and Trust Company of South Carolina first and Charles W. Carnell and Barbara E. Carnell second; as overall secondary beneficiaries after such creditors, the corporation itself would be the remaining beneficiary. The intent is that insurance proceeds would be available to pay any sums then owing to such creditors and no more. All remaining policy benefits would, as stated hereinabove, be made payable to the corporation itself as the secondary beneficiary.


JOHN C. CURL, SHAREHOLDER


WALTER A. PARKER, SHAREHOLDER





ELECTRONICALLY FILED - 2018 Nov 12 4:11 PM - FLORENCE - COMMON PLEAS - CASE#2018CP2102958

ELECTRONICALLY FILED - 2019 Jan 30 3:52 PM - FLORENCE - COMMON PLEAS - CASE#2018CP2102958

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

LEASE

THIS AGREEMENT MADE AND ENTERED INTO THIS ^{30th} 6th day of April, 2007 ^F
between Curl Properties, LLC, hereinafter known as Lessor and Florence Carpet and Tile, Inc., hereinafter
known as Lessee:

WITNESSETH:

1. That the Lessor, for and in consideration of the rents, covenants and agreements
hereinafter set out, have this day demised, leased and rented unto the Lessee, for the term stated, the
following described property: 1706 Pamplico Highway in Florence, SC.

Together with all and singular the rights, privileges and appurtenances thereunto
belonging.

2. TO HAVE AND TO HOLD the above described property with the rights, privileges
and appurtenances thereunto belonging unto the Lessee upon payment of rents as below described for the
term of five (5) year(s), beginning on April ^{30th} 9th, 2007 and ending on April ^{24th} 8th, 2012, ^F

3. In consideration of the lease of the above described property to the Lessee by the
Lessor, the Lessee promises to pay for the first year (12 months) of the within lease the sum of Eleven
Thousand and Three Hundred Dollars (\$11,300.00) per month. Thereafter, the annual rent shall be
increased by two percent (2%) for each twelve month period of the lease term. ^{30th} The first such amount shall
be payable upon the signing of the within lease, beginning April 9th, 2007 and continuing each month
thereafter for the balance of the leased term. All payments are to be made on the first day of each and
every month of the term of the within lease. If said monthly payments as set out above are in default for
more than fifteen (15) days following due date, the Lessor may declare the within lease canceled and
collect for the term, together with costs and attorney's fees. Failure to exercise option by the Lessor in case
of default in the payment of any monthly installment shall not constitute a waiver of their rights to exercise
the same in the event of any subsequent default. In event of default as aforesaid, the Lessor reserves the

right to forthwith take possession of said property with or without legal action without waiving any rights of collection of all delinquent rents and other damages due to Lessor by virtue of breach of this agreement.

4. That upon signing of the within lease by the Lessee, the Lessee agrees to pay an additional sum of \$() as damage deposit. Upon the expiration of within lease, said damage deposit shall be returned to Lessee less the cost of any damage to said property over and above normal wear and tear in the condition in which said property were received.

5. The Lessee agrees to pay for all services and utilities including lights, heat, air-conditioning, water, gas, electricity, etc., required in the operation of the property. Lessee agrees to keep up all plumbing, electrical or any other interior or exterior portions of the building and to pay for any and all repairs thereto. The Lessee shall also be responsible for the timely payment of all property taxes and property insurance related to and necessary for the protection of the property and all improvements thereon. The Lessee agrees to pay for and maintain general liability insurance for the property with limits comparable to those required by other similar businesses and Lessee shall insure that the Lessor is named as an "additional insured" party to the subject policy.

6. The Lessee shall not sublet the property or assign the within lease without the prior written consent of the Lessor, which consent shall not be arbitrarily withheld.

7. The Lessee shall be responsible for all repairs and renovations, decorations and upkeep to said property. The Lessor shall be responsible only for repairs to the roof of the leased building or any structural portion thereof, and agrees to pay for any necessary repairs to keep roof in good condition and to repair all roof leaks in a reasonable time after notice from the Lessee. The Lessor shall not be responsible to the Lessee for any loss or damage due to leakage from the roof or from any leakage or seepage whatsoever.

8. The Lessee agrees to accept the within described property in its "as-is" condition and shall make all repairs at his/her own expense. Any and all alterations, renovations, remodeling improvements and structural changes desired by the Lessee shall be at Lessee's own expense. Any structural changes desired by the Lessee shall be made by Lessee at his/her own expense and only upon written approval of Lessor.

9. The Lessee further agrees to carry on no form of business constituting a nuisance or involving illegal transaction on the property or in connection therewith; in case illegal business or a nuisance is engaged in on the property or in connection therewith, the within rentals shall accrue and the Lessor may forthwith eject the Lessee from the property and collect for the term including attorney's fee.

10. The Lessor shall not be responsible for injuries or damages to the Lessee, his agents, servants, customers, employees, or assigns, occurring on the property during the term of the within lease, or any renewal thereof, and the Lessee shall hold the Lessor harmless and shall assume full responsibility for all such injuries or damages to property or persons occurring on the property during the term of the within lease or for any damages or injuries of any nature or kind in connection with the use and occupancy of the property from any cause whatsoever.

11. The Lessee shall be responsible for any damages to the said property whether by himself, his agents, servants, customers, employees and assigns, and shall repair such damages at his own expense.

12. The Lessee at his/her own expense will be responsible for contents insurance and general liability insurance.

13. In case of injury or damage to the building from fire or other casualty, the rent shall be abated from time the above described property are not suitable for occupancy, but the Lessor shall have the option to promptly repair the property, or to cancel the within lease, or rebuild if practicable.

14. The air-conditioning and heating equipment are the property of the Lessor and shall not be removed from the premises. The Lessee shall maintain an ongoing preventive maintenance contract with a reputable, insured and bonded contractor and shall be responsible for any and all repairs or replacements that may be required.

15. The Lessee agrees to abide by any rules and plans set forth by the Lessor for the exterior sign in front of the within designated storebuilding and agrees not to place or erect any signage on or around the property without Lessor's prior approval.

16. The Lessee agrees to require all his employees to park in the parking lot in an area located away from the front of said store. The purpose being to leave front parking spaces open and available for customers.

17. The Lessee agrees to keep the front of within leased premises clean, free and clear of trash.

18. Lessee agrees to make all rental checks payable to Curl Properties, LLC and send to the following mailing address: P.O. Box 4815, Florence, SC 29502.

19. The Lessor guarantees the peaceful occupation and enjoyment of the premises to the Lessee during the term hereby provided.

20. The Lessee promises to pay the said rent at the times and in the manner above set out and to quit and deliver up the premises above described to the Lessor peaceably and quietly at the end of the said term in the same condition in which they were received, ordinary wear and tear accepted.

THIS AGREEMENT SHALL be binding upon the parties, hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Lessor and Lessee have hereunto set their hands and seals on the day and in the year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Jim P. Poulas

Brendall Hilley
For Lessor

Jim P. Poulas

Brendall Hilley
For Lessee

FC C-1
Lessor: Curl Properties, LLC

Walter R. R. R.
Lessee: Florence Carpet and Tile, Inc.



CURL PROPERTIES, LLC

**FIRST AMENDMENT TO
COMMERCIAL REAL ESTATE LEASE**

WHEREAS Curl Properties, LLC, (Lessor) and Florence Carpet and Tile, Inc., (Lessee) executed a Lease Agreement dated April 6th, 2007 for the following property:

1706 Pamplico Highway in Florence, SC and

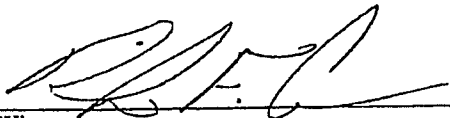
WHEREAS the parties now wish to Amend the subject Lease, then

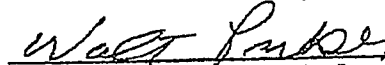
THEREFORE the parties agree to the following Amendments:

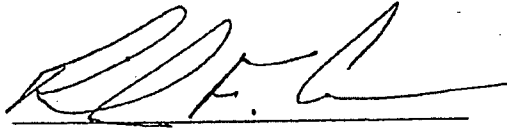
1. Beginning on April 9th, 2012, this lease shall renew for another five (5) year term and the new expiration date shall become April 8th, 2017.
2. Upon expiration of the above renewal term (April 8th, 2017) and each and every renewal term thereafter, provided neither party has notified the other in writing a minimum of ninety (90) days in advance of their desire to terminate, this lease shall automatically renew for consecutive five (5) year terms.

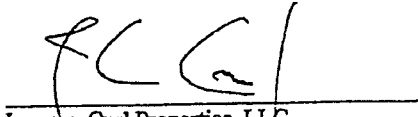
All other terms and provisions of the original Lease Agreement dated April 6th, 2007 shall remain unchanged and in effect.

Agreed to this 16 day of April, 2012.


Witness


Lessee: Florence Carpet and Tile, Inc.


Witness


Lessor: Curl Properties, LLC



Florence County Tax Assessor's Office Real Property Valuation Appeal Form

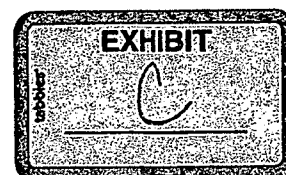
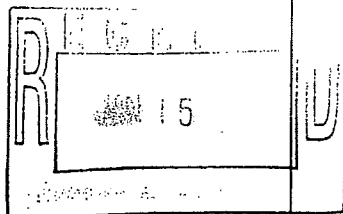


Instruction: Please Fill out all spaces completely. Incomplete Forms will be returned.
Appeals on Commercial Properties MUST include income/expense statements to be reviewed
All Appeals must include the Appellant's Opinion of Value to be reviewed

Owner Name: <u>Curl Properties, LLC</u> Mailing Address: <u>PO Box 4815</u> <u>Florence, SC 29502</u> Physical Address of Property: <u>Florence Carpet and Tile</u> <u>1706 Pamlico Hwy., Florence, SC 29505</u> Phone Number: <u>843-669-1851</u> MAP/BLOCK/PARCEL: <u>90134-02-015</u> eMail Address: <u>Walt@FlorenceCarpetAndTile.com</u> NOTE: IF YOU ARE A REPRESENTATIVE, PLEASE FILL OUT THE FOLLOWING Agent's Name: _____ All Agents are required to be one of the following (check any that apply) Licensed Appraiser (Active License #) _____ Accountant/Attorney (Include Name of Firm and Phone#) _____ Regular, Fulltime employee of owner: <u>Florence Carpet and Tile</u> (attach documentation) Immediate Family Member of Owner (list relation) _____	Owner's Opinion of Value (REQUIRED): \$ <u>600,000.00</u> Reasons for Appeal (including support for value): <u>Condition of the building has deteriorated to the point</u> <u>where our lease payments have been reduced from</u> <u>\$142,000.00 to \$67,000.00 in 2018.</u> <u>Florence Carpet and Tile is asking for the assessed value</u> <u>to be reviewed since we are obligated to pay property taxes</u> <u>due to the terms of our lease with Curl Properties.</u> What is the best way to contact you? Phone - <u>843-669-1851</u> Signature of Owner/Agent: <u>Walt Parker</u> Date: <u>1-15-2019</u> Printed name of Owner/Agent: <u>Walt Parker, President</u> Select One Tax Year for Review: (see below) ☒ 2018 ☐ 2019

Appeals Received/Postmarked by 1/15/2019 will be reviewed for the 2018 Tax Year.

Appeals Received after 1/15/2019 will be reviewed for the 2019 Tax Year.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2018-CP-21-2958
	)	
Walt Parker,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
	)	
John C. Curl,	)	
	)	
Defendant.	)	
	)	
John C. Curl,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Palmetto Floor Covering Installation,	)	
LLC and Florence Custom	)	
Countertops, Inc.,	)	
	)	
Third-Party Defendants.	)	

TO: REYNOLDS WILLIAMS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF,
WALT PARKER:

YOU WILL PLEASE TAKE NOTICE, that on February 21, 2019, at 9:30 a.m., or as soon thereafter as counsel may be heard, counsel for the Defendant John Curl will move before the Florence County Court of Common Pleas for an order pursuant to Rule 56 of the S.C.R.C.P. granting summary judgment in favor of the Defendant as to the causes of action set forth in the Plaintiff's Complaint. The grounds for this Motion are:

1. The Plaintiff's complaint is barred by the three year Statute of Limitations applicable to a breach of contract cause of action. See S.C. Code § 15-3-530 (2018). Plaintiff alleges that the Defendant was obligated to give him three percent of his shares in Florence Carpet & Tile ("FCT") pursuant to an agreement between the parties. Any right the Plaintiff may have had against the Defendant accrued in 2013 which was more than five years before the Plaintiff filed this lawsuit. Consequently the Plaintiff's Complaint should be dismissed with prejudice since he failed to file it within three years from when the defendant's obligation to tender additional shares arose in 2013.

2. The agreement between the Plaintiff and the Defendant specifically provided that FCT must have three profitable years during the company's first five years of "complete fiscal year of operation." FCT failed to earn a profit during the first five "complete" years of operation which were the years 2008 – 2012. The Plaintiff wants to include the year 2007 in his analysis. However, the results for 2007 are not included since the Plaintiff and the Defendant did not acquire their shares until April of 2007, and during that year the company was still paying Charles Carnell to manage the business. Thus, Plaintiff is not entitled to any additional shares from the Defendant and the Plaintiff's Complaint should be dismissed with prejudice;

3. The phrase "complete fiscal year of operation" set forth in the Agreement as alleged in the Plaintiff's Complaint does not include FCT's financial results for the year 2007. Plaintiff and Defendant did not purchase the shares in

FCT until April of 2007 and the prior owner managed the business for the remainder of the year. The clear meaning of this phrase as alleged by the Plaintiff does not include the year 2007. During the years 2008–2012, the Plaintiff has admitted that the company only made a profit according to its tax returns during the years 2010 and 2011. As result of the company's failure to make a profit during three of the first complete five fiscal years of operation, the Plaintiff therefore would not be entitled to any additional shares. As result, the court should dismiss the Plaintiff's Complaint, with prejudice.

This Motion is based upon pleadings before the court, the affidavits of John C. Curl, and any subsequent affidavits filed with the court, along with the substantive and procedural law of the State of South Carolina.

Respectfully submitted,

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

Date: Feb. 1, 2019

/Jeffrey L. Payne

Jeffrey L. Payne

P.O. Box 5478

Florence, South Carolina 29502

Telephone: (843) 662-9008

Fax: (843) 667-0828

Florence, South Carolina

ipayne@turnerpadget.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	Docket No.: 2018-CP-21-02958
WALT PARKER,	)	
Plaintiff,	)	
v.	)	
JOHN C. CURL,	)	
Defendant.	)	
		AFFIDAVIT OF WALT PARKER
JOHN C. CURL,	)	
Third-Party Plaintiff,	)	
v.	)	
PALMETTO FLOOR COVERING INSTALLATION, LLC AND FLORENCE CUSTOM COUNTERTOPS, INC.,	)	
Third-Party Defendants.	)	

PERSONALLY APPEARED BEFORE ME, WALT PARKER., who first being duly sworn deposes and states as follows:

1. I am the President of Florence Carpet & Tile, Inc. and a Member of its Board of Directors.
2. From January 1, 2017 through January 22, 2019, Florence Carpet & Tile paid rent to Curl Properties, Inc. in the amount of \$192,000. \$14,000 was paid in October 2018, \$4,000 in November, \$2,000 in December and \$8,000 in January 2019.
3. On no occasion has John Curl requested from me an income statement or a balance sheet. John Curl knows that Mike Barker maintains these records on behalf of the Company and, upon information and belief, John Curl has never asked Mike Barker for any such statement. Nevertheless since this Motion was filed alleging a "refusal" to furnish statements, my attorney has furnished Mr. Curl or his attorney Profit and Loss Statements for calendar years 2016, 2017, and 2018. Mr. Curl knows that all he needs to do to get additional P&L is to ask Mr.

Barker for them. Mr. Barker does not prepare balance sheets, rather that is the function of the accountant, who is also Mr. Curl's accountant.

4. Of the check numbers identified as payable to Florence Custom Countertops and as a diversion of income that should have gone to Florence Carpet & Tile, check numbers 100697, 771, 801, and 862 were paid to Florence Custom Countertops for raw materials (granite and the fabrication thereof) for the Wachowski job, the Foster (Ackerman) job, the Lynch and Foster (Young) job, and the Johnston job. Florence Carpet & Tile retained the funds paid by the customer above the granite and fabrication costs, i.e. the profit. Check number 100797 was not payable to Florence Custom Countertops, rather to the Florence Carpet & Tile petty cash account for items such as fuel, kerosene, cleaning supplies, and miscellaneous other expenses incurred by employees and subs.

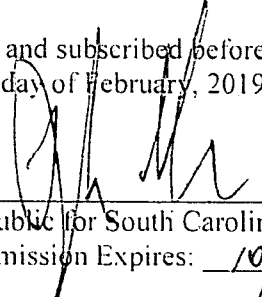
5. The described checks 100738, 765, 782, 845, 781, and 846 were reimbursement for monies owed to Walt Parker and Allison Parker. These monies were paid to Mr. and Mrs. Parker in lieu of salary. Their ordinary payroll checks were, in part, deferred at the end of the year and as Manager I elected instead to repay Allison and myself monies owed to us by the business. It was a good business purpose for doing this rather than paying the salary. That good business purpose was to ensure that my and Allison's annual salary did not rise above the threshold level that would cause an increase in the Company health insurance premium. Had that threshold been surpassed, Florence Carpet & Tile would have seen a large increase in the premium and in the beginning of 2018, I determined that the Company could save approximately \$1,000 per month on such payments by purchasing insurance through the (Obamacare) healthcare exchange.

6. There was nothing false about the application I filed for a reappraisal of the property value. I listed that Curl Properties, Inc. was the owner, Florence Carpet & Tile has a financial interest in the rent since, under the lease, it is that Company's obligation to actually pay the rent. Curl Properties should encourage lower taxes, not discourage them since the sole owner of Curl Properties is John Curl, also a Board Member and fiduciary to Florence Carpet & Tile.

FURTHER AFFIANT SAYETH NOT.


Walt Parker

Sworn to and subscribed before me this
18 day of February, 2019.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/24/26

Rent Payments to Our Properties

Date	Payment Amount	Paid MTD	Paid YTD	Paid Since 1/1/17
01/03/17	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
01/13/17	\$ 4,000.00	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00
01/25/17	\$ 4,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00
02/14/17	\$ 4,000.00	\$ 16,000.00	\$ 16,000.00	\$ 16,000.00
02/17/17	\$ 4,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
02/28/17	\$ 3,000.00	\$ 23,000.00	\$ 23,000.00	\$ 23,000.00
3/10/2017	\$ 4,000.00	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
3/24/2017	\$ 4,000.00	\$ 31,000.00	\$ 31,000.00	\$ 31,000.00
3/31/2017	\$ 4,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00
4/7/2017	\$ 4,000.00	\$ 39,000.00	\$ 39,000.00	\$ 39,000.00
4/13/2017	\$ 1,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00
4/26/2017	\$ 3,000.00	\$ 43,000.00	\$ 43,000.00	\$ 43,000.00
5/10/2017	\$ 4,000.00	\$ 47,000.00	\$ 47,000.00	\$ 47,000.00
5/19/2017	\$ 4,000.00	\$ 51,000.00	\$ 51,000.00	\$ 51,000.00
5/26/2017	\$ 4,000.00	\$ 55,000.00	\$ 55,000.00	\$ 55,000.00
6/9/2017	\$ 4,000.00	\$ 59,000.00	\$ 59,000.00	\$ 59,000.00
6/15/2017	\$ 4,000.00	\$ 63,000.00	\$ 63,000.00	\$ 63,000.00
6/23/2017	\$ 4,000.00	\$ 67,000.00	\$ 67,000.00	\$ 67,000.00
7/14/2017	\$ 4,000.00	\$ 71,000.00	\$ 71,000.00	\$ 71,000.00
8/3/2017	\$ 2,000.00	\$ 73,000.00	\$ 73,000.00	\$ 73,000.00
8/11/2017	\$ 2,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00
8/18/2017	\$ 6,000.00	\$ 81,000.00	\$ 81,000.00	\$ 81,000.00
9/29/2017	\$ 20,000.00	\$ 101,000.00	\$ 101,000.00	\$ 101,000.00
11/10/2017	\$ 4,000.00	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00
11/17/2017	\$ 4,000.00	\$ 109,000.00	\$ 109,000.00	\$ 109,000.00
12/8/2017	\$ 4,000.00	\$ 113,000.00	\$ 113,000.00	\$ 113,000.00
1/8/2018	\$ 6,000.00	\$ 119,000.00	\$ 119,000.00	\$ 119,000.00
2/23/2018	\$ 2,000.00	\$ 121,000.00	\$ 121,000.00	\$ 121,000.00
3/8/2018	\$ 4,000.00	\$ 125,000.00	\$ 125,000.00	\$ 125,000.00
3/14/2018	\$ 2,000.00	\$ 127,000.00	\$ 127,000.00	\$ 127,000.00
3/20/2018	\$ 4,000.00	\$ 131,000.00	\$ 131,000.00	\$ 131,000.00
4/9/2018	\$ 2,000.00	\$ 133,000.00	\$ 133,000.00	\$ 133,000.00
5/16/2018	\$ 2,000.00	\$ 135,000.00	\$ 135,000.00	\$ 135,000.00
5/25/2018	\$ 2,000.00	\$ 137,000.00	\$ 137,000.00	\$ 137,000.00
5/30/2018	\$ 2,000.00	\$ 139,000.00	\$ 139,000.00	\$ 139,000.00
6/18/2018	\$ 2,000.00	\$ 141,000.00	\$ 141,000.00	\$ 141,000.00
6/22/2018	\$ 2,000.00	\$ 143,000.00	\$ 143,000.00	\$ 143,000.00
7/9/2018	\$ 3,000.00	\$ 146,000.00	\$ 146,000.00	\$ 146,000.00
7/19/2018	\$ 2,000.00	\$ 148,000.00	\$ 148,000.00	\$ 148,000.00
7/20/2018	\$ 2,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00
7/30/2018	\$ 2,000.00	\$ 152,000.00	\$ 152,000.00	\$ 152,000.00
7/31/2018	\$ 1,000.00	\$ 153,000.00	\$ 153,000.00	\$ 153,000.00
8/17/2018	\$ 4,000.00	\$ 157,000.00	\$ 157,000.00	\$ 157,000.00
9/11/2018	\$ 2,000.00	\$ 159,000.00	\$ 159,000.00	\$ 159,000.00
10/10/2018	\$ 2,000.00	\$ 161,000.00	\$ 161,000.00	\$ 161,000.00
10/15/2018	\$ 2,000.00	\$ 163,000.00	\$ 163,000.00	\$ 163,000.00
10/30/2018	\$ 10,000.00	\$ 173,000.00	\$ 173,000.00	\$ 173,000.00
11/13/2018	\$ 2,000.00	\$ 175,000.00	\$ 175,000.00	\$ 175,000.00
11/23/2018	\$ 2,000.00	\$ 177,000.00	\$ 177,000.00	\$ 177,000.00
12/22/2018	\$ 2,000.00	\$ 179,000.00	\$ 179,000.00	\$ 179,000.00
1/8/2019	\$ 2,000.00	\$ 181,000.00	\$ 181,000.00	\$ 181,000.00
1/11/2019	\$ 2,000.00	\$ 183,000.00	\$ 183,000.00	\$ 183,000.00
1/16/2019	\$ 2,000.00	\$ 185,000.00	\$ 185,000.00	\$ 185,000.00
1/22/2019	\$ 2,000.00	\$ 187,000.00	\$ 187,000.00	\$ 187,000.00



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	Docket No.: 2018-CP-21-02958
WALT PARKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
JOHN C. CURL,	)	
	)	
Defendant.	)	
	)	MOTION FOR RECONSIDERATION
JOHN C. CURL,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
PALMETTO FLOOR COVERING	)	
INSTALLATION, LLC AND FLORENCE	)	
CUSTOM COUNTERTOPS, INC.,	)	
	)	
Third-Party Defendants.	)	

Pursuant to the provisions of Rule 59 SCRCP, the Plaintiff moves the Court to alter or amend its Findings of Fact and Conclusions of Law entered April 29, 2019 in the following particulars:

- (I) That it declare the rights and obligations of the parties under the Purchase Agreement dated April 30, 2007. In Finding of Fact No. 10, the Court found that the terms of that Agreement were ambiguous and in Finding of Fact No. 8 that Curl was the drafter of the Agreement. In Conclusion of Law No. 7, the Court has found that "Any ambiguity in the terms of that Agreement will be construed against Curl as he is the party responsible for drafting the contract." and in No. 8 that "the first full fiscal year for FCT was 2007." It has never been disputed that 2010 and 2011 were profitable, as found by the Court in Finding of Fact No. 10.

The necessary, inescapable conclusion from these factual findings and legal conclusions is that Parker and Curl are each entitled to 50% of the ownership of Florence Carpet & Tile, Inc. and the Plaintiff requests that the Findings of Fact and Conclusions of Law be amended to so provide.

- (II) That Finding of Fact No. 17 be removed because there was no testimony to the effect that Curl co-owned Palmetto Floor Covering Installation, LLC with Rob Simmons.
- (III) That Conclusion of Law No. 12(g) be removed because there was no evidence offered that Synovus Bank "repeatedly requested that Parker provide FCT's tax returns."
- (IV) That Conclusion of Law No. 12(a) be deleted because the undisputed testimony from Parker regarding the reasons for his facilitating the founding of Florence Custom Countertops is that the best protection for Florence Carpet & Tile, Inc. against the competition from granite competitors gaining inroads was that FCT itself go into the granite business, but that Curl specifically rejected that idea thus Parker felt he had no alternative but to protect Florence Carpet & Tile, Inc. by creating a friendly, allied granite countertop business, FCC. Curl offered no testimony disputing that background or that motivation.
- (V) That the Court reconsider and alter its finding that Walt Parker's hands were unclean, taking additional testimony from Lisa Shelton and/or Mike Barker if the Court would benefit from further information about FCC.

Respectfully submitted,

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: s/Reynolds Williams
Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiff

Florence, SC
May 8, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	Docket No.: 2018-CP-21-02958
WALT PARKER,	)	
Plaintiff,	)	
v.	)	
JOHN C. CURL,	)	
Defendant.	)	SUPPLEMENTAL MEMORANDUM
	)	IN SUPPORT OF PLAINTIFF'S
	)	MOTION FOR RECONSIDERATION
JOHN C. CURL,	)	
Third-Party Plaintiff,	)	
v.	)	
PALMETTO FLOOR COVERING	)	
INSTALLATION, LLC AND FLORENCE	)	
CUSTOM COUNTERTOPS, INC.,	)	
Third-Party Defendants.	)	

In support of his Motion for Reconsideration, the Plaintiff submits this Supplemental Memorandum of Authorities.

The Defendant Curl Did Not Plead the Affirmative Defense of Unclean Hands

The doctrine of "unclean hands" is an affirmative defense which must be pled in an Answer; *Allendale County Bank v. Cadle*, 356 S.C. 412, 589 S.E.2d 752 (Ct. App. 2003), citing *Rock Hill Nat'l Bank v. Honeycutt*, 289 S.C. 98, 104, 344 S.E.2d 875, 879 (Ct. App. 1986) and *Dye v. Gainey*, 320 S.C. 65, 70, 463 S.E.2d 97, 100 (Ct. App. 1995). *See also Doosan Mach. Tools Am. Corp v. Mach. Sols., Inc.*, U.S. District Court for the District of South Carolina, Columbia Division, March 19, 2019, 2018 U.S.D. Lexis 44042. Rule 8(c) SCRCP also requires that "any other matter constituting an avoidance" must be pled affirmatively by a defendant.

In his Answer, Counterclaim, and Third-Party Complaint filed December 13, 2018, Curl raised several affirmative defenses, none were the Plaintiff's unclean hands. The failure to plead the affirmative defense of unclean hands effectively denied the Plaintiff of notice and the opportunity to present evidence. Depriving the Plaintiff of relief to which he is otherwise entitled on the basis of the unpled doctrine unlawfully deprives the Plaintiff of due process of law.

The Derelictions the Court Found Had No Bearing On The Relief That The Plaintiff Sought Thus Should Not Preclude His Recovery

The doctrine of "unclean hands" precludes the Plaintiff from recovering in equity if he acted unfairly **in a matter that is the subject of the litigation to the prejudice of the Defendant**; *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943). "Clean hands" means a clean record with respect to the transaction with the defendants themselves and **not** with respect to others. *Ibid*.

As discussed in *Straight v. Goss*, 383 S.C. 180, 678 S.E.2d 443, 457-58 (Ct. App. 2009) (citations omitted), the doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. The taint of inequity or bad faith must be relative to the matter in which he seeks relief, thus one requirement of an unclean hands defense, if properly pled, is that the improper action of the plaintiff involve the subject matter at issue to the prejudice of the opposing party.

The Plaintiff brought this declaratory judgment action seeking a declaration of the respective rights of Curl and him under an agreement made in 2007, claiming, in part, that events in 2007, 2010, and 2011 gave rise to his ownership of 50% of Florence Carpet Tile, Inc. In this

court's Conclusions of Law 12(a) – (h) it found that Parker had come into Court with “unclean hands.” Not one of the breaches of fiduciary duty or loyalty enunciated there by the court were activities related to the declaratory judgment and injunctive relief sought by the Plaintiff, neither in time nor subject matter. Nor do any of them prejudice the Defendant Curl directly, but only derivatively as a shareholder in Florence Carpet & Tile, Inc.

Parker's role in having to create, operate, or facilitate the operation of Florence Custom Countertops and Palmetto Floor Covering occurred well after the making of the 2007 agreement regarding the Florence Carpet & Tile, Inc. shares. The Articles of Organization for each of those companies were not even filed until September and October 2011 and their activities this Court found to be competitively impacted, if anything at all, the operations and profit of Florence Carpet & Tile, Inc., not Curl.

The failure to file the 2016 and 2017 tax returns, even if harmful to Florence Carpet & Tile, Inc., have no effect upon John Curl; the failure to file them occurred at least five years after Plaintiff Parker's rights under the Purchase Agreement had fully accrued. The failure to provide non-existent copies of those same tax returns to Synovus, in like manner, may impact Florence Carpet & Tile, Inc. and its relationship with a creditor but neither affects Curl directly nor is in any way related to the rights which Parker sought to have declared or the need for the permanent equitable relief he sought.

Parker's failure to cause Florence Carpet & Tile, Inc. to pay its vendors and its landlord in a timely fashion are all acts of the same vintage. The undisputed evidence is that the vendors and the landlord were all paid current until sometime in 2015, years after Parker's rights to his equal ownership vested. Again, John C. Curl is neither one of the vendors nor is he, himself, the landlord. Curl Properties, LLC is the landlord.

Conclusion

Since the affirmative defense of “unclean hands” was never pled by the Defendant and since the uncleanliness found by the Court did not pertain to the subject of the litigation to the prejudice of the Defendant Curl, we request the Court to amend its Findings of Fact and Conclusions of Law in a way that reflects the true ownership of Florence Carpet & Tile, Inc.: 50% to John C. Curl and 50% to Walt Parker.

Respectfully submitted,

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: /s/ Reynolds Williams
Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiff

Florence, SC
May 10, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
Walt Parker,	)	Civil Action No. 2018-CP-21-2958
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM IN OPPOSITION TO
	)	RECONSIDERATION
John C. Curl,	)	
	)	
Defendant.	)	
_____	)	
John C. Curl,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Palmetto Floor Covering Installation, LLC	)	
and Florence Custom Countertops, Inc.,	)	
	)	
Third-Party Defendants.	)	
_____	)	

The Trial

The allegations set forth in the Plaintiff's complaint were tried in this Court pursuant to SCRCF Rule 39(b). The non-jury trial was held on March 20 and March 21, 2019. The parties agreed that all of the Defendant's counterclaims and third party complaint would be tried by jury at a later date.

The Order

After considering all the relevant and admissible evidence, the Court issued (25 April 2019) and filed (29 April 2019) its Order finding that Plaintiff Parker had unclean hands (specifically concluding that Parker had breached his fiduciary duty and duty of loyalty to corporate co-owner Curl) and holding that it would be inequitable to order the specific

performance of the incentive ownership contract requested by Parker – a transfer of some Curl corporate ownership shares to Parker. The Court also denied Plaintiff's request for a permanent injunction.

The Motion For Reconsideration

Now, after the Court's devotion of judicial resources to the matter, Parker seeks a second bite at the apple – a bite somehow free of his own inequitable conduct. Parker's motion even suggests the Court "taking additional testimony" despite the fact that he had every chance to fully present and prove his case the first time it occupied the Court's time and attention.

While additional testimony, and amendment of findings of fact / conclusions of law are among the possibilities allowed by SCRCP 59(a)(2) in those remote situations where reconsideration is appropriate, the Rule not intended to simply allow a failed litigant to try his case again when he doesn't get the result sought. Notably, Parker does not proffer the details of the "additional testimony" or explain why it was not provided at the Court's scheduled trial or show how it would make any difference in the Court's determination – as required by Wright v. Strickland, 306 S.C.187, 410 S.E. 2d 596 (Ct. App. 1991)(motion to reopen record not allowed simply "to embark on a 'fishing expedition.'").

Specific Performance

Part of Parker's present motion (item I) is a renewed effort to seek Court ordered specific performance of the incentive contract as determined by the Court. This is precisely the relief sought in the two day trial and thoughtfully denied because of Parker's disqualifying inequitable conduct.¹

¹ As the Court noted, Parker labeled the first cause of action of his complaint. In the prayer of his Complaint, Parker did not seek damages but rather requests that this Court compel Curl "to sign the necessary papers to reflect the true ownership" of the Corporation.

In his motion (item I) Parker erroneously suggest that the “inescapable conclusion” from the factual finding of the incentive contract (Finding of Fact 7) and the legal conclusion of contract interpretation (Conclusion of Law 8)² is contract enforcement, but Parker ignores that he had either a legal remedy or an equitable remedy³ for his alleged failure to receive the benefit of the contract. Specific performance of contract is an equitable remedy. Ingram v. Kasey’s Assocs., 340 S.C. 98, 531 S.E.2d 287 (2000); Campbell v. Carr, 361 S.C. 258, 262-263, 603 S.E.2d 625, 628 (Ct. App. 2004). Parker pursued the equitable remedy and had a full and fair opportunity to present his case for that remedy to this Court.

Parker’s Inequitable Conduct

Of course, it is quintessential that to receive equity, a party must do equity. “He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945). *See also* Symons, Pomeroy’s Equity Jurisprudence § 397, at 91-92 (5th ed. 1941) (stating the unclean hands maxim “says that whenever a party, who . . . seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy”).

² While Curl disagrees with the Court’s finding of ambiguity and disagrees with the Court’s subsequent interpretation of the incentive contract, it need not be briefed here.

³ White v. Felkel, 225 S.C. 453, 82 S.E.2d 813 (1954); Campbell v. Carr, 361 S.C. 258, 603 S.E.2d 625 (Ct. App. 2004)

In this case, it was precisely the Plaintiff's inequitable conduct or "unclean hands" that led to the Court's decision to deny the equitable remedy sought. Parker now attacks that decision in two-fold: first, he suggests that his hands really weren't unclean – and if he can only submit additional testimony (somehow different from his previous trial opportunity) he will show the Court the error of its conclusions; in the alternative, Parker seeks to avoid the truth of his inequitable conduct all together by having the Court disregard that conduct because of an alleged pleading failure by Defendant Curl. There was no pleading failure or inadequacy and it is most disingenuous to suggest such.

Raised Outside of Rule 59 Jurisdictional Window

First, the alleged pleading failure – not pleading "unclean hands" as an affirmative defense – was not timely raised under Rule 59. In the Rule 59 motion filed May 8, 2019 (within 10 days of the Court's April 29th filing of its Order), there is no mention of the alleged failure to plead "unclean hands." This alleged failure was not raised until the supplemental memorandum filed May 10, 2019 – outside of Rule 59's strict 10 day jurisdictional window.⁴

Inequitable Conduct Was Pleaded and Repeatedly Raised

Even if the Court were to consider the alleged failure to plead "unclean hands", it is a red herring. The Court sitting in equity must act equitably considering the circumstances surrounding the Plaintiff's claim for equitable relief. Moreover, Plaintiff was not surprised at

⁴ Rule 59(b) provides, in part, "In non-jury actions the motion shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered." Our Supreme Court has called this an "absolute deadline" beyond which the trial court loses jurisdiction. Overland, Inc. v. Nance, 423 S.C. 253, 815 S.E.2d 431 (2018). While unable to find precedent on the precise point of whether a Rule 59 motion raising only some matters (e.g. issues A, B, and C) would create extended jurisdiction for additional matters (e.g. issues X, Y, and Z), based upon South Carolina's general jurisprudence, this seems highly unlikely. See discussion in Heins v. Heins, 543 S.E.2d 224, 344 S.C. 146 (Ct. App. 2001).

trial by Defendant's claims and evidence of inequitable conduct. Indeed, Parker's inequitable conduct has been repeatedly raised by Defendant in his Answer, his counterclaims, his third-party claims, and his multiple motions to dissolve the Plaintiff's temporary restraining order.

Curl's Fourth (Breach of Fiduciary Duty), Fifth (Derivative Action for "mismanagement, misappropriation, self-dealing, and unjust personal enrichment" (see ¶ 35 filed December 13, 2018)), and Sixth (Misappropriation of Corporate Opportunity) defenses are pleaded both "As A ... Defense" – and as a counterclaim. The Court's findings of fact track these defenses of inequitable conduct and support the Court's use of "unclean hands" to describe Parker's position and conduct.

Finally, in his motion for reconsideration, Plaintiff suggests that his inequitable or "unclean" conduct is not applicable to or relevant to the subject matter of the trial because it occurred after the Purchase Agreement and incentive ownership contract of April 30, 2007. Parker misconstrues the applicability of the defense. It isn't that inequity tainted the formation of the incentive contract; it's that inequity tainted the claimed fulfillment of the incentive contract.

In this vein, Parker further argues that his inequitable conduct did not "competitively impact" Defendant Curl. To the contrary, the evidence supports the Court's finding that Parker acted inequitably toward his Florence Carpet & Tile, Inc. and to his fiduciary partner in that business and some of this unclean conduct occurred in the first five years following the incentive contract that Parker now seeks to enforce. In addition, it does not matter if the inequitable conduct directly or indirectly impacted Curl as "the equitable defense of unclean hands is available in a shareholder derivative action." Straight v. Goss, 678 S.E.2d 443, 458, 383 S.C. 180 (Ct. App. 2009).

While Parker points to the actual formation of problematic businesses (Florence Custom Countertops and Palmetto Floor Covering) occurring late in the year 2011 – even this is during the key first 5 years of the incentive contract Curl seeks to specifically enforce.⁵ Moreover, other testimony presented by Curl supported other inequitable self-serving conduct relating to the potential profit (or inflation thereof) during the 5 years of the incentive agreement.⁶

Conclusion

This Court has already used precious judicial time and resources carefully considering and sorting out the multiple issues presented in the non-jury trial. The Plaintiffs motion for reconsideration should be denied for the reasons outlined herein.

TURNER PADGET GRAHAM & LANEY, P.A.

June 3, 2019

/s/ J. René Josey

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⁵ Again, Curl does not agree with the Court that the year 2007 was eligible to be considered as part of the five-year incentive contract, but, even if considered, the year 2011 falls in the relevant fifth year of that contract window.

⁶ In his motion filed May 8, 2019, Parker urges the Court to delete Conclusions of Law 12(a) (his motion item IV) and 12(g) (his motion item III) *which did have evidentiary support* including the testimony of John Curl. This evidence and the Court's supported conclusions relate precisely to the detrimental impact of Parker's self-serving conduct upon Florence Carpet & Tile, Inc.

1 you'll see in this case that has Mr. Parker as anything
2 other than a minority shareholder.

3 Lastly as to this deal with Florence Custom
4 Countertops, the evidence is going to show that they're
5 still running it separately from this business. He's
6 writing checks. He's got his own bank accounts. I don't
7 know how it got wrapped into this company when Mr. Curl
8 has never been apart of it. He's never been an owner of
9 it and yet they continued to operate it all the way
10 through year end 2018 I subpoena the bank records here's
11 their bank records from '15 to '18. Supposedly, they
12 stopped operating it in 2011. So that will be something
13 that we need to figure out here today, Your Honor. And
14 really those are the key issues for us. Thank you.

15 THE COURT: All right. Mr. Williams, you may
16 call your first witness.

17 MR. WILLIAMS: I call Walt Parker.

18 THE COURT: Mr. Parker, please come forward.
19 I'm going to ask if you could to place your left hand on
20 the Bible and raise your right hand as the clerk
21 administers the oath.

22 THE CLERK: Left hand on the Bible and raise
23 your right hand. Do you swear or affirm that the
24 testimony you give will be the truth, the whole truth, and
25 nothing but the truth so help you God?

1 MR. PARKER: I do.

2 THE CLERK: You can have a seat on the witness
3 stand.

4 THE COURT: Have a seat in the witness chair.
5 I'm going to ask that you pull up real close to that
6 microphone, speak loudly and clearly and slowly in order
7 that we can hear everything that you have to say and let's
8 start with your full name please, sir.

9 MR. PARKER: My full name is Walter Allen
10 Parker.

11 WHEREUPON,

12 Walter A. Parker,
13 after first having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WILLIAMS:

16 Q And you go by Walt, is that correct?

17 A That is correct.

18 Q Okay. Walt, tell us how old you are and where you
19 live?

20 A I am 54 years old and I live in Florence, South
21 Carolina.

22 Q And are you married?

23 A I am.

24 Q To Allison?

25 A Correct.

1 Q And you have children?

2 A I do.

3 Q What ages are they?

4 A Thirteen, 16 and 20.

5 Q Okay. Give the judge a brief biography with what
6 sort of education that you have and what's been your work
7 experience prior to your affiliation with Florence Carpet
8 and Tile?

9 A I spent most of my working career in manufacturing
10 management. I went to undergraduate school at Francis
11 Marion and I received a bachelor of business
12 administration. And then went back to work or excuse
13 me -- went back to school a couple years later and
14 received a master's in business administration.

15 Q And how about your working history as an adult?

16 A I worked in -- or held several jobs in manufacturing
17 starting out as a shift supervisor and working my way up
18 to plant manager as director of operations.

19 Q For what company?

20 A Various companies JPS Automotive where we
21 manufactured carpet for the automotive industry, Bosch
22 Braking Systems, Interlake Material Handling, States
23 Industries and that's it.

24 Q Okay. Now, you went to Francis Marion is that
25 because you grew up in the Florence area or was it just

1 happenstance?

2 A I actually grew up in Johnsonville, South Carolina
3 and my family is from North Carolina both parents. And I
4 was at the time when I went to school, I had a brother
5 that was attending the University of North Carolina. And
6 I was not as studious as he, so I did not matriculate
7 there. I chose to go to Francis Marion and stayed there.

8 Q Okay. In 2006, what happened to your employment
9 situation?

10 A I left the company that I was working for and
11 manufacturing in this country was -- the job prospects and
12 the employment security was pretty low and so I was
13 contemplating looking at purchasing a business and ---

14 Q Have you got water up there? You need some water?

15 A I do not have any water.

16 Q Go ahead.

17 A My mother was a teacher in Johnsonville and she was
18 friends with the Florence Carpet and Tile's accountant Ann
19 Marie Hanna. She was friends with her mother because they
20 taught together. And so my mother ask me to -- thank you.
21 My mother ask me to have Ann Marie take a look at the
22 financials of a commercial glass business that I was
23 looking at in Morehead City, North Carolina. And during
24 that time Ann Marie asked if we were looking to move from
25 the area and I indicated that we were not. And she was

1 also the accountant for Charles Carnell of Florence Carpet
2 and Tile and she knew that he was trying to sell his
3 business. And she was also John's accountant and so she
4 knew that there was a possibility of something there. So
5 she facilitated a meeting between John and myself and then
6 things kind of went from there.

7 Q And when you say John you talking about John Curl?

8 A I am, yes, sir.

9 Q Okay. And had you ever met John Curl before Ann
10 Marie Hanna's introduction?

11 A I had not.

12 Q Okay. And did you ever met Charles Carnell before
13 being introduced by Ann Marie Hanna?

14 A I had not.

15 Q You had never bought any carpet from this company or
16 anything?

17 A No.

18 Q Okay. Describe to the judge how the discussions
19 with John Curl went?

20 A Well, initially it was -- initially, it was just
21 introductory type things. And, I guess, there was nothing
22 that really stood out from the standard things that you
23 would expect discussions of something of that nature would
24 take place. What he expected his role to be and what he
25 expected my role to be. And I express similar type, you

1 know, type concerns and then we went just discussing the
2 normal things that will take place in due diligence. And
3 it took about a year to get to that point.

4 Q What did you and he agree about what his role would
5 be and your role would be?

6 A John said that his interest in it was primarily the
7 real estate, that he had no long-term interest in owning
8 the business and my interest was obviously the business.

9 Q And so did you agree what your role in the business
10 would be?

11 A Yes.

12 Q What was that?

13 A Would be the president of the company and the
14 day-to-day managing director.

15 Q Okay. And did you discuss what his -- what did you
16 decide his role in the business would be?

17 A I don't know that we ever officially stated what his
18 role was going to be and I don't know that that was ever
19 clear or defined. It was more of an implied thing that he
20 was not going to be involved in day-to-day activities.

21 Q Okay. Did you and he reduce any of that to writing?

22 A Not to my knowledge.

23 Q Okay. And tell me you said you had about a year of
24 due diligence. What did that consist of from your
25 point of view, what did you do?

1 A Part of that time was spent -- I didn't really have a
2 whole lot of work to do initially part of it was, I guess,
3 figuring out how the financing was going to take place.
4 There was a period of time where I went in and did some
5 due diligence. There was not an awful lot of time before
6 closing. So I don't know that there was ever a point of
7 that it was a done deal, if you will, until probably about
8 a month before we went through closing.

9 Q Okay. All right. About a month before you went
10 through closing, what happened that made you say decide to
11 tell yourself, okay, this is a done deal?

12 A It just look like financing -- the structure of the
13 financing was going to be -- was going to be able to be
14 viable way of going about doing it. It look like the --
15 Mr. Carnell had agreed -- I think there was a period of
16 time where there were some negotiations going back and
17 forth about the amount that was going to be paid and so
18 that took -- and that took probably a couple months to get
19 to that point. And then the last couple of weeks it was
20 kind of a rush to get in and do some due diligence and
21 looking at inventory and going through that process.

22 Q Did you do an inventory count or did you just walk
23 through and look at the inventory?

24 A I verified inventory was there. There was no way to
25 go in and do an actual full physical inventory by myself.

1 The -- so I walk through with Charles or with somebody
2 from Florence Carpet and Tile and just verified that
3 materials that appeared to show on an inventory roster was
4 actually there.

5 Q Okay. You said a deal was struck with Mr. Carnell
6 and the financing was in place. What was your role in
7 striking the deal with Mr. Carnell?

8 A Very minimal. I had -- I was not involved in that
9 aspect of it. I would get information about that from
10 John. John would provide that information to me.

11 Q Okay. Who was the principal discussor with Charles
12 Carnell?

13 A That was -- that would be John.

14 Q Okay. And how about the bank?

15 A That would be John.

16 Q Did you have any discussions with the bankers about
17 the financing?

18 A I don't recall having any. And if there was any, it
19 was very very minimal.

20 Q Okay. The record will reflect that the closing was
21 on April 30th 2007, is that correct?

22 A That is correct.

23 Q Okay. Prior to the day of closing, had you and John
24 reduced anything to writing?

25 A Not to my knowledge.

1 Q Okay. Did you have -- what was your understanding of
2 what the ownership of the company would be upon closing?

3 A It was always my understanding that we were going
4 into this with a 50/50 partnership.

5 Q And from whom did you gain that understanding?

6 A I guess, it was a -- I don't know that we had any
7 discussion about how the ownership break down was going to
8 take place. We never had any discussions about, okay, I'm
9 going to be a majority and you're going to be in the
10 minority. I mean, none of that was discussed. So when we
11 went into the closing, initially I walked in with the
12 understanding that I was going to be an equal owner of the
13 business.

14 Q And where did the closing take place?

15 A The closing took place at the McGowan Law Firm.

16 Q Okay. I think the Court is familiar with where that
17 is, but for the record, that's on Coit Street in Florence,
18 correct?

19 A Yes, sir.

20 Q Okay. Who attended the closing as best you remember?

21 A Best from my recollection, it was myself, my wife,
22 the Carnells, Porter Stewart, John and that's -- I think
23 that was it.

24 Q Okay. Now, were you present for the real estate
25 portion of the closing?

- 1 A I was not.
- 2 Q Okay. When did you enter the room where the closing
- 3 took place?
- 4 A When we first got there, the Carnells were in the
- 5 waiting room. We waited for five or ten minutes or so and
- 6 then we all went into the room myself, Allison, the
- 7 Carnells. At the time I'm not sure if John was in the
- 8 room or not. I don't remember that and Porter Stewart.
- 9 Q Okay. Prior to walking into that room and meeting
- 10 Porter Stewart, had you ever met him before?
- 11 A I had not.
- 12 Q Did you ever talk to him on the phone before?
- 13 A I had not.
- 14 Q How about Kendall Hiller?
- 15 A I had never met him.
- 16 Q Had you ever talk to him on the phone?
- 17 A No, I had not.
- 18 Q Okay. Was Porter Stewart your lawyer?
- 19 A I wouldn't say he was my lawyer, he was John's
- 20 lawyer.
- 21 Q Okay. Did you have -- had you consulted a lawyer?
- 22 A I had not.
- 23 Q Okay. Did you have a lawyer in connection with this
- 24 transaction, the purchase of the Carnell stock?
- 25 A I did not.

1 Q Okay. Prior to this day, had you ever been an owner
2 in a business or a small company or a small business
3 anything of that nature?

4 A I had not.

5 Q You always been a corporate employee?

6 A Correct.

7 Q Okay. Had you ever own stock?

8 A I've own stock in a 401k or in a, you know, like a
9 online training account, but I've -- so technically if I
10 ever own stock, yes.

11 Q Had you ever been involved in the management of a
12 corporation?

13 A No.

14 Q Okay.

15 A Well, the management ---

16 Q The administrative executive level management of a
17 corporation?

18 A No.

19 Q Not the operations part of a corporation?

20 A No.

21 Q Okay. Had you ever seen a share certificate of
22 stock?

23 A I have not.

24 Q Did you know what a share certificate was?

25 A I did not.

1 Q Okay. Have you ever seen a share certificate since
2 then? Since April 30th 2007?

3 A I have not.

4 Q Okay. Do you know -- did you then know anything at
5 all about the management or formalities of owning a
6 corporation?

7 A I did not. My whole -- again, my whole professional
8 career had been in operations management.

9 Q Okay. Did Mr. Stewart explain any of that to you?

10 A He did not.

11 Q Okay. Did anybody else on that day explain any of
12 that to you?

13 A They didn't. No one did.

14 Q Okay. In front of you, you're going to see a
15 notebook. It's a white notebook. It says witness. Turn
16 if you will to tab three which is by agreement is exhibit
17 three for the purpose of this trial?

18 A What was that tab again?

19 Q Three.

20 A Okay.

21 Q And in there you will see a transmittal letter from
22 the McGowan Law Firm to you and Mr. Curl dated
23 January 2015 sending copies of the various documents. I'm
24 getting ready to ask you questions about. But if you turn
25 to the first page after that, there's a stock sale.

1 agreement says at the top and down at the bottom, it says
2 Curl double 0-1. You see what I'm talking about?

3 A On the second page?

4 Q Yeah, lower right corner says Curl double 0-1?

5 A Yes, correct.

6 Q Okay. And that's the stock sale agreement of
7 April 30th, correct?

8 A It is.

9 Q And turn to the last page of that which is double
10 0-9. And is that your signature Walter A. Parker?

11 A I want to make sure that I'm on double 0-9. That is.

12 Q Okay. All right. That stock sale agreement that
13 was signed on April 30th 2007 had you or had you not seen
14 it prior to entering McGowan Law Firm on that day?

15 A I had not seen it.

16 Q Okay. In the very first paragraph of that says
17 agreement made effected the 30th day of April 2007 by and
18 between Charles W. Carnell seller owner of all shares of
19 Florence Carpet and Tile, Inc., with its principal place
20 of business in Florence, South Carolina and John C. Curl
21 and Walter A. Parker of Florence, South Carolina, paren
22 quote buyer close quote -- close paren and Barbara E.
23 Carnell. Is that consistent with what your understanding
24 of who the buyers were to be?

25 A It is.

1 Q Okay. And the terms and conditions in there was that
2 consistent with what your understanding was of how much
3 you were going to pay and how you were going to pay it?

4 A It is. You have to understand the context of the
5 situation. I didn't have a lot time to go through it,
6 okay. So there was not a lot time for me to sit and
7 scrutinize it. So, yes, as sitting here that was my
8 understanding.

9 Q Okay. And what was your understanding about who had
10 consulted with Mr. Stewart to get this agreement prepared?

11 A That was something that John had handled.

12 Q Okay. Now, the next -- the very next page after that
13 agreement is a promissory note dated that same day
14 April 30th 2007 where you all finance half of the purchase
15 price \$540,000 with Mr. Carnell, correct?

16 A That's correct.

17 Q And is there another promissory note that was signed
18 with BB&T at that same time for the other half?

19 A That's correct.

20 Q But you do not have a copy of that?

21 A I do not.

22 Q Okay. Now, on this promissory note is that your
23 signature on the second page?

24 A It is.

25 Q Okay. And is that John Curl signature?

1 A I believe it is..

2 Q Okay. And he was there -- you all were both there

3 when it was signed?

4 A Yes.

5 Q Okay. Is Allison Parker signature on there?

6 A It is.

7 Q Was that at your request?

8 A It was not.

9 Q Okay. Why was her signature on there, do you know?

10 A It was explain to us that the ---

11 Q When you say it was explain to us, tell me who

12 explain what to you?

13 A Well, the person leading the meeting was the

14 attorney.

15 Q Okay.

16 A And it was explained that that was required as

17 security so that I couldn't hide assets under my wife's

18 name, okay. So I think Mr. Carnell required or the bank

19 required. I was not told who required it, but it was

20 required so that for example I couldn't take my house and

21 put it in my wife's name to skirt any type of personal

22 guarantee.

23 Q Did you or did you not question why Ms. Curl's

24 signature was not required?

25 A I did.

1 Q And what were you told about it?

2 A I was told that the -- John's financial situation was
3 suitable enough that he did not have to have his wife sign
4 on the same thing that my wife did. And I found out later
5 or at some point after that that I believe that his house
6 was in his wife's name.

7 Q You said it was explain. Who explain that to you?
8 Was that John or Porter Stewart?

9 A I don't recall who explain that to me.

10 Q Okay. And then the next page in exhibit three is a
11 five year later promissory note modification. I don't
12 have any real question about that other than you just --
13 rather than making the balloon payment at the end of five
14 years you all in essence refinanced it, correct?

15 A Correct.

16 Q Okay. And again you and John were the makers and
17 Allison Parker was a maker?

18 A Correct.

19 Q And how did that get presented to you for signature,
20 if you recall?

21 A Ask the question again I'm not sure I understand it.

22 Q How did that get in your hand so that you can sign
23 it?

24 A It was -- most of the signings -- I would say all of
25 the signings anything with the bank John had signed it

1 prior and then it was somehow wind up at the store. I
2 don't know if it was mailed to the store or if somebody
3 hand delivered it to the store and it would be brought to
4 me and said, hey, that the bank really needs this.
5 They're rushing to get this done would you go ahead and
6 sign it, that it's a renewal and so it was kind of pushed
7 through.

8 Q Okay. Was this -- do you believe Mr. Curl signed
9 this first or that you signed it first?

10 A No, I did not sign it first.

11 Q Okay. Exhibit four in that notebook is the deed to
12 Curl Properties and I think you testified earlier you were
13 not present when that deed was signed, but you knew it had
14 been signed, correct?

15 A That's correct.

16 Q All right. Let's go to the lease to Florence Carpet
17 and Tile which I believe is exhibit five, take a look tab
18 five which is exhibit 5. Is that the lease whereby
19 Florence Carpet and Tile, Inc., leased the property from
20 Curl Properties, LLC?

21 A Yes.

22 Q Okay. And was that also signed on the same date you
23 talking about?

24 A I didn't realize at the time -- bear with me one
25 second. Okay, go ahead would you restate the question?

1 Q Was that lease signed at the same closing we been
2 talking about on April 30th 2007?

3 A Yes.

4 Q Okay. And look at the paragraph one what is the
5 property that's being leased from Curl Properties, LLC?

6 A 1706 Pamplico Highway.

7 Q Okay. And what is 1706 Pamplico Highway?

8 A It is the property that Florence Carpet -- the
9 physical location of the building and land of Florence
10 Carpet and Tile.

11 Q Okay. And that's being leased from Curl Properties
12 under the arrangement you described earlier where John was
13 primarily interest in the real estate?

14 A That's correct.

15 Q Owner of the business, okay. Did the Carnells stay
16 for the entire meeting that you described, the entire
17 closing or did they leave at some point?

18 A They left at some point.

19 Q Okay. After they left, take a look at exhibit six in
20 tab six please. You familiar with this document?

21 A I am.

22 Q Is that your signature and John Curl's signature?

23 A It is.

24 Q And were you present when it was signed?

25 A Yes.

- 1 Q Who else was present?
- 2 A My wife and Porter Stewart.
- 3 Q Okay. Tell me how it came to pass that this exhibit
- 4 was signed?
- 5 A I was presented with this and told that this meeting
- 6 was going to be the first shareholders meeting and I was
- 7 given this and asked to sign it.
- 8 Q Okay. Who gave it to you?
- 9 A I think Porter Stewart.
- 10 Q Okay. Did you read it before you signed it?
- 11 A I did.
- 12 Q And what was your reaction to it?
- 13 A Shock. I felt blindsided by it.
- 14 Q In what way and why?
- 15 A Well, we had never had any discussions of the
- 16 ownership or the percentage of the ownership prior to
- 17 seeing this for the first time. And I immediately when I
- 18 read it, I was concerned. And I kind of turned to my wife
- 19 and it was a what do we do. And so we felt -- I felt that
- 20 I was in a -- duped so to speak.
- 21 Q Okay. But you signed it anyway?
- 22 A I did.
- 23 Q Why?
- 24 A I felt like I had no choice.
- 25 Q Why?

- 1 A I been out of work for a year.
- 2 Q Any other reasons? Had you just signed a promissory
- 3 note for -- two promissory notes for over a million
- 4 dollars?
- 5 A I had.
- 6 Q Okay. Had the Carnells left the building?
- 7 A They had.
- 8 Q With their promissory note?
- 9 A That's correct.
- 10 Q Had the banker left the building?
- 11 A I don't recall.
- 12 Q Okay. Be that as it may, you signed it. Did you ask
- 13 any questions about it?
- 14 A I did. Let me go back to your question. I felt an
- 15 enormous pressure for this thing to go through, given the
- 16 fact that I been out of work. We were working on it and I
- 17 had a family to support. So I went ahead because of a
- 18 fear of if I didn't sign it, it was going to unravel the
- 19 whole thing.
- 20 Q You didn't want it to unravel?
- 21 A I couldn't afford for it to.
- 22 Q Okay. Did you -- had you and John reached an
- 23 understanding of what the terms and conditions of your
- 24 employment at Florence Carpet and Tile would be?
- 25 A We had some discussion, yes.

1 Q And what was the result of that?

2 A You mean what were the stipulations of it?

3 Q Yeah, what did you all stipulate your salary, perks
4 et cetra would be?

5 A Okay. There was a standard salary, a company
6 vehicle, health insurance and, you know, miscellaneous
7 necessities, cell phone, computer that kind of thing.

8 Q Okay. And what was your starting salary?

9 A \$75,000.

10 Q Okay. And what is your salary today?

11 A \$75,000 approximately.

12 Q Okay. Twelve years later?

13 A Twelve years later.

14 Q Okay. At this -- after -- I think I ask this
15 question, but I'm not sure if I received an answer. Why
16 did -- when you ask the question about the agreement, what
17 about the exhibit three -- I'm sorry exhibit six the
18 minutes. When you asked a question about it, what
19 explanation did John give you?

20 A When I raise a question, I was told, well, we have to
21 do this so that I can assure that I have a tenant for the
22 building.

23 Q Had the lease already been signed at that point?

24 A It had.

25 Q Okay. So did that explanation make sense to you?

1 A It did make sense to me because I understood at the
2 time what it was doing. In other words, it was putting
3 everything under his control, so that he controlled, you
4 know, he basically controlled whatever he wanted to
5 control.

6 Q Okay. Did you have a specific discussion about the
7 -- what percent a year the transition features of that
8 exhibit -- exhibit six?

9 A Say that again?

10 Q Did you have specific discussion about the three of
11 the first five fiscal years, did you all talk about that?

12 A We did not.

13 Q Okay.

14 A After this meeting I don't recall this ever coming up
15 again.

16 Q Until when?

17 A Until I raise the issue in a meeting with -- that
18 John and I were in with Steve Mikell.

19 Q Okay. What about the meeting of May 2015 he come up
20 then?

21 A It did not come up then.

22 Q Okay. Did you all at that -- on April 2007 did you
23 and John decide who the board of directors and the
24 officers of the corporation would be?

25 A We did.

- 1 Q Okay. What did you decide?
- 2 A The board was to be myself, my wife and John.
- 3 Q And what about the officers of the corporation?
- 4 A Again, myself, my wife and John.
- 5 Q Who agreed to that?
- 6 A Who agreed to it?
- 7 Q Yeah.
- 8 A I did.
- 9 Q Did John agree to it also?
- 10 A Yes.
- 11 Q Who's idea was it?
- 12 A It was John's.
- 13 Q Okay. And who was present when he said that?
- 14 A I was president, my wife was vice president, John was
- 15 secretary.
- 16 Q Okay. Was Porter Stewart present?
- 17 A He was.
- 18 Q Kendall Hiller?
- 19 A I don't remember Kendall being in the -- the only
- 20 time I ever remember Kendall was he entered the room for a
- 21 brief minute and then left the room.
- 22 Q Okay. And how about Paul Stewart?
- 23 A I don't remember Paul being in that meeting.
- 24 Q Okay. You do remember the Carnells being in the
- 25 meeting?

1 A I do.

2 Q Did you ever see the Carnells hand to you, to
3 Allison, to John, to Porter Stewart or to anybody a
4 certificate of stock representing the ownership in you and
5 Mr. Curl?

6 A I don't remember that and that would have been
7 something that would have been intriguing to me, okay.
8 And I knew what a stock certificate was, but I had
9 never -- other than, you know, seeing something on an
10 internet or picture something, but I would have been
11 curious to look at it had I been given that.

12 Q Did you see Mr. Carnell -- did Mr. Carnell or Mrs.
13 Carnell give you or your wife, Allison, or John Curl or
14 Porter Stewart or anybody else in those meetings a book
15 that was called here's the stock book, here's the
16 corporation, the corporate records?

17 A I don't have any recollection of anything ever being
18 given or passed over or anything like that.

19 Q Okay. When you walked out of the McGowan Law Firm
20 that day, did you have any stock certificates or any
21 record books in your hands?

22 A I did not.

23 Q Did Allison?

24 A She did not.

25 Q Okay. Have you ever seen the corporate books?

1 A I have not.

2 Q Okay. Up until yesterday, did you know what
3 corporate books look like?

4 A I did not.

5 Q Okay. How did you determine what they look like?

6 A You showed me a -- an example of another company of
7 what that would look like, the color of it, the way it
8 would have been presented, so that's how I knew about it.

9 Q And was that a company formed by Gary Crawford using
10 Kitco Corporate Record Books.

11 A I believe it was, yes.

12 Q Was Gary Crawford the Carnell family attorney?

13 A I think he was.

14 Q Okay. Tell me about how you went about -- once y'all
15 became the owner, did you go to Florence Carpet and Tile
16 later that day and start running it?

17 A I think we did.

18 Q Okay. The agreement itself says that Mr. Carnell and
19 Mrs. Carnell indeed were to stay on for a period of time
20 as consultants, is that correct?

21 A That's correct.

22 Q Okay. Did they?

23 A They did stay on for -- I think there was a defined
24 period of time six months. Mrs. Carnell did not stay on.
25 I actually terminated her part of the way through that

1 process. Mr. Carnell did stay on. And in fact stayed
2 on -- and I'm not sure of the exact dates but stayed on a
3 little bit longer than that because he wanted to, I guess,
4 still manage one of the accounts he had cultivated over
5 the years.

6 Q What account was that?

7 A Carolinas Hospital System.

8 Q That was a big account?

9 A Yes, that's correct.

10 Q All right. Did Mr. Carnell after April 30th 2007
11 once you became president and became the general manager
12 of the company, did Mr. Carnell continue to run the
13 company in any way?

14 A He did not. Any financial decisions or day-to-day
15 decisions were made by me. And, I guess, if he had been
16 running the company, I guess, he would have allowed me to
17 fire his wife because we had some discussions about that
18 the situation that took place leading up to me terminating
19 her.

20 Q What were his duties? You've described his principle
21 duty. Did he do anything else other than manage special
22 customers?

23 A I used him as a soundingboard to get clarification on
24 things or to ask him to explain things, but primarily he
25 went about his business in the manner that just managing

1 the way that the business works is there are individual
2 sells people. And those individual sells people are
3 managing their individual jobs, okay. And so they're
4 responsible for helping the customer, selling the job,
5 planning the administrative part of it and then that would
6 be turned over so that the materials could be installed,
7 okay. And Charles primarily met with Charles' customers.
8 My job was to deal with not only the customers that I was
9 working with, but also managing the day-to-day operations
10 of the business.

11 Q Okay. Was any doubt about who was the boss and who
12 was running the business?

13 A I don't think there was any indecision about who was
14 making the decisions.

15 Q Okay. How full-time was your employment in Florence
16 Carpet and Tile in the early years and today? How many
17 hours have you traditionally put in working there?

18 A Initially, well past initially, I was probably
19 working 70, 80 sometime 90 hours a week to the point where
20 it affected my marriage.

21 Q Okay. And do you still work that hard there?

22 A I do not work that many hours now.

23 Q How many hours do you work now?

24 A On average probably between 55 and 60.

25 Q Okay. Now, your wife works in the business, correct?

1 A That's correct.

2 Q Okay. Was it always contemplated that she would work
3 in the business?

4 A Yes, it was decided that she was going to come and be
5 part of the business.

6 Q Okay. In fact, she was vice president at least from
7 day one, correct?

8 A That's correct.

9 Q All right. What was John Curl's involvement as far
10 as running the business?

11 A There was no involvement.

12 Q With what frequency would he come there just to see
13 how things were going or consult or advise or whatever?

14 A That would be hard for me to say anything in terms of
15 frequency, okay. The first year was a pretty good year.
16 I mean, it was an exceptional year and as long as things
17 were going okay I don't know that he -- maybe once every
18 three months or something or if he had to come, you know,
19 maybe he had a conversation with Charles or but in terms
20 of him physically coming the location, I don't remember
21 that it was any frequency to it. It could have happened a
22 few times, but there was no set we need to meet once every
23 couple of weeks or I never got a -- there was no structure
24 set up to review things.

25 Q Okay. Has that changed any in a material way over

1 the years?

2 A It has not. In fact, I probably would say he visits
3 less frequently now in the past five or six years. I
4 probably say less frequent than it was initially.

5 Q Okay. Has he ever asked for information about the
6 company that you have refused to give him.

7 A That I refuse to give him?

8 Q Right.

9 A No, I can't refuse. I mean, he was the majority
10 owner. He could get any information he wanted at any time
11 he wanted.

12 Q How about in recent years when you contend that he's
13 an equal owner not the majority owner, if you refuse to
14 give him any information about the business?

15 A No, not refuse to. In fact, he wouldn't even make
16 that request from me. He would make that request from
17 Mike Barker, who was the general manager and John is in
18 frequent contact with him asking for rent money. So all
19 he has to do is say can you give me this or can you give
20 me that.

21 Q My question is not what he could do. My question to
22 you is to your knowledge is Mike Barker ever refuse to
23 give John any information back when he was a majority
24 owner in the early days or in recent years?

25 A No, I don't know that anyone prior to Mike being

1 there or after Mike being there has ever refused to give
2 John any information.

3 Q Okay. When did Mike Barker become general manager
4 by the way?

5 A I'm not sure of the exact date.

6 Q Approximately?

7 A 2015, '16 time frame.

8 Q Okay. And he's been there continuously ever since
9 and still is?

10 A He has.

11 Q Okay. And what are his duties?

12 A His title is general manager. I guess, a more
13 appropriate title would be administrative manager. He is
14 primarily accounts payable, accounts receivable, other
15 tasks that I ask him to do, but that's primarily it.

16 Q Okay. Going back to the purchase of the stock of the
17 Carnells, did you put up any cash money?

18 A I did not.

19 Q Okay. Did John Curl put up any cash money?

20 A At the time I was not aware that John had to put up
21 any money.

22 Q Okay. I'm talking cash money not pledges?

23 A At the time I was not aware that he had to pledge
24 anything or put any cash money up.

25 Q Okay. Did you have to -- you had to pledge what?

- 1 A I had to sign a personal guarantee.
- 2 Q Okay, to who?
- 3 A To the bank.
- 4 Q And, of course, we already talked about the Carnells
- 5 so you on the hook to the Carnells?
- 6 A Correct.
- 7 Q Okay. Are you aware of you've already said you
- 8 didn't put up any significant cash money. Are you aware
- 9 of John Curl putting up any significant cash money at the
- 10 beginning?
- 11 A John told me after at some point that the bank had
- 12 required him to pledge a CD.
- 13 Q Okay. To pledge a CD as collateral?
- 14 A Correct.
- 15 Q All right. What I'm talking about is cash money
- 16 where you either wrote a check or handed cash and put it
- 17 in the Florence Carpet and Tile checking account?
- 18 A At any point in time?
- 19 Q At the beginning as of -- when y'all bought the
- 20 stock?
- 21 A No.
- 22 Q Okay. Did you give any -- either one of you give any
- 23 cash money whether in check, money order or green cash to
- 24 the Carnells to buy this stock?
- 25 A No.

1 Q Okay. So you both signed promissory notes?

2 A That's correct.

3 Q For the full amount?

4 A Correct.

5 Q To the Carnells?

6 A Correct.

7 Q And gave them nothing else?

8 A That's correct.

9 Q Okay. So in that sense your contributions to the

10 purchase price were equal, correct?

11 A That is correct.

12 Q Okay. Tell me about two companies and tell the Court

13 about them, but don't go into a great deal of detail, but

14 just tell what these companies are and why you formed them

15 and what they had to do with Florence Carpet and Tile?

16 And I'm talking about what you and John call the granite

17 store and the instillation store, tell about those?

18 A That's kind of hard. I'm naturally overly robust but

19 I'll try to. Which one you want me to start with?

20 Q Start with the granite store.

21 A Okay. We saw that there was a growing demand for

22 doing granite countertops primarily, okay. And we were

23 kind of on the periphery of being in that business. We

24 primarily were in the countertop business. Well,

25 Florence Carpet and Tile had always been in the countertop

1 business and it use to fabricate Corian countertops.

2 Okay, that market was dying and granite was becoming more
3 affordable in that sector or segment of the market was
4 rapidly growing. And we didn't really have a way to do
5 that, so we had to outsource it. So we outsourced it to a
6 company in Columbia, that presented a set of problems that
7 I can either go into for you or not.

8 Q I chose not.

9 A Okay. Then we changed the way we were doing it and
10 we started doing business with a company in Raleigh and
11 again that created certain problems. And so we were
12 working with a company out of Charleston and it created a
13 set of unique problems. So we decide that we really
14 wanted to be ---

15 THE COURT: When you say we, who you talking
16 about?

17 A The employees at the store, okay. The people that
18 were -- sells people that were having to deal with it,
19 okay. And there was an installer that we had who was
20 installing granite for us. So the way that would happen
21 is another company would fabricate it. They would bring
22 it to us and we would install it, okay. He was pushing
23 wanting to go into a granite -- wanting to start a granite
24 business.

25 Q Of his ---

1 A Excuse me.

2 Q Of his own or for the company?

3 A I think he wanted to be -- I think he wanted to be --
4 he wanted either Florence Carpet and Tile or he wanted me
5 to go into a granite business of which he could be part
6 of, okay.

7 Q Okay.

8 A So there's been discussions about this with them for
9 approximately a year. And I approached John about
10 starting a granite business at Florence Carpet and Tile on
11 two different occasions. And he both times he said now is
12 not the time. He didn't ask me why I thought it was the
13 right time. He didn't ask me for -- we hadn't run any
14 projections anything. It was just now is not the right
15 time. So I was getting a lot of pressure from internally
16 because part of the reason that we decided to do it is
17 because of quality issues. And so Your Honor if I have
18 your kitchen torn up and your wife's not happy, it's
19 sitting there for a week, that's going to cause problems
20 with the perception of Florence Carpet and Tile. So I
21 looked at how we could do this and do it in a manner that
22 was not harmful to Florence Carpet and Tile. So at one
23 point I was given -- I wouldn't call it an ultimatum, but
24 it was after several meetings where the installer had said
25 if you're not going to do this, let me know because I'm

1 going to go do it somewhere else. So I was faced with a
2 situation of losing an installer which is very very
3 difficult to find, okay. It's a skill that not just
4 everybody has. So not only was I going to lose my ability
5 to install granite, but I also was going to in essence
6 create a competitor. So I had an employee at the store
7 and she had been extremely valuable to the business.

8 Q What's her name?

9 A Lisa Shelton.

10 Q Okay.

11 A And Lisa had during a very very difficult time at
12 Florence Carpet and Tile had done everything she could to
13 help. And she was working pretty much the same hours I
14 was. So being a small business, we can't afford to pay
15 the type of salaries that over a period of time that would
16 retain people just on salary alone. So -- and I knew from
17 my time in manufacturing management that employees -- part
18 of employees satisfaction means having the ability to
19 advance or for potential growth. And so I looked at this
20 as a way that she could come in and be part of the
21 ownership. And this was a way for her to be able to grow
22 both professionally and from a salary standpoint or from a
23 compensation standpoint.

24 Q Okay. And so you did what?

25 A So we formed a business.

1 Q And named it?

2 A Florence Custom Countertops.

3 Q And who was the initial owners of that company?

4 A The initial owners was Robbie Neil, Lisa Shelton.

5 THE COURT: That was Florence what?

6 MR. WILLIAMS: Florence Custom Countertops.

7 A Florence Custom Countertops. Robbie Neil, Lisa
8 Shelton and my father.

9 Q Okay. Did you own any of it?

10 A I did not.

11 Q Okay. And what was Florence Custom Countertops.
12 exclusive business?

13 A It was heavily majority focused on just wholesaling
14 granite to Florence Carpet and Tile.

15 Q Okay. And you earlier in your answer talking about
16 the installer I forgot his name. Tell me his name again?

17 A Robbie Neil.

18 Q Robbie. Talking about Robbie becoming a competitor.
19 If somebody is in the granite business over here and
20 you're not selling granite, how is that a competitor of
21 yours?

22 A Well, we were selling the granite. We were just
23 outsourcing granite.

24 Q Okay.

25 A And we were not doing it very well.

1 Q So he would be a competitor in the granite business?

2 A That's correct.

3 Q Okay. And talking about the competitive environment
4 when people get in your kitchen selling one thing, does
5 that help them sell other things while they're in that
6 kitchen?

7 A It absolutely does. One of the drawing cards for
8 Florence Carpet and Tile is we -- and this has grown
9 substantially in the last couple of years, but one of the
10 things is from a service standpoint we can provide just
11 about any service from a -- remodel type situation. So if
12 somebody wants a kitchen floor, they don't just come to us
13 for that and then have to go to somebody else and get a
14 countertop and then go to somebody else to get something
15 else. You know, they can go to one place and a place that
16 has been, I guess, in existence since 1964 and has a good
17 reputation in the community, they can go there and feel
18 confident that they can just deal with one person. And so
19 it often time happens that somebody comes in looking for
20 just a countertop, then we wind up doing a back splash or
21 they'll say, well, while you're here, you know, I want to
22 put carpet in the bedrooms so go ahead and measure for
23 that or any number of things. So it is a kind of a
24 snowballing thing that takes place.

25 Q Okay. When you allowed Florence Custom Countertops

1 to be created and facilitated in its creation, you
2 described how that benefitted Florence Carpet and Tile.

3 Was it for the benefit of any -- of you or your family?

4 A Well, I think the intent was, you know, we wanted to
5 do well and there would be, you know, there would be some
6 benefit there, but the primary intent, the initial intent
7 was to do this in a manner that facilitated a -- I guess,
8 if you're going to do things, the way I always looked at
9 it was is it going to improve safety, is it going to
10 improve quality, is it going to improve profitability,
11 okay. Those were kind of the litmus test for things. And
12 so this was a manner that was definitely going to improve
13 quality of what we were doing at Florence Carpet and Tile
14 and it was going to improve profitability. So we always
15 hoped that the countertop business would be of some
16 benefit, but that was not the overall driving force. My
17 commitment has and -- initially was and has been and still
18 is to -- loyalty is with Florence Carpet and Tile.

19 Q All right. Now, tell us about the instillation
20 company?

21 A The instillation company came about because there was
22 a business that was available that Florence Carpet and
23 Tile could not undertake, okay. So we were having to just
24 turn that business away and ---

25 Q You talking about instillation work?

1 A Instillation work.

2 Q Okay.

3 A For example, if you don't purchase the materials at
4 Florence Carpet and Tile, we won't install it for you
5 because you get into liability issues. You get into all
6 kind of potential problems. If there is a problem, whose
7 fault is it, is it the material or is it the instillation.
8 And so for anybody to have work done at Florence Carpet
9 and Tile, they have to purchase the material there. And
10 so there was a lot of that was taking place. And so there
11 was an opportunity to -- that I saw ---

12 Q Now, you said there was a lot of that taking place.
13 What does that refer to?

14 A There was a lot of request to install materials that
15 we did not sell or to do work that we did not do. The
16 majority of it came -- the request came for doing work
17 that Florence Carpet and Tile historically had not done.

18 Q Okay. And I interrupted you. You were going to tell
19 me what you did as a result?

20 A Well, we formed an instillation company and then I
21 would take on work that Florence Carpet and Tile would
22 typically not engage in.

23 Q Okay. And who were the owners -- what was the name
24 of that company first?

25 A Palmetto Floor Covering.

1 Q Palmetto Floor Covering?

2 A Uh-huh.

3 Q And who own Palmetto Floor Covering?

4 A Initially, it was myself and Rob Simmons.

5 Q Okay. And what's the history about Palmetto Floor
6 Covering?

7 A What ---

8 Q What happened to it? Well, you said initially it was
9 you and Rob Simmons. Then later did it become something
10 different?

11 A No.. Well, he left. And one of the things that we
12 started out -- he left Florence Carpet and Tile not long
13 after that business started, okay. So he was not part of
14 Palmetto Floor Covering. He had taken a job in a
15 incorporate environment. So one of the benefits of that
16 company that was used -- the benefits to Florence Carpet
17 and Tile of that company was that taking on work that had
18 historically never done. There was a risk and liability
19 with that. Once that work, we figured out how to do that
20 work and there was a demand for that work Florence Carpet
21 and Tile took over that work. So Palmetto Floor Covering
22 quit doing that kind of work and Florence Carpet and Tile
23 started doing that kind of work, okay. So it was a trial
24 and error type basis, okay. We also utilize that company
25 because our insurance company requires our installers to

1 have workers' comp and general liability. The problem
2 with that is most installers can't maintain their
3 insurance because Palmetto Floor Covering had workers'
4 comp and general liability. I was approached by one of
5 the employees at Florence Carpet and Tile and asked could
6 that business be utilized, could the installers run --
7 could we run the instillation through that so that we were
8 covered from having workers' comp and general liability,
9 okay. It did -- and John had raised some issues and
10 concerns about that business because he thought that that
11 business was competing directly with Florence Carpet and
12 Tile or was in some way undermining the business of
13 Florence Carpet and Tile.

14 Q Was it correct that it was competing or undermining?

15 A It was not competing with nor undermining the
16 business. As a matter of fact, it was one of the things
17 that I think that help keep us where we are today because
18 we started taking on some work that when I saw that it was
19 a viable thing for us to do, I gave 100 percent of that
20 work over to Florence Carpet and Tile.

21 Q Okay. As a result of John's misgivings about the
22 instillation business, what did you do if anything?

23 A He wanted it closed down. So I agreed to close it
24 down.

25 Q Did you close it down?

1 A I did.

2 Q Okay. Did any -- when did the profits -- did that

3 business have any profits, I guess, is the first question?

4 A Very little, very minor.

5 Q Okay. And where did those profits go?

6 A Well, ultimately Florence Carpet and Tile.

7 Q In what way?

8 A Money that was given back to Florence Carpet and

9 Tile.

10 Q Okay. And you gave it back? Did you cause it to be

11 given back?

12 A I did.

13 Q Okay. And how did you cause it to be given back?

14 A I made personal loans. I wrote checks.

15 Q Okay. To the instillation company who then gave it

16 to Florence Carpet and Tile or did you write the checks

17 directly to Florence Carpet and Tile?

18 A Florence Carpet and Tile.

19 Q Okay. Look at exhibit one if you will, tab one. And

20 that's an extract from the corporate income tax return of

21 Florence Carpet and Tile calender years 2007, eight, nine

22 10, 11 and 12. And principal portion of that extract is

23 always page one that shows profit. What do they call it,

24 taxable income, okay.

25 A Okay.

1 Q Profit and taxable income. For the calender year
2 2007, did Florence Carpet and Tile make a profit?

3 A It did.

4 Q Okay. The taxable income is zero even though it had
5 a profit. Why is that do you know?

6 A Well, Charles Carnell had operated the business from
7 1964 until 2007 and he often showed losses. So there
8 were -- there were carryovers of losses from year to year.
9 So there was not a requirement that Florence Carpet and
10 Tile pay income tax.

11 Q Okay. So if you didn't have a profit, didn't have to
12 pay income tax because of the operating loss carry
13 forward?

14 A Correct.

15 Q Okay. If you'll look at tab two exhibit two, you'll
16 see Ann Marie Hanna the accountants compilation report for
17 Florence Carpet and Tile including not only calender year
18 2007 but also 2006. You see that?

19 A I do.

20 Q And that's a little bit easier to see. What does she
21 show the net income for 2007 to have been?

22 A 2007 she shows a net income of \$152,385.

23 Q Okay. And now let me go forward to 2008. And I'm
24 going to be looking at exhibits one and two because it's
25 sort of -- they both showing the same information from two

1 different angles. In 2008, did Florence Carpet and Tile
2 have a profit? The year ending December 31, 2008.

3 THE COURT: Which tab is it?

4 MR. WILLIAMS: This will be tab one. It's a
5 2008 corporate income tax return Form 1120. And then in
6 exhibit two tab two it would be page number -- the page
7 number at the bottom is 0-0-3-4-5.

8 A Okay. In 2008, it shows a taxable income of a lost
9 of \$85,574.

10 Q Okay. And then if you look at tab -- at exhibit two
11 down at the bottom page 345 that also shows a lost,
12 correct?

13 MR. PAYNE: Excuse me did you get my exhibits
14 instead of yours?

15 MR. WILLIAMS: I thought I handed them to you.
16 Sorry, Your Honor. I'm sorry.

17 THE COURT: Hang on just one second.

18 (WHEREUPON, a pause in the proceedings.)

19 THE COURT: Okay.

20 BY MR. WILLIAMS:

21 Q And then for 2009 if you look at tab one the page
22 number down at the bottom is a little bit hard to read,
23 but it's 0-0-7-3. Do you see that? You know what page
24 I'm talking about?

25 A I do.

1 Q 2009 tax return?

2 A I do.

3 Q Okay. And then the 2009 P and L is the same page we
4 were just looking at just a different column page 345.
5 Was Florence Carpet and Tile profitable in 2009?

6 A It was not.

7 Q Okay. Now, if you'll look at exhibit two page number
8 350 I'm sorry -- exhibit two for some reason doesn't
9 include calender year 2010 or fiscal year 2010?

10 THE COURT: How much was the loss in 2009?

11 MR. WILLIAMS: Pardon?

12 THE COURT: How much was the loss in 2009?

13 MR. WILLIAMS: In 2009, it was a \$167,784.44.
14 2009.

15 THE COURT: All right, good.

16 MR. WILLIAMS: 2008 it was \$115,742.39.

17 BY MR. WILLIAMS:

18 Q All right. I'm looking now only at the 2010 tax
19 return which is at tab one exhibit one and it's page 00100
20 at the bottom. Do you see that?

21 A I do.

22 Q And was Florence Carpet and Tile profitable or not
23 that year?

24 A It was.

25 Q How much profit?

1 A \$127,657.

2 Q The taxable income was again zero, was it not?

3 A Correct.

4 Q Okay. And do you have -- do you know why it was a

5 taxable income of zero even though it had a profit?

6 A For carryovers from previous losses.

7 Q Same reason you said before?

8 A Correct.

9 Q Okay. And now let's look at fiscal year ending

10 December 31, 2011. And I'm drawing your attention to

11 exhibit one. The page at the bottom is 0-0-0-1-3-3-5.

12 And then also in exhibit two the page number at the bottom

13 is 351, the accountants compilation for encompassing 2011.

14 Was Florence Carpet and Tile profitable in that year?

15 A It was.

16 Q About how much?

17 A \$22,119.

18 Q Okay. And if you look at page 351 of the accountants

19 compilation of income does it reflect profit also?

20 A It does.

21 Q And how much on the P and L? Was the dollar amount

22 of the profit?

23 A 22,119.

24 Q Now, I see on the profit and loss I see where it says

25 operating income mine says 19,839.85.

1 A What page are you on?

2 Q I'm on exhibit two page 351?

3 A Okay. Operating income loss 19,839.85.

4 Q Okay. Do you know why there's a -- that \$3,000 --

5 \$2500 difference between those two figures or is that

6 something we need to ask the accountant?

7 A I do not.

8 Q Okay. And then 2012 the information is in those two

9 exhibits, but I'm not going to ask you about those because

10 we don't believe 2012 is material. But it was not

11 profitable, correct?

12 A 2012, that is correct.

13 Q Okay. Do you recall a shareholders meeting that was

14 called by John Curl that occurred at Tam McBratney's

15 office in May of 2015?

16 A I do recall the meeting. It was at John Curl's

17 office.

18 Q Okay. Well, do you recall Tam McBratney being there?

19 A I do.

20 Q Okay. Do you recall everything that happened in that

21 meeting?

22 A I recall most of what happened at the meeting from a

23 macro level.

24 Q Okay. Have you recently listened to a recording of

25 that meeting?

1 A I have listen to, yeah, most of it.

2 Q Okay. One of the subjects that came up in that
3 meeting was John Curl wanted to fire you, correct?

4 A That is correct.

5 Q Okay. And there were numerous references if one
6 listens to the meetings, there numerous references to
7 where either John Curl or Tam McBratney referred to John
8 as the majority shareholder. Do you recall that?

9 A I do.

10 Q Okay. During that meeting, you did not protest or
11 contest that, did you?

12 A I did not.

13 Q Why not?

14 A I had an attorney there Steve Mikell and he didn't
15 protest it, so I didn't know there was any reason to
16 protest it.

17 Q Okay. How did -- if you had those three profitable
18 years, tell me what was your thinking that made you think
19 there was no reason to protect it?

20 A I wasn't -- I wasn't -- that wasn't my mind set at
21 the time. It was not until after that meeting that I
22 started looking for, I guess, ways to protect my interest.
23 From the very beginning, John handled the financial
24 aspects of things. I even had a conversation with John
25 where I told him that he had to get in and help, that

1 there was no way that one person could manage everything
2 both operationally and administratively and so I was
3 trying to get differences between John and myself
4 resolved. And so John had exerted his authority to get
5 basically what he wanted. And there were implied threats
6 in what he was saying. It wasn't until that meeting that
7 he really came out and verbalized what his intent was. So
8 then I had to start looking for ways to protect myself.
9 And that's when after that looking at the documents --
10 going back and looking at the documents, I saw that that
11 was in that purchase agreement. And so I went and pulled
12 the tax returns, but I didn't want to use that. Again,
13 this is after that meeting. Didn't want to use that
14 because I knew that would be a very contentious thing with
15 him. And I was trying to come to some kind of a
16 resolution without having to get to that point.

17 Q Okay. Did you have meetings with John after the
18 shareholders meeting?

19 A We did.

20 Q How many roughly?

21 A Maybe three, four.

22 Q Okay. And where did those occur?

23 A A couple of them took place at John's office and then
24 a couple of them took place at Steve Mikell's office?

25 Q Okay. The ones at John's office did you and he ever

1 reach an agreement?

2 A We did.

3 Q Tell the Court what that agreement was?

4 A The agreement was the discussion started out where he
5 objected to the floor covering instillation business and
6 objected to the granite business. And he basically
7 accused me of operating in a manner that wasn't in the
8 best of interest of Florence Carpet and Tile. So I ask
9 him I said, okay, if I bring Florence Carpet and Tile or
10 excuse me -- Florence Custom Countertops under the
11 umbrella of Florence Carpet and Tile, would you agree to
12 even up the shares and he said yes.

13 Q Okay. Acting in reliance on that, what steps, if
14 any, did you take?

15 A Well, I went back to the store. I had a meeting with
16 Mike Barker and later Lisa Shelton came in. And I told
17 them what John told Mike and what John had agreed to and
18 that we were going to divert a hundred percent of the
19 revenue and the proceeds of the profit to Florence Carpet
20 and Tile and I wanted them to keep two different sets of
21 books.

22 Q And for what purpose?

23 A Well, he agreed to do it, but he would not put
24 anything in writing. There was nothing in writing. So I
25 had to basically treat the profit that was going to --

1 that would have -- should have gone to the countertop
2 business that was going to Florence Carpet and Tile, I had
3 to keep a separate set of books. I had to treat that as
4 basically a loan and then administratively when the stock
5 was evened out that loan would just be forgiven, that that
6 money would just absorbed into Florence Carpet and Tile.
7 It would be dissolved.

8 Q Who had the actual money though? Into whose bank
9 account did the actual profit from Florence Custom
10 Countertops go?

11 A It went into the bank account of Florence Carpet and
12 Tile.

13 Q Okay. So it's only a recordkeeping entry that was
14 separate, correct?

15 A That is correct. So the way that worked is the
16 countertop business was wholesaling granite the same way
17 that the business in Raleigh, the business in Charleston
18 was wholesaling granite to Florence Carpet and Tile. But
19 when was taking place, there would be a profit margin that
20 was -- the granite countertops consisted of three
21 components. It consist of material, fabrication and
22 instillation. So the companies that we were buying
23 granite from out of Charleston and Raleigh were selling us
24 stone that they put a profit margin on, okay. Then they
25 would fabricate it and they would put a profit margin on

1 that. And then we would install it and there's a profit
2 margin on that, okay. So when we started after that
3 meeting, we started diverting the profit margins basically
4 diverting that revenue, that profit to Florence Carpet and
5 Tile. We would invoice Florence Carpet and Tile just like
6 we normally would, okay, but Florence Carpet and Tile
7 would not have to pay the invoices other than to pay for
8 stone when it came in or to pay for payroll check for
9 people doing fabrication. So you got hypothetically, you
10 know, \$50,000 worth of invoices that Florence Carpet and
11 Tile is sitting on. Well, when stone -- when we would get
12 shipments of stone when it would come in, we have to pay
13 for it. So we would pull an invoice that was about the
14 same amount as the cost of the stone and it would pay
15 Florence Carpet and Tile that invoice, okay. Let me back
16 up. It's confusing. The names are confusing. Florence
17 Carpet and Tile would pay an invoice from Florence Custom
18 Countertops for the amount of the stone, the cost of the
19 stone, okay. Then Florence Custom Countertops would write
20 a check to the stone supplier, okay. So Florence Carpet
21 and Tile was only paying costs on things. So it was
22 getting a hundred percent of the profits. And we did that
23 until again until administratively the shares were evened
24 up.

25 Q Okay. Have the shares ever administratively been

1 evened up?

2 A No.

3 Q Okay. Other than the initial meeting of April 30th
4 of 2007 and then the March 15 -- I mean, the March 2015
5 shareholders meeting that we've already talked about.

6 Other than two meetings, has there ever been a
7 shareholders meeting of Florence Carpet and Tile?

8 A Well, we did have a meeting. I don't know if you
9 want to call it a shareholders meeting, but we had a
10 meeting with John, myself and Allison that, I guess, we
11 termed a board meeting and that was a couple years after
12 2000, so that might have been maybe later part of 2008,
13 2009. I'm not exactly sure of the date, but it was on a
14 Sunday afternoon where we were having some issues that we
15 needed to get John's help on. And so we met that
16 afternoon and term that a board meeting.

17 Q Okay. And what was -- was any action taken during
18 that board meeting?

19 A Well, there was actions as to how we were going to
20 resolve that -- the particular issues.

21 Q Were any minutes taken?

22 A Excuse me.

23 Q Were any minutes taken and recorded?

24 A I believe they were.

25 Q Okay. Do you know who would have them?

1 A I think I gave a copy of that.

2 Q Okay. Turn to tab 18. Is that the meeting you're
3 talking about. I didn't realize you were talking about
4 that same meeting. Turn to tab 18.

5 A Yes.

6 Q Is that the meeting you're talking about?

7 A Yes.

8 Q Okay. Read through that just to refresh your memory.

9 A Okay.

10 Q Those minutes seem to address only the issue of a
11 life insurance policy, correct?

12 A Correct.

13 Q Do you recall any other subject that came up at that
14 meeting?

15 A No, the -- we're talking about some cash flow --
16 talking about some cash flow issues and how we are going
17 to get some materials.

18 Q Okay. No resolutions were passed or minutes?

19 A No, no, no not from that.

20 Q Okay. All right. This -- we jumped into the meeting
21 of the board of directors, so now let me jump back. I'm
22 asking about shareholders meetings exclusively, okay.

23 Other than the April 30th 27 (sic) shareholders meeting,
24 the minutes of which are recorded in exhibit six and the
25 May of 2015 meeting at John Curl's office that Tam

1 McBratney attended, were there any other shareholders
2 meeting? I'm not asking about board meeting. I'm asking
3 about shareholders meetings that you're aware of?

4 A No.

5 Q Okay. Other than -- now, let me go to the board of
6 directors. Other than this board of directors minutes of
7 March 13, 2008, that's exhibit 18, was there ever any
8 other board of directors meeting of this company that
9 you're aware of?

10 A No.

11 Q Okay. And just to connect the dots on this board of
12 directors meetings from April 13, 2018 exhibit 18, go back
13 to exhibit three the purchase agreement and look at page
14 two of that agreement Curl 02. Kind of right in the
15 middle of that page in the second paragraph number two
16 read that paragraph. It begins to further secure the
17 payment of this \$540,000 note?

18 A All right, so we're talking about exhibit three.

19 Q Exhibit three.

20 A The first page.

21 Q Page double 0-2 at the bottom. Curl double 0-2.

22 A Okay.

23 Q And kind of in the middle of pages -- there's a
24 numbered paragraph two?

25 A Okay.

1 Q And a numbered section two and then the second
2 paragraph of that section read along with me, but I'm
3 going to summarize it and you just tell me if I wrongly
4 summarized it. That requires you and John Curl to get
5 life insurance policies, correct?

6 A Correct.

7 Q Okay. So the minutes recorded exhibit 18 seem to
8 have a relationship to that paragraph, do they not?

9 A Correct.

10 Q Okay. Have you ever been asked to approve any other
11 minutes of a shareholders meeting other than the one of
12 April 30th 2007 shareholders meeting?

13 A Well, at the meeting of -- in May of 2015 I was asked
14 to approve.

15 Q Did you approve it?

16 A I did.

17 Q Approve what?

18 A The document that I was -- put in front of me.

19 Q What document was that?

20 A That was the minutes from the 2007 shareholders
21 meeting.

22 Q Okay. The same one that we've already talked about?

23 A Right.

24 Q So you re-approved them even though you had signed
25 them?

1 A Right.

2 Q Okay. Other than the minutes of April 30th 2007,
3 have you ever been asked to approve any other minutes of
4 any shareholders meeting?

5 A I have not.

6 Q Same question, but board of directors meeting?

7 A I have not.

8 Q Okay. Have you since we talked about what left the
9 room on April 30th 2007. I'm going to ask the same
10 questions just to be sure. Since then have you ever seen
11 any stock certificates, minute books for records of any
12 kind of meetings or any kind of official corporate or
13 semi-official corporate records from Florence Carpet and
14 Tile, Inc.?

15 A I have not.

16 Q Okay. Has Florence Carpet and Tile, Inc. observed
17 any other corporate formalities that we haven't talked
18 about?

19 A No.

20 Q Okay. You described a meeting in Steve Mikell's
21 office. Did that meeting -- let me withdraw that
22 question. The meeting you just described with John Curl
23 where he agreed to equalize the ownership if you folded
24 up the auxilliary businesses into Florence Carpet and
25 Tile. Roughly when did that meeting occur?

1 A I don't remember exactly within probably the last
2 couple years.

3 Q So 2016, 2017 somewhere in there?

4 A Yeah, I would say that that would be 2016, 17, yes.

5 Q Okay. After that, did you ever get anything in
6 writing about it?

7 A I did not. I did not have anything in writing after
8 that.

9 Q Did you ever discuss that in the presence of other
10 people?

11 A I did.

12 Q All right. Tell me about that?

13 A I discussed it with my wife. I discussed it with
14 Mike Barker. I discussed it with Steve Mikell.

15 Q Okay.

16 A Matter of fact after that -- after I had that meeting
17 with John, I contacted Steve and told him what the gist
18 of that meeting resulted in and he seemed kind of enthused
19 and he said, well, that's a good thing. I agreed with
20 him, yeah, that's a good thing.

21 Q And when did you tell Mike Barker about that meeting?

22 A Immediately after I left John's office, I went
23 straight back to Florence Carpet and Tile.

24 Q And why did you tell him about it immediately?

25 A Because I was concerned that if I did that and there

1 was no administrative resolution that it would -- I wanted
2 someone to understand why we were doing it. I wanted to
3 corroborate that meeting.

4 Q The bookkeeping techniques that you described to the
5 Court on how you went about effecting this, who engaged in
6 that activity? Who did that work?

7 A Mike and Lisa.

8 Q Okay. Did you and John Curl ever meet with -- in
9 Steve Mikell's office on this subject matter?

10 A That subject came up in the meeting.

11 Q Okay. And describe for the Court what happened
12 during the meeting when that subject came up?

13 A Well, the meeting was again was really design to try
14 to bring about some kind of resolution for John wanting
15 either me out or for me to buy him out, okay. He wanted
16 to exit the business. And so a lot of it was spent kind
17 of arguing back and forth, but John led me to believe that
18 on several occasions John led me to believe that the note
19 from the bank was being called due to me, you know, not
20 doing something, okay. And so that was discussed in the
21 meeting the issue of the floor covering instillation
22 business, the issue of the granite business, okay. And so
23 we were kind of arguing back and forth and that's when I
24 first broached the issue of the shareholder minutes, the
25 three years of profitability. And he denied that the

1 criteria had been met for evening the shares up. And then
2 I said, well, additionally the shares be evened up because
3 you agreed to bring -- if I brought the countertop
4 business under the umbrella of Florence Carpet and Tile,
5 that you would even the shares up and his comment was,
6 yes, but you never done that.

7 Q And was Mr. Mikell in position to hear those
8 comments?

9 A He was.

10 Q Okay.

11 THE COURT: All right. We going to take just a
12 five minute recess.

13 MR. WILLIAMS: Okay.

14 THE COURT: All right. Under these
15 circumstances, you can't discuss the matter with any of
16 the lawyers. I'm going to ask that you stay on the
17 witness stand. If you need to use the restroom, they'll
18 assist you in that regard.

19 (WHEREUPON, a break was taken.)

20 THE COURT: Let me ask something for
21 clarification, you indicated that Mr. Parker signed a
22 guarantee. What was that indebtedness for who and who is
23 the guarantee for?

24 MR. WILLIAMS: Your Honor, we have been told and
25 we believe in his recollection is it was a guarantee to

1 BB&T of the \$540,000 cash payment Mr. Carnell received at
2 closing.

3 THE COURT: Okay, very good. All right.

4 MR. WILLIAMS: In other words, the other half of
5 the stock purchase.

6 THE COURT: Okay.

7 MR. WILLIAMS: And it makes sense. I have never
8 delved into it more deeply.

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: I was almost through. I just
11 want to make sure that I get in what I want to get in.

12 BY MR. WILLIAMS:

13 Q Mr. Parker, you've already described at the closing
14 neither you or Mr. Curl put in any cash to buy the stock,
15 correct?

16 A Correct.

17 Q Since then have y'all made your payments to
18 Mr. Carnell?

19 A We have.

20 Q Okay. And to BB&T?

21 A We have.

22 Q And then BB&T loan subsequently refinanced at NBSC
23 now?

24 A That's correct.

25 Q Are you making those payment?

1 A Yes.

2 Q Okay. As far as money into the company itself, have
3 you put in cash money not to Mr. Carnell but into the
4 company?

5 A I have.

6 Q Okay. Roughly how much?

7 A Approximately \$150,000.

8 Q Cash or the equivalent?

9 A Cash or equivalent.

10 Q Okay. And has Mr. Curl put in money into the company
11 itself?

12 A I believe he has.

13 Q In round figure how much has he put in?

14 A Well, I don't know what he said he's put in was
15 approximately 100 to \$110,000. He has put -- he allowed
16 the company to use a personal credit card which is being
17 paid back. He has put in some other monies that he has
18 been paid back for. So, you know, I'm going to say
19 between 100 and \$115,000 that I'm aware of.

20 Q Did you two put in this money simultaneously where
21 one of you say I'm putting in half and now you put in
22 half? I'm putting in 53 percent and now you put your 47?

23 A I only think that that happened one time that we were
24 doing some work and it had not been paid for and we needed
25 to pay the installer. And so I think Mike Barker

1 contacted John and he and I put in the same amount and we
2 paid John back. I have not been paid back yet.

3 Q Okay. You recall roughly how much that was?

4 A I want to say between probably eight or \$9,000.

5 Q Okay. Have there been occasions when you -- part of
6 that \$150,000 you talking about of yours was part of that
7 a credit card also?

8 A It was.

9 Q Did Florence Carpet and Tile use your credit card?

10 A It used my personal card, yes.

11 Q With your permission, of course?

12 A Yes.

13 Q Okay. Have you been paid -- has it been paying your
14 credit card for you?

15 A It has not. It has made a couple of minor payments,
16 but, no, it has not been paying that. I've been paying
17 that out of my pocket.

18 MR. WILLIAMS: Okay. That's all the questions I
19 have. The Court may have some more questions and
20 Mr. Payne has.

21 THE COURT: Okay, thank you.

22 MR. WILLIAMS: Thank you.

23 THE COURT: All right. Mr. Payne, we -- I've
24 got a minor settlement at 12 and we're going continue
25 questioning until 12 and then we're going to take a break

1 for lunch. But you feel free to go forward.

2 MR. PAYNE: Okay. Thank you.

3 THE COURT: Don't want to mess up your rhythm
4 let you know you got 15 minutes.

5 MR. PAYNE: That's all right.

6 MR. WILLIAMS: While he's getting sorted out,
7 Your Honor, what time would you end the lunch break you
8 think?

9 THE COURT: I imagine this minor settlement will
10 be 10 or 15 minutes. I'm thinking about reconvening about
11 1:30.

12 MR. WILLIAMS: Thank you, Your Honor.

13 MR. PAYNE: Your Honor, we have premarked
14 exhibits some of which maybe duplicative and they've
15 already been introduced into evidence the defendant's
16 exhibits without objection. And I've given you and your
17 clerk a notebook for some of these we'll be talking about.

18 (WHEREUPON, Defendant's Exhibits Nos. 1-9 were
19 admitted into evidence.)

20 CROSS-EXAMINATION

21 BY MR. PAYNE:

22 Q Mr. Parker, got a few questions to ask you on. One
23 thing you were just mentioning some of the money John had
24 loan to the company. John actually had to pay off the
25 BB&T loan; is that not correct? And that's the 110,000

1 that's owed to him?

2 A I think that that is what John contended. I've not
3 seen any documentation from BB&T or anything that verified
4 that, but I think he has contended all along that he had
5 to do that.

6 Q And it's on the books, isn't it? It's a note payable
7 to shareholder \$110,000?

8 A No, I've just not seen anything from the bank that
9 said that John paid that off.

10 Q Okay. We'll get to it in a minute. And didn't
11 recently John had to loan \$40,000 to the company for the
12 FBI project?

13 A No, I think that John guaranteed at least the way it
14 was explain to me is that he put a personal guarantee up
15 for some work that we were doing. It was a fairly large
16 commercial job. Now, whether he paid that out of his
17 pocket, I don't know because when I ask Mike Barker are we
18 paying John back, are we paying the bank, Mike told me
19 that we were paying the bank.

20 Q And Mike didn't tell you about the promissory note
21 that exist between Florence Carpet and Tile and John Curl
22 for that \$40,000 that was loaned in October?

23 A Yes, yes.

24 Q Okay. Now, as far as your being involved with
25 Florence Carpet and Tile, before you got contacted or

1 spoke with John you had been -- John had been negotiating
2 with the Carnells on this purchase?

3 A I don't know. I can't speak to what John's
4 conversations with Carnell was prior to me meeting John.

5 Q So you think the first time you and John mention this
6 he had never approached or discussed the purchase with the
7 Carnells?

8 A No, I'm not saying I think that. I just don't know
9 what the context of those conversations were.

10 Q But I know you know the context, but you knew that he
11 had been discussing this purchase with the Carnells before
12 you ever got involved?

13 A Correct.

14 Q Okay. You knew that John had gone to BB&T to try to
15 get the loan to purchase their stock before you got
16 involved?

17 A No, I was not aware of that.

18 Q No, okay. How were y'all going to fund the purchase
19 of the stock?

20 A I don't know that was really ever discussed other
21 than we had to put up personal guarantees that we were
22 going to sign.

23 Q But you didn't have the money to or the financial
24 strength to go out and borrow over a million dollars, did
25 you?

- 1 A I did not, no.
- 2 Q Right. Okay. And you been unemployed for about a
- 3 year and that was sort of John's role was to go out and
- 4 secure some of the financing from the bank?
- 5 A Correct.
- 6 Q He was sort of the money man and you're the worker
- 7 that was going to do the work?
- 8 A Correct.
- 9 Q And without his financial strength there would never
- 10 have been the loan with BB&T?
- 11 A Correct.
- 12 Q Okay. And you guaranteed that loan with BB&T?
- 13 A I did.
- 14 Q And John Curl guaranteed that loan at BB&T?
- 15 A That is correct.
- 16 Q And you guaranteed the one with Mr. Carnell, is that
- 17 right?
- 18 A Correct.
- 19 Q And John guaranteed the Carnell loan?
- 20 A Correct.
- 21 Q Okay. And John actually had to get one of his own
- 22 companies to guarantee the Carnell loan as well, didn't he
- 23 -- Curl Properties had to guarantee it?
- 24 A Okay.
- 25 Q And it's in the -- let me just show you exhibit one

1 Your Honor. I'm going to hand you exhibit one. If you
2 would Defendant's Exhibit 1, Your Honor, sorry. And if
3 you look over there on the second page of exhibit one,
4 item number two that last sentence there in the first
5 paragraph. And it says the note shall be guaranteed by
6 Curl Properties, LLC and that was the deal, right?

7 A Okay.

8 Q Is that right?

9 A Yes.

10 Q Okay. Now, after the closing or at the closing, I
11 think BB&T loaned \$540,000 to y'all and then the Carnells
12 loaned the other \$540,000?

13 A Correct.

14 Q Okay. And you subsequently learned, I think, you
15 said that John had to pledge a CD to the bank to secure or
16 as further collateral for this BB&T loan?

17 A Correct.

18 Q Okay. And it was a \$100,000 CD?

19 A Yes.

20 Q Okay. You did not have a CD or anything like that to
21 pledge to either the bank or Mr. Carnell, did you?

22 A I did not.

23 Q After the closing, Mr. Carnell stayed on ---

24 THE COURT: Mr. Payne, let me ask you this. I'm
25 asking out of pure ignorance, but seems like to me the

1 real focus is whether or not -- what the ownership of the
2 business is and whether or not there was profit and
3 whether or not there should have been transfer of stock,
4 whether or not this deal where they wrapped up all the
5 businesses really in effect. I know there's been some
6 discussion about who's paid what and some about the money.
7 You know, that's really not what we here to focus about,
8 is it or is it? I'm asking.

9 MR. PAYNE: I'm moving on. I was just -- they
10 were acting like ---

11 THE COURT: Don't you agree those are really the
12 issues and not who, you know, the financial structure how
13 it got started and all that?

14 MR. PAYNE: And I'm only dealing with the cash.
15 Nobody put cash in. Well, the fact is he did have a CD
16 down there and his financial strength -- he had a lot on
17 the line.

18 THE COURT: But, you know, in the end that
19 really makes probably -- doesn't make a whole lot of
20 difference.

21 MR. PAYNE: Well, I think it explains why he's
22 the majority owner and has been since day one.

23 THE COURT: Oh, I see what you saying now. Go
24 ahead. Very good.

25 MR. PAYNE: He's been it from day one and this

1 is why, but I got your point.

2 THE COURT: I understand what you're saying.

3 BY MR. PAYNE:

4 Q Now, after closing Mr. Carnell stayed on and worked
5 for the business?

6 A He did.

7 Q And he was paid \$260 a day or roughly \$95,000 a year
8 was how that would equate, is that right?

9 A I think that's close, yes.

10 Q And he was there. His wife was there working, is
11 that right?

12 A That's correct.

13 Q And his son stayed on to work?

14 A He did.

15 Q And they all assisted -- all the Carnells assisted
16 during the transition?

17 A They did.

18 Q And Mr. Carnell even stayed beyond 2007 I think you
19 said earlier?

20 A He did.

21 Q And Mrs. Carnell though left earlier?

22 A She did.

23 Q And you fired her?

24 A That is correct.

25 Q All right. And she was not really getting a salary

1 it doesn't look like according to that agreement. She was
2 just getting paid a commission to what she sold?

3 A I don't remember the specifics of that.

4 Q And the son kept working beyond 2007 in the
5 accounting department, is that right?

6 A I don't -- he did. He did stay on. I don't know
7 what his exact departure date was.

8 Q Now, when y'all had the closing over at the McGowan
9 Law Firm and all these discussions that were prior to that
10 closing, you said the word that you felt like you had been
11 duped, but then your testimony was you had never had a
12 discussion with John as to the percentage of ownership
13 that you were going to have?

14 A That's correct.

15 Q There was never any discussion according to your own
16 testimony?

17 A That's correct.

18 Q And you were assuming that it was going to be 50/50,
19 is that right?

20 A That is correct.

21 Q And at the closing these minutes were prepared and
22 handed to you that we've marked as exhibit two. I think
23 at the meeting you, Porter Stewart and John Curl were
24 present together in one room at some point?

25 A Correct.

1 Q And Mr. Stewart was representing the company during
2 this meeting, wasn't he?

3 A I don't know who he was representing. I had never
4 had any contact with him. I didn't necessarily feel that
5 he was representing me. I thought that he was just an
6 attorney John had gotten to handle this process.

7 Q And he actually had prepared exhibit one, hadn't he?

8 A Yes.

9 Q And he had been in negotiations with Carnell's
10 attorney as they tried to finalize exhibit one, is that
11 right?

12 A I believe so.

13 Q And Mr. Carnell's attorney was Gary Crawford?

14 A I believe that's correct.

15 Q And so at the closing on April 30th 2007 it was
16 discussed between John, you and Porter the possibility of
17 you getting additional shares of stock, wasn't it?

18 A I don't know that it was discussed, but it was in the
19 document. I don't have recollection of there being a
20 discussion of that, but it's certainly in the document.

21 Q But you read exhibit two?

22 A I did.

23 Q And you signed it?

24 A I did.

25 Q You signed it that day?

- 1 A Uh-huh.
- 2 Q So on April 30th you knew that you had a 47 percent
3 interest in Florence Carpet and Tile?
- 4 A I did that day, yes.
- 5 Q And you were name president of the company?
- 6 A Correct.
- 7 Q The company accountant was Ann Marie Hanna?
- 8 A Correct.
- 9 Q She was preparing the tax returns for the company
10 like she had done previously?
- 11 A Correct.
- 12 Q And you and your staff provided her with all the
13 information that she needed to prepare those returns?
- 14 A Correct.
- 15 Q And each year that the tax returns were prepared, I
16 think you told me at the deposition that you went over
17 there and you would sign them by yourself John not
18 necessarily there, but you would review them and you would
19 sign the returns at Ann Marie's office?
- 20 A Yes, I guess, review have to be the -- your
21 definition of review would have -- but, yes, I would go
22 over and sign them.
- 23 Q Let me show you -- and that was kind of the way y'all
24 did it for every year?
- 25 A Pretty much, yes.

1 Q I think you only filed returns through 2015, is that
2 right?

3 A Correct.

4 Q Have not done '16 or '17?

5 A That is correct.

6 Q Okay. Let me show you, we'll start with exhibit
7 number three which is your 2011 return, which is at the
8 bottom of it it's dated 9-19-2012. You think that's about
9 the time this got finalized?

10 A If that's what's there, yes.

11 Q And Ms. Ann Marie Hanna's office would have submitted
12 this. You would have signed it and then they filed it on
13 behalf of the company?

14 A Correct.

15 Q And at that point in time I think you were testifying
16 earlier it's got a taxable income of zero, but the line
17 above that was your gross operating profit of \$22,119?

18 A Correct.

19 Q And that's what was reported to the IRS. And you
20 knew that at least as of September 19th 2012 that y'all
21 had a profit for that year?

22 A Okay.

23 Q Well, you knew it when you signed the return, right?

24 A Yeah, I looked at the return and saw that there was a
25 -- it showed a profit.

1 Q And if you flip on over, I think, it's about eight
2 pages over to bait stamp number 142 on exhibit three. You
3 see scheduled G at the top of that page 142?

4 A I do.

5 Q And then down at the bottom they have certain
6 individuals in the stakes owning the corporations voting
7 stock, you see that?

8 A I do.

9 Q And what percentage does it stake that you own?

10 A Forty-nine.

11 Q And how about John Curl?

12 A Fifty-one.

13 Q All right. Flip over to the next page of exhibit
14 three which is bait stamp number 143 and it's got their
15 compensation of officers. And what percent of stock does
16 it indicate that you own there on bait stamp page number.
17 143?

18 A Forty-nine.

19 Q How about john?

20 A Fifty-one.

21 Q What's your compensation on that one?

22 A \$82,672.

23 Q Now, when you're talking to Mr. Williams a little bit
24 ago, you said 75,000 and you never gotten a raise. So you
25 getting 82,000 on this one. That's more than 75, right?

- 1 A That is more than 75.
- 2 Q Okay. Let me show you exhibit four. I handed you
- 3 now what we marked as Defendant's Exhibit 4, which is the
- 4 2012 tax return. And if you'll flip on over about seven
- 5 or eight pages on this one bait stamp number 179.
- 6 A Okay.
- 7 Q It says on schedule G certain individuals owning the
- 8 voting stock what percent does it indicate that you own?
- 9 A Forty-nine.
- 10 Q Okay. And John Curl's?
- 11 A Fifty-one.
- 12 Q All right. Flip over to the next page bait stamp
- 13 number 180. What percentage does the Form 1125-E indicate
- 14 that you own on that one?
- 15 A Forty-nine.
- 16 Q And this return was submitted -- dated on page one or
- 17 the second page of it looks like January 31st '14, is that
- 18 right?
- 19 A Okay.
- 20 Q Is that right? That's what it's dated?
- 21 A Yeah.
- 22 Q Okay. And that was about the date that you would
- 23 have submitted it, right?
- 24 A Right.
- 25 Q Okay. Flip on over while we're here on this exhibit

1 four. Flip over to page 196 of this particular document.
2 You see at the annual report it's completed by all
3 corporations?

4 A Okay.

5 Q You see that. And then number seven, you see number
6 seven when asked for the names of the directors?

7 A I do.

8 Q And who are the two directors listed there?

9 A John C. Curl and Walter A. Parker.

10 Q Okay. Now, let's look at exhibit five here showed
11 you now exhibit number 5 which is the tax return for the
12 year 2014, is that correct?

13 A It is.

14 Q Okay. And what's the date of this particular return?

15 A 3-3 of '16.

16 Q Okay. And that was the date Ann Marie Hanna would
17 have submitted it to the IRS?

18 A Correct.

19 Q All right. Flip on over to page 261 of exhibit five
20 bait stamp number 261. And is that same schedule G we
21 been looking at.

22 A 261?

23 Q Yes, sir.

24 A Okay.

25 Q And what's the percentage as indicated that you own

1 in Florence Carpet and Tile?

2 A Forty-nine.

3 Q And John Curl?

4 A Fifty-one.

5 Q All right. Look at the next page. Does it indicate
6 you own 49 percent?

7 A It does.

8 Q What's your salary indicated there?

9 A 78,967.

10 Q And how about John Curl's percentage?

11 A Fifty-one.

12 Q All right. If you would on exhibit five flip on over
13 to bait stamp number 299. It said same annual report that
14 we looked at on the last return.

15 THE COURT: While he's looking for that, the
16 meeting that initially took place at Tam McBratney's
17 office or Mr. Curl's office whichever it was where they
18 talked about combining all of the businesses, that date --
19 the date of those meetings were in what year?

20 MR. PAYNE: May of 2015. I'm not sure the exact
21 date. I don't have ---

22 THE COURT: Okay, that's what I want to know.

23 MR. WILLIAMS: That was a shareholders meeting,
24 is that what you're talking about?

25 THE COURT: Where there was discussion about

1 combining all of the businesses. I just want to know what
2 year that it was.

3 MR. WILLIAMS: Your Honor, I don't believe
4 there's been any testimony, that discussion occurred in
5 that meeting. I think it said 2016, 2017.

6 THE COURT: Was when ---

7 MR. PAYNE: The combination meeting was later
8 on.

9 THE COURT: Was in 2016?

10 MR. PAYNE: Or '17 he said.

11 THE COURT: '16 or '17, okay.

12 BY MR. WILLIAMS:

13 Q Now, look on exhibit five there on page 299 baits
14 number 299 do you see that one the annual report?

15 A Okay.

16 Q And who were the -- question number seven asked for
17 the names of the directors. Who were the two directors
18 that are listed there?

19 A John Curl and Walt Parker.

20 THE COURT: All right, Mr. Payne, we're going to
21 take a recess and we're going to reconvene at 1:30. And
22 once again, you're not allowed to discuss these matters
23 with your lawyer during this period of time. Very good.
24 We'll stand at ease and we'll reconvene right there. And
25 we'll stand at ease.

1 MR. WILLIAMS: May it please the Court.

2 THE COURT: Yes.

3 MR. WILLIAMS: To some extent Mr. Parker is
4 acting as my paralegal, may I ask him to call certain
5 witnesses and tell them what time to be here?

6 THE COURT: That will be good. We could do
7 that. Very good.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: All right. Mr. Payne, you
10 recognized.

11 MR. PAYNE: Thank you, Your Honor.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. PAYNE:

14 Q Mr. Parker, I've handed you there Defendant's Number
15 6 which is the 2015 tax turn of Florence Carpet and Tile,
16 Inc. What's the date of that particular return?

17 A 2-27-18.

18 Q And just like we talked about for all the other
19 returns, you went by Ann Marie's office. You reviewed
20 this and she mailed it in about that particular date you
21 think?

22 A The typical protocol is they that would tell me that
23 the tax returns were done. I would go by her office. The
24 receptionist would put it through the window where I
25 signed and then would sign and then they would file the

1 returns.

2 Q And this one was dated February 27 '18 when it was
3 filed by Ann Marie's office?

4 A I'm assuming so.

5 Q Okay. If you would flip over to bait stamp number
6 314 of the 2015 tax return here at exhibit six. What does
7 it indicate your percentage of ownership here on schedule
8 G your 2015 return?

9 A Forty-nine.

10 Q And John Curl?

11 A Fifty-one.

12 Q All right. Look at the next page page number bait
13 stamp page number 315. What's your percentage of
14 ownership on that page?

15 A Forty-nine.

16 Q And what's John Curl's?

17 A Fifty-one.

18 Q Okay. And if you would flip on over to page 332 of
19 that particular tax return exhibit six. Question number
20 seven there who does it indicate that the directors and
21 principal officers of the corporation are?

22 A John Curl and Walt Parker.

23 Q And what's the title besides both of y'all's names?

24 A Director.

25 Q Okay. Now, in all the returns that we've looked at

1 you and I together and any of the other returns, has it
2 ever been indicated on any tax return that you own more
3 than 49 percent of this company?

4 A It has not.

5 Q Okay. And Ms. Hanna, Ann Marie Hanna was also
6 charged with preparing y'all's 1099s for Florence Carpet
7 and Tile?

8 A She was.

9 Q Let me show you what was marked as exhibit seven.
10 And on exhibit seven those are copies of all your 1099s.
11 At any time has your 1099 represented any more than
12 49 percent of the dividends that were distributed for
13 Florence Carpet and Tile?

14 A It has not.

15 Q I think it's always been around 49 percent except for
16 2007 where it was 46 percent, is that right?

17 A That's correct.

18 Q And you've never voiced any concern to Ann Marie
19 Hanna or anybody in her office regarding the percentages
20 that are indicated on these retax returns, have you?

21 A I have very little input in doing the taxes.
22 Typically the information that is -- that goes into them,
23 I'm not aware of -- they're just compiled based off of the
24 system and whoever is working with her or Charles who
25 works with Ann Marie. So probably it's not something I

1 would have ever looked at to question.

2 Q And the question was you never complained about that
3 to her office?

4 A Correct.

5 Q Or to John or anybody?

6 A Correct.

7 Q You signed the returns and send them in?

8 A Correct.

9 Q Now, the May 5th 2015 meeting at John Curl's office,
10 we've talked a little bit about that. You, John Curl,
11 your lawyer Steve Mikell, Tam McBratney were there, is
12 that right?

13 A Correct.

14 Q And at that meeting your lawyer Steve Mikell asked
15 John specifically about exhibit two which are the minutes
16 of the meeting. Do you remember that?

17 A I don't remember the specifics of what he asked.

18 Q Do you remember Steve Mikell asking John if any of
19 those shares had ever been issued that are referenced
20 there on exhibit -- Defendant's Exhibit 2?

21 A I do not specifically remember him asking that.

22 Q And do you not remember John telling Steve that the
23 company had been profitable and therefore the shares --
24 there's no additional shares owed to you?

25 A I do not remember that.

1 Q The meeting though I think you did testify that cause
2 you some concern, is that right? 2015 meeting?

3 A I don't know that I understand the context of your
4 question.

5 Q Well, I think your answer at your deposition was,
6 yes, I started thinking about ways to protect myself after
7 that meeting. Do you remember that?

8 A After the meeting, yes.

9 Q And you never between that meeting and in 2015 to --
10 before this lawsuit was filed, you never asked John to
11 provide you additional shares, did you?

12 A I guess that's somewhat subjective because the issue
13 was raised -- the issued was raised at Steve Mikell's
14 office and John denied that there was -- that the criteria
15 had been met for that. So if you look at that as asking
16 for shares, did I ever explicitly state I'm demanding you
17 give me X number of shares, no.

18 Q And you never sent a letter to John. There's never
19 been an e-mail. There's no document whatsoever that
20 you're demanding more shares in this company is there?

21 A I was trying to avoid that, but that is correct. And
22 the reason for that as I was trying to avoid what I knew
23 was going to wind up being a very contentious thing.

24 Q And I think you said at your deposition with Steve
25 Mikell I did not come out and say I'm demanding an

1 additional three percent, is that right? You didn't want
2 to stir it up. You never came out point blank to John and
3 said I'm demanding more shares from you. I want -- you
4 owe me more shares. You never said that in any of these
5 meetings?

6 A I think I did say that I should be in the meeting
7 with Steve that I should be or that the shares should be
8 even based off the criteria laid for in the purchase
9 agreement.

10 Q You think you said that at Steve's office?

11 A I do. I raise the question about it.

12 THE COURT: Might I ask the lawyers a question
13 about this issue because I think it's important and we'll
14 continue to take testimony and all, but it seems to me
15 that first of all the minutes of this meeting April 30th
16 2007 is somewhat -- it's not very clear as to how they're
17 going to do what, where and when. But it does contemplate
18 the fact there was -- the possibility of a transfer of
19 three additional shares of stock that would even it up.
20 And when you read it it almost seems to me that the
21 transfer would take place after the first five years. And
22 in order for the trigger to transfer of the three shares,
23 you would have to have profit during those periods of
24 times, but the tax returns seem to indicate that the
25 agreement is in full force and effect because the

1 accountant obviously was given this agreement and he was
2 adding a share of stock every time there was a profit.

3 MR. PAYNE: But the problem there though, Judge,
4 is in 2015 it's still 49 percent. It's never gone up
5 three percent.

6 THE COURT: Well, of course, that's a different
7 issue as to what you gone calculate as the fiscal year of
8 the calendar year.

9 MR. PAYNE: No, but they've never -- it's never
10 been reported ever above 49 percent. He's always had
11 minority interest. So why is it near three, I guess is
12 the question after 2011.

13 THE COURT: But my point -- and this is a
14 question I want both of you to address. And, of course, I
15 think, you've addressed your position, but it seems to me
16 that that this agreement is in full force and effect and
17 the accountant was giving him a share of stock or at least
18 by virtue of the way you are filing it for the number of
19 years that there was a profit. Of course, it's a question
20 as to when you calculate whether you calculate 2007 or
21 not, but what do you think about that, Mr. Williams?

22 MR. WILLIAMS: Your Honor, I think two things
23 about it. One is I don't think the accountant -- I don't
24 think either Mr. Curl or Mr. Parker ever looked at that
25 part of the tax return. And two I really don't think the

1 accountant knew what she was doing because if look at the
2 early years she had that Mr. Curl own 54 percent of the
3 stock, okay, and Mr. Parker 46. So it was clear that she
4 didn't know where they were starting from, but I do think
5 if you look at 2010 -- by 2010, she had down Mr. Parker
6 owning 49 percent of the stock, Mr. Curl 51.

7 THE COURT: Meaning that he had at least had two
8 ---

9 MR. WILLIAMS: He had two years under the belt
10 by 2010. And then we all know from looking at the tax
11 return and financial statements in 2011 was profitable.
12 Now, I can't explain why she didn't take from the
13 49 percent in 2010 and move it to 50 percent in 2011. I
14 don't know why she made that mistake and has continued to
15 make that mistake since then, but it's incontrovertible
16 that 2011 was profitable. That's my position.

17 THE COURT: All right. What do you have to say
18 about that?

19 MR. PAYNE: Well, if you look at 2008, she's
20 already got it at 51 49 and 2008 was not profitable
21 according to anything ---

22 THE COURT: So what you're saying is what she
23 says makes no difference at all?

24 MR. PAYNE: Well, no, I just think -- I think
25 what's represented and what the testimony is gone be from

1 Mr. Curl is he's always been the majority owner, that's
2 what he told them I'm the majority owner. The percentages
3 never -- the actual percentages because he was thinking he
4 was 45 55.

5 THE COURT: So what these tax returns say is
6 irrelevant?

7 MR. PAYNE: No, and the key is they're signing
8 them showing him as the minority owner for the whole time
9 even in 2018.

10 THE COURT: It could be construed as that, but
11 it could be construed is that they are fluctuating and
12 according to profitability.

13 MR. PAYNE: But it's always from '08 forward
14 it's 49 percent and there's only been one profitable year
15 out of those two.

16 THE COURT: Is the accountant going to testify?

17 MR. PAYNE: I'm not bringing her.

18 THE COURT: Okay. All right. Very good.

19 MR. WILLIAMS: Your Honor, if I could interject,
20 when I look at 2008 return, I look at the -- this bait
21 stamp number -- it says 46 percent -- 46 54 in 2007 and
22 2008.

23 THE COURT: Mr. Payne, when you read this
24 agreement, do you think that the transfer of stock is
25 going to trigger after the five-year period and they

1 evaluate whether there's three to the good or whether it's
2 going to be done sequentially?

3 MR. PAYNE: They'll evaluate it end of the five.

4 THE COURT: Okay. All right. Very good. You
5 may proceed.

6 MR. PAYNE: And one other point, Your Honor, all
7 the dividends that they've always gotten historically had
8 been divided 51 49 since 2008 so that's, you know, why I
9 don't know. Our testimony is going to be -- I have told
10 them we were majority. They really weren't getting into
11 the specifics of percentages. Your Honor, I'm going to
12 open his deposition.

13 THE COURT: Yes, sir.

14 (WHEREUPON, Court's Exhibit No. 1 was marked for
15 the record.)

16 BY MR. PAYNE:

17 Q Mr. Parker, I have handed you your deposition there
18 if you would and I'd asked you previously about, you know,
19 whether you came out at that meeting at Steve Mikell's
20 office and demanded additional shares and you think you
21 said -- you think did I believe was your answer, is that
22 right?

23 A I mentioned the -- in that meeting, I mentioned the
24 issue of that purchase agreement how exactly it was said I
25 don't recall.

1 Q Well, let's look at your deposition here so we're
2 clear. We'll start at the bottom of line -- on page 34
3 line 24. Are you with me?
4 A 34.
5 Q No, let's start with 17.
6 A Page 17 or line 17?
7 Q No, page 34 line 17.
8 A Okay.
9 Q You ready?
10 A Go ahead.
11 Q So the meeting at Tam McBratney's office was May of
12 2015. How quickly after was this meeting where you
13 discussed it with him and your answer was maybe a year to
14 a year and a half. So it's probably been in the last
15 couple of years that it's been brought up and you said you
16 were at John's office. Well, no, let me back up, I was at
17 Steve Mikell's office. Question, John was there too?
18 Answer, correct. Did John have an attorney or was it just
19 Steve and John? Correct. When was that meeting? I don't
20 know the exact date. Question, what was the purpose of
21 the meeting? Answer, to try to resolve I guess some
22 differences that John and I had. Question, and at that
23 time did you demand him give you more shares or was it
24 that you told him you wanted question. Answer, I don't
25 know that I specifically said okay. I'm demanding you

1 give me three percent of the stock, okay. I think what I
2 was doing was challenging his in that meeting -- the 2015
3 meeting. John became somewhat hostile and threatening.
4 And it was after that I began to start looking for ways to
5 protect my interest. And so John was -- John was -- we
6 had some issues that he raised that I don't necessarily
7 agree with, but he was trying to exert influence over
8 things by him being a majority owner. And that's when I
9 raised the issue of the purchase agreement and his
10 rebuttal to it was it had not met the criteria. Is that
11 what you said at the meeting?

12 A Yeah.

13 Q So you didn't come out and demand the shares at the
14 meeting, did you?

15 A No, but I had said earlier before you read that that
16 I did not come out and expressly say that I was demanding
17 the shares.

18 Q But y'all discussed the agreement and the issue of
19 the additional shares, didn't you?

20 A That is correct.

21 Q And John told you at that meeting that you had met
22 the criteria?

23 A That is correct.

24 Q Okay. And there's not one document before this court
25 were you've ever stated that you were 50 percent owner of

1 Florence Carpet and Tile, is there?

2 A No, sir.

3 Q Okay. Now, the Florence Custom Countertops you've
4 claimed that that, I guess, that it was at this meeting at
5 Steve Mikell's office there was some agreement to give you
6 more shares if you shut down Florence Custom Countertops?

7 A No, that was not at Steve Mikell's office, that was
8 at John's office.

9 Q That's a different meeting?

10 A Yes.

11 Q And the agreement was you were going to shut down
12 Florence Custom Countertops and give you some shares?

13 A No, it was going to be incorporated into Florence
14 Carpet and Tile.

15 Q What does that mean Florence Carpet and Tile is going
16 to own it?

17 A Yes, Florence Carpet and Tile was going to -- was
18 going to the outstanding revenue that was or the debt that
19 Florence Carpet and Tile owed to Florence Custom
20 Countertops was going to be absolved and that the 100
21 percent of the revenue and profits were going to Florence
22 Carpet and Tile.

23 Q And I've looked at the bank statements from 2018,
24 I've never seen one check from Florence Custom Countertops
25 going to Florence Carpet and Tile. There's never any

1 payment went from Florence Custom Countertops to Florence
2 Carpet and Tile.

3 A It is kind of confusing, isn't it. All right, ask
4 that question again please?

5 Q Florence Custom Countertops has never or at least in
6 the year 2018 never issued one check to Florence Custom
7 Countertops?

8 A That is correct, but it was never structured that
9 way.

10 Q Florence Custom Countertops continued to exist in
11 business?

12 A It does.

13 Q And I might have misstated that. FCC Florence Custom
14 Countertops never issued a check in 2018 to FCT Florence
15 Carpet and Tile?

16 A But it wouldn't because Florence Carpet and Tile owed
17 Florence Custom Countertops a -- depending on what point
18 in time you're looking for anywhere from ten to \$60,000.

19 Q Florence Custom Countertops owed FCT money?

20 A Florence Carpet and Tile owed Florence Custom
21 Countertops money.

22 Q And Florence Custom Countertops was using the
23 facility of Florence Carpet and Tile rent free, never paid
24 any rent, never paid utilities, never paid nothing and yet
25 it owed money to FCC?

- 1 A It did pay rent.
- 2 Q When?
- 3 A In the tax returns, there's -- it paid rent. It paid
4 utilities. It paid for office administrative copy
5 machine.
- 6 Q When, when, when?
- 7 A Every year.
- 8 Q But this is what John was fussing at they weren't
9 making a nickel, were they, he brought that up in 2015,
10 '16, '17. And you said I'll shut it down. I'll shut it
11 down.
- 12 A No, I didn't never say I would shut that down.
- 13 Q Oh, really. All right. So what is it that you
14 decided to do with Florence Custom Countertops? It's
15 still running out the back door of Florence Carpet and
16 Tile right now, isn't it?
- 17 A It is.
- 18 Q And you own it, don't you?
- 19 A No.
- 20 Q Who owns it?
- 21 A Lisa Shelton and my dad.
- 22 Q All right. Do you remember giving an affidavit to
23 the Court to try to get this injunction in this case? Do
24 you remember this?
- 25 A Let me see what it is.

1 Q Look at number nine if you would please and read what
2 paragraph number nine states?

3 A It says the granite store which I had started and
4 owned in September of 2011 acting in reliance, but as
5 promise, I did make the transfer. And since 2011 the
6 granite store operate as part of parcel company result is
7 that even had the company had -- not had three-years
8 profitability out of its first five once we owned it.
9 There was an independent and separate transaction
10 equalizing the ownership of the company.

11 Q Okay. Let me read that the whole number nine and
12 this is your affidavit. Additionally, John Curl agreed to
13 transfer to me three percent of his original ownership in
14 the company in exchange for me agreeing to transfer into
15 the company the granite store which I had started in
16 September of 2011, acting in reliance upon his profit --
17 promise I did make that transfer and since 2011 the
18 granite store has operated as part and parcel of the
19 company is that what you said the deal was?

20 A I don't know that I'm -- state your question are you
21 asking me if I'm a owner?

22 Q That's what you said in your affidavit, right?

23 A That's what's in the affidavit.

24 Q And that was true and you said that, right?

25 A It's not true that I own the company.

1 Q Well, you said I agree in exchange -- the agreement
2 was in exchange for me agreeing to transfer into the
3 company the granite store which I started and owned, okay.
4 But you didn't own it number one. You had no -- is that
5 what you're saying?

6 A I did not own the granite business.

7 Q And you didn't transfer ownership of the Florence
8 Custom Countertops into Florence Carpet and Tile?

9 A I effectively transferred everything into Florence
10 Carpet and Tile. And I think the confusion that you're
11 suffering is when you say it didn't pay rent. If I give
12 you -- I'm going to give you a hypothetical. If I loan
13 you \$10,000, okay, and you owe me, okay, or I loan you
14 \$10,000 and then I owe you \$2,000, you in effect owe me
15 \$8,000 at that point in time, right, so it's a wash. But
16 when the profits are going to Florence Carpet and Tile and
17 Florence Carpet and tile owes \$60,000, then saying we
18 didn't pay rent is a little bit disingenuous. So what
19 happens is it doesn't owe \$60,000 any more. It owes
20 \$54,000 and that did go into the tax returns for Florence
21 Custom Countertops. And so we agreed because at some
22 point in time don't remember what year, but Mike Barker
23 was there. We had to purchase a new forklift for Florence
24 Carpet and Tile, okay. So we split the cost of that
25 forklift even though the majority of the forklift usage

1 goes to Florence Carpet and Tile. Florence Custom
2 Countertops pay 50 percent of the cost of the forklift.
3 So I was very very cognizant and diligent to make sure
4 that the countertop business did not in any way profit or
5 benefit off of Florence Carpet and Tile. In fact, that
6 was an issue that I had between Lisa Shelton and myself.
7 I raised the rent on Florence Custom Countertops and made
8 it pay more rent than it had previously been paid.

9 Q And isn't this your affidavit you stated that you
10 were going to transfer into the company the granite store
11 and you never transferred the ownership or any of the
12 assets of the granite store what you call it over to
13 Florence Carpet and Tile, hadn't you? Still separately
14 owned it, operated, correct?

15 A Yeah, without an administrative transfer, it would
16 be. It would be utterly stupid of me to do that without
17 John putting it in writing that he would do that. But to
18 offset that, I did make sure that the general manager of
19 Florence Carpet and Tile made sure that why we were doing
20 what we were doing and the money was going to Florence
21 Carpet and Tile and why it was going to Florence Carpet
22 and Tile.

23 Q In this supposed agreement, you said in your
24 affidavit you testified earlier that it would be stupid
25 for you to have done anything to further that agreement

1 because you weren't sure John was gone do anything, right?
2 So you never done anything. It's still a separate
3 company. It's got a separate checking account, separate
4 ownership, separate assets everything is separate.
5 Florence Countertops writes them checks. You pull ten of
6 them here. Florence Carpet and Tile's writing Florence
7 Custom Countertops checks. This is in November of '18,
8 December of '18 \$1100, \$1600, \$1500, \$1500. You're
9 writing checks over to your company. They're still
10 separate companies, right? They're not incorporated.
11 It's not being run underneath Florence Carpet and Tile, is
12 that correct?

13 A That is incorrect. You're correct from a semantics
14 standpoint, but you're wrong from an applicability
15 standpoint.

16 Q It's a separate company Florence Custom Countertops
17 is a separate company?

18 A It is.

19 Q It is. It's got its own checking account, right, Mr.
20 Parker?

21 A It does.

22 Q It does.

23 THE COURT: Separate tax returns?

24 MR. PARKER: Separate tax returns.

25

1 BY MR. PAYNE:

2 Q Separate employees?

3 A Separate employee.

4 Q And John Curl's not an owner of that company, is he,
5 Mr. Parker?

6 A At this point in time he's not, but he has received
7 the benefits from that company.

8 THE COURT: While he's looking for that, did you
9 ever have a discussion with the accountant about the
10 shares and who has what? The division of shares did you
11 ever talk with the accountant about the fact that you
12 might have had -- it might have been 50 percent yours, 47,
13 48 or 49. Did you ever give them any directives in that
14 regard?

15 MR. PARKER: I don't recall having a discussion
16 saying that I'm -- because I never really fully understood
17 what the break down was. I knew that I was a minority --
18 started out as a minority owner, but I never knew what the
19 exact percentage was.

20 BY MR. PAYNE:

21 Q But you had forgotten you didn't even remember the
22 agreement, did you, when y'all had the May of 2015
23 meeting?

24 A I'm not sure at what point the -- I went back to that
25 agreement. I'm not sure at what point that was.

1 MR. PAYNE: That's all I have, Your Honor.

2 THE COURT: Any redirect, Mr. Williams?

3 MR. WILLIAMS: A little bit, Your Honor.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q Walt, did you have any discussion of any kind with an
8 accountant whether you remember the percent or didn't?
9 Did you ever talk to an accountant about the percentage of
10 ownership?

11 A I possibly could have been asked, yes, what
12 percentage it was, but I wouldn't have known.

13 Q But do you remember being asked? What I'm trying to
14 get to is do you remember any such discussion at all?

15 A I don't know whether I was asked. I think I was
16 asked maybe and I said I don't know. You probably have to
17 ask John. I just didn't have very much involvement in
18 doing the tax returns.

19 Q Okay. When you and John would sign the tax returns
20 how would that occur?

21 A Typically separately. He would go up and sign them
22 and then I would go up and sign them.

23 Q Okay. When you signed them, did you read -- you
24 recall today Mr. Payne showed you some pages where it had
25 49 percent, 51 percent whatever 46 percent, did you read

1 those pages at the time of signing?

2 A No, I did not. That's a 100 page tax return and I
3 had a -- you know, the accountant that's a certified
4 public accountant compiling the tax returns and so I just
5 put faith that the tax returns were correct and typically
6 as I said they would go up there and put them in the
7 window and say, okay, I need you to sign here, here, here.

8 Q Did John Curl ever ask you where his shares were?

9 A No.

10 Q Did he ever write you a letter saying why don't you
11 issue me my shares?

12 A No.

13 Q Okay. Let me ask you the same questions that
14 Mr. Payne asked you about your shares, did John take any
15 steps to get his shares from the company?

16 A No.

17 Q That you were aware of?

18 A No.

19 Q Okay. You gave a hypothetical answer in response to
20 Mr. Payne's question about the rent and the overhead and
21 the copying cost and all that for Florence Custom
22 Countertops give me a real answer now. What steps, if
23 any, did you all take to make sure that a proper record
24 was being maintained about the rent and the utilities and
25 the management of it?

1 A I was very adamant to make sure that there was
2 transparency in what we were doing. And I had asked
3 numerous times to make sure that rent was deducted from
4 the amount of money that was owed to Florence Custom
5 Countertops and the amount was owed was not just the rent
6 that it included the additional overhead including the
7 forklift.

8 Q In what way were you adamant or to whom you were
9 adamant?

10 A To Lisa Shelton making sure that that got included in
11 that.

12 Q Got included in what?

13 A Included in the information that she would send to
14 the accountant and for her own internal records that she
15 inputted that into the quick books.

16 Q That's from the Florence Custom Countertops point of
17 view?

18 A Correct.

19 Q What about from the Florence Carpet and Tile point of
20 view to whom were you adamant?

21 A To Mike Barker that we were making sure that the
22 expenses from Florence Custom Countertops were properly
23 identified.

24 Q Okay. I asked you a question what was your salary
25 now. Mr. Payne asked you a question had you ever gotten a

1 raise. Let's be totally clear give us the salary history
2 from day one to now with respect to your employment with
3 Florence Carpet and Tile?

4 A Well, I had -- when we initially agreed upon salary
5 or the compensation package, there was no further
6 discussion or anything that laid out what it would be year
7 two, year three, year four, year five. So I had proposed
8 increases to John. He didn't reject it. He didn't -- I
9 don't know that he did anything with it. It was a we'll
10 see kind of thing and that's kind of where it ended. And
11 then giving the hours that I was working and giving the
12 load that I was baring, I increased it on my own and he
13 objected to it, so then it dropped back. Right now I
14 don't deal with that. I didn't set it. You know, Mike
15 Barker issues the -- he handles all the payroll. He
16 issues the checks. I'm not involved in that, okay. So if
17 you look at the cumulative pay that I receive from one
18 year to the 12th year and you divide it out, it's just
19 about 75 -- between 75 and \$78,000.

20 Q Okay.

21 A And I haven't -- to be real clear, I haven't done the
22 math on that, but it's stayed in that range for the entire
23 time.

24 THE COURT: Excuse me, Mr. Reynolds. Mr. Payne,
25 what is your position of you and your client as to what

1 the share distribution is today?

2 MR. PAYNE: The percentage?

3 THE COURT: Yes. Is it 47 53, 49 51? What is
4 it or do you know?

5 MR. PAYNE: Fifty-three 47 is what it should be.
6 No, I'm sorry 53 47. Did I say that?

7 MR. WILLIAMS: That's what you said.

8 THE COURT: I understood it, but I don't know if
9 that's what you said.

10 MR. WILLIAMS: You said it right, but it ain't
11 right, but that's what you said.

12 BY MR. WILLIAMS:

13 Q From the time Mr. and Mrs. Carnell left the closing
14 on April 30th of 2007, from the time they had signed the
15 paperwork, transferred the shares to you and John, from
16 that time until you signed the April 30th 2007 minutes,
17 the infamous 53:47 minutes, okay, did John Curl give you
18 any money?

19 A He did not.

20 Q Did he had make any promise to you other than what's
21 written in that document of April 30th of 2007?

22 A He did not. I didn't become aware that he had put
23 any money in until after that meeting.

24 Q I'm not talking about putting any money in. My
25 question to you is did he give you any money?

1 A Oh, no.

2 Q Did he make any promise to you other than what's set
3 forth on the minutes of April 30th 2007?

4 A No.

5 MR. WILLIAMS: That's all I have.

6 THE COURT: All right. You may step down.

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: Mr. Williams, you may call your next
10 witness.

11 MR. WILLIAMS: Your Honor, I can call my next
12 witness. I don't know if I've already said this or not,
13 but in an abundance of precaution I did want to make sure
14 I moved into evidence my exhibits one, two, three, four,
15 five, six, nine and 16.

16 THE COURT: Any objection?

17 MR. PAYNE: That's fine no objection.

18 THE COURT: All right. Those are into evidence
19 without objection.

20 (WHEREUPON, Plaintiff's Exhibits Nos. 1-6, 9 and
21 16 were admitted into evidence.)

22 (WHEREUPON, Plaintiff's Exhibit Nos. 10, 11 and
23 18 were admitted into evidence by agreement.)

24 THE COURT: You may call your next witness.

25 MR. WILLIAMS: Call Allison Parker, Your Honor.

1 THE COURT: Mrs. Parker, please come forward.
2 Yes, ma'am, I'm going to ask if you could to place your
3 left hand on the Bible and raise your right hand as the
4 clerk administers the oath.

5 THE CLERK: Do you swear or affirm that the
6 testimony you give will be the truth, the whole truth, and
7 nothing but the truth so help you God?

8 THE WITNESS: I do.

9 THE COURT: Yes, ma'am, come around please and
10 have a seat in that witness chair. I'm going to ask that
11 you pull up close to that microphone, speak loudly,
12 clearly and slowly in order that we can hear everything
13 that you have to say. And let's start with your full name
14 please, ma'am?

15 THE WITNESS: Allison Wills Parker.

16 THE COURT: Thank you, Mrs. Parker.

17 Mr. Williams, you recognize.

18 WHEREUPON,

19 Allison W. Parker,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WILLIAMS:

23 Q Allison, you're married to Walt, correct?

24 A Correct.

25 Q And are you an employee of Florence Carpet and Tile?

1 A I am.

2 Q Okay, speak up please.

3 A I am.

4 Q Okay. Is it -- how long have you been an employee?

5 A Mostly the 12 years. I did take a break for a year

6 and a half.

7 Q Okay. And what did you do for a living before you

8 were employed at Florence Carpet and Tile?

9 A I worked in medical offices.

10 Q Whose medical office?

11 A McLeod Family Medicine, McLeod Vascular, Pee Dee

12 Cardiology.

13 Q What do you do at Florence Carpet and Tile?

14 A I am a salesperson.

15 Q I'm sorry.

16 A Salesperson.

17 Q All right. Are you the top salesperson there?

18 A Probably not. I would think that would be

19 commercial.

20 Q I'm talking in terms of dollars brought in?

21 A Yeah, that would be commercial.

22 Q Okay. When you took time out what was that for?

23 A Because the business was struggling. We were going

24 through the recession and I was getting phone calls from

25 vendors and phone calls from John trying to collect rent

1 and it just got to be too much for me.

2 Q Okay. You heard your husband's testimony this
3 morning, correct?

4 A Uh-huh.

5 Q Okay. With respect to the time he put into the
6 business and the hours that he's there, what is your
7 recollection of that?

8 A That is correct.

9 Q Meaning his testimony?

10 A Yes.

11 Q Okay. How many hours -- what working hours except
12 for the time you took off because of what you just
13 described, what hours do you work there?

14 A Before I took the break, I was working eight to two
15 and then I pick the children up. And then after I came
16 back, I work eight to six or 8:30 to six.

17 Q Okay. Did you and Walt ride to work together?

18 A We do not.

19 Q Okay. What -- when you get to work is he there or
20 not?

21 A Usually.

22 Q When you leave work is he there or not?

23 A Usually.

24 Q Okay. When you say usually, you mean usually there?

25 A Yes.

1 Q Okay. Did you attend the closing on April 30th of
2 2007 that resulted in your signature to the minutes on --
3 look at exhibit six in that book -- notebook in front of
4 you?

5 A Where am I looking again?

6 Q Tab six says minutes -- Florence Carpet and Tile
7 minutes call of shareholders April 30th 2007.

8 A Where it says John and Walt's signature?

9 Q Yeah.

10 A Yes, I was there.

11 Q Okay. Tell the Court what you remember about who
12 else was there, where did it occur?

13 A It occurred at that law office. I'm not sure who it
14 was.

15 Q On Coit Street?

16 A Yes.

17 Q Okay.

18 A There was Bobby Carnell, Charles Carnell, John Curl,
19 Walt, myself and the attorney.

20 Q Did everybody stay the entire time?

21 A No.

22 Q Who left?

23 A From what I remember Bobby and Charles left after
24 their part was done.

25 Q The Carnells?

- 1 A Yes.
- 2 Q Okay. Do you recall any discussion about -- well,
- 3 did you see John and Walt sign the exhibit six?
- 4 A I did.
- 5 Q Okay. Was there any discussion about it at the time?
- 6 A Walt showed it to me kind of questioning it because
- 7 he wasn't aware until like that moment and then he did
- 8 question why was it 47 53.
- 9 Q And did anybody answer that question?
- 10 A Yes.
- 11 Q Who?
- 12 A John.
- 13 Q What did he say?
- 14 A From what I remember, he said something about he
- 15 needed to ensure he had a renter or lessor.
- 16 Q Had a what?
- 17 A A renter for the building.
- 18 Q Okay. Anything else?
- 19 A Or tenant excuse me.
- 20 Q Anything else anybody said about that?
- 21 A Not that I remember, just -- not being in that
- 22 business it seemed like a strange comment.
- 23 Q Okay. Had you ever owned stock before?
- 24 A No.
- 25 Q Had you ever been apart of a small business or any

1 other business before?

2 A No.

3 Q From an ownership perspective?

4 A No, sir.

5 Q Did you keep the corporate records at any of these

6 medical practices you talked about?

7 A No, sir.

8 Q Do you have any background or experience in corporate

9 finance or ownership or covenants anything like that?

10 A No, sir.

11 Q Okay. Did you see a stock certificate at that

12 meeting?

13 A Not that I recall.

14 Q Did you see a corporate record book at that meeting?

15 A Not that I recall.

16 Q Did you see a ledger or any official documents

17 relating to the corporation?

18 A I don't remember any legal documents except for the

19 ones we signed.

20 Q Okay. Did you walk out of that meeting with any

21 legal documents?

22 A Not that I can remember.

23 Q Did Walt walk out of that meeting with any legal

24 documents?

25 A Not that I remember.

1 Q And when I say legal documents I mean stock
2 certificates, record book, ledger, any corporate records
3 of any kind?

4 A No.

5 Q Okay.

6 MR. WILLIAMS: That's all the questions I have.

7 THE COURT: Any questions, Mr. Payne?

8 MR. PAYNE: No questions, Your Honor.

9 THE COURT: You may step down. Thank you,
10 ma'am.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 THE COURT: All right, Mr. Williams, you may
14 call your next witness.

15 MR. WILLIAMS: Your Honor, my next witness is
16 either Steve Mikell or Mike Barker whoever gets here
17 first. And I know Steve had to obtain three signatures at
18 2:30 said he would come after he got those.

19 THE COURT: Those your last two witnesses?

20 MR. WILLIAMS: Yes, sir. And Mike we call him
21 and he's headed to the courthouse, so if we can take a
22 break now.

23 THE COURT: You recon maybe you can get the
24 deputy to come get me -- that might be them there, see
25 somebody coming in. Okay, very good. We'll stand at

1 ease. And you'll come get me when the witness shows up?

2 DEPUTY: Yes, sir.

3 THE COURT: Thank you.

4 (WHEREUPON, a break was taken.)

5 THE COURT: Mr. Williams, you recognize. You
6 may call your next witness.

7 MR. WILLIAMS: Your Honor, Mr. Payne and I made
8 an agreement. He has a witness Porter Stewart he would
9 like to call out of sequence.

10 THE COURT: Certainly.

11 MR. WILLIAMS: It's okay with me if it's okay
12 with you?

13 THE COURT: Certainly. Yes, sir, come on up.
14 Mr. Stewart, ask you if you could to place your left hand
15 on the Bible and raise your right hand as the clerk
16 administers the oath.

17 THE CLERK: Do you swear or affirm that the
18 testimony you give will be the truth, the whole truth, and
19 nothing but the truth so help you God?

20 THE WITNESS: I do.

21 THE COURT: Mr. Stewart, have a seat in the
22 witness chair there, pull up real close to that
23 microphone, please speak loudly, clearly and slowly in
24 order that we can hear everything that you have to say and
25 let's start with your full name.

1 THE WITNESS: Sinclair Porter Stewart, II.

2 THE COURT: Very good. Mr. Payne.

3 MR. PAYNE: Your Honor, I'm missing exhibit two.
4 Has anybody got ---

5 COURT REPORTER: It's right here.

6 MR. PAYNE: Sorry.

7 WHEREUPON,

8 S. Porter Stewart, II,
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PAYNE:

12 Q Mr. Stewart, got a few questions for you here today.
13 Before are you are exhibits -- Defendant's Exhibits 1 and
14 2, which is one's an agreement and then number two were
15 some minutes of the meeting. We're going to ask you a few
16 questions about that. And first of all back in 2007 do
17 you remember representing Mr. Parker or Mr. Curl in their
18 acquisition of the stock in Florence Carpet and Tile?

19 A Yes.

20 Q Okay. And were you representing both individuals in
21 that acquisition at that time?

22 A Yes.

23 Q Exhibit one is actually the stock purchase agreement,
24 did you actually draft that particular document?

25 A This would have been drafted in conjunction with, I

1 believe, Gary Crawford represented the Carnells.

2 Q Did you actually type the final agreement and based
3 on y'all's negotiations over the period of time?

4 A It looks like it was done through our system, yes.

5 Q Okay. And was there a lot of back and forth between
6 you and Mr. Crawford on finalizing those terms?

7 A Well, there would have back and forth, yes, sir.

8 Q The actual closing with the Carnells on this
9 particular transaction it's represented by exhibit one
10 there. Was that handled in your office?

11 A Yes, it closed in our office.

12 Q And who all was present on the date of the closing
13 you remember?

14 A I do not. I cannot say I recall with a photographic
15 memory as to who was there, but Mr. Parker, Mr. Curl
16 myself. Mr. and Mrs. Carnell would have been there.
17 Their signatures were on this agreement and I am a witness
18 at their signature lines and it's dated the 30th and
19 that's the date of closing. Mr. Hiller in my office may
20 have been present because there was a real estate closing
21 also in conjunction with the overall transaction.

22 Q Okay. Now, exhibit two up on the ledge there, did
23 you type that particular document?

24 A Yes, this would have been in done in our office as
25 well.

1 Q And were those -- was exhibit two signed on that same
2 day in your office on April 30th?

3 A Yes, sir, it so indicates.

4 Q Now, at the meeting with you and Mr. Curl and Mr.
5 Parker, was exhibit two did y'all review that and discuss
6 it?

7 A It would have been one of the documents there that
8 was handled in that setting that day, yes, sir.

9 Q Okay. Was it discussed with everybody that was in
10 attendance?

11 A I don't have independent recollection of what all was
12 said that day 12 years ago, but, yes, generally speaking
13 we would have reviewed any documents that were before the
14 parties.

15 Q Okay. Now, if you would look at the second
16 photograph of exhibit two.

17 A Yes, sir.

18 Q Okay. And just one question you see in the middle of
19 it the terminology was used for each complete fiscal year
20 of operation of said corporation. Do you see that?

21 A Yes, sir.

22 Q Okay. And the question is if this was signed in
23 April of 2007 what would have been the complete physical
24 year of operation of the corporation?

25 MR. WILLIAMS: Objection, Your Honor, relevance.

1 THE COURT: I'll allow him to answer it?

2 A Would you repeat that please, sir?

3 Q Yeah, what would have been the first complete
4 physical year of operation of the corporation for this
5 under the terms of the minutes?

6 THE COURT: No, really I think I am going to
7 sustain that objection, really that's the ultimate
8 question I need to determine.

9 BY MR. WILLIAMS:

10 Q Well, let me ask you this way if -- when you're
11 drafting a document and you're dealing with a time period
12 that's less than a full year, what term would you use if
13 it's less than a full year when you drafted the document?

14 A If it's less than a full year, it's a partial year.

15 Q Okay. Complete year would be January to December?

16 A Yes, sir.

17 Q Okay.

18 MR. WILLIAMS: No further questions then, Your
19 Honor.

20 THE COURT: Cross-examination. Mr. Stewart, you
21 had indicated in the very beginning that you represented
22 who?

23 MR. STEWART: Represented the -- both parties
24 Mr. Parker and Mr. Curl. They were the buyers in this
25 transaction. The Carnells were the sellers. I think

1 Mr. Carnell specifically was the shareholder, but his wife
2 was also involved as a party in this agreement because of
3 certain commitments.

4 THE COURT: All right, very good.

5 Mr. Williams.

6 CROSS-EXAMINATION

7 BY MR. WILLIAMS:

8 Q Mr. Porter, when did you meet Walt Parker?

9 A I do not independently recall. It would have been
10 prior to April 30th, but I do not know.

11 Q That you what?

12 A It would have been prior to the date of closing, but
13 I could not tell you when I may have met him prior to
14 that.

15 Q Where did you meet him prior to that?

16 A Would have been at the office. I assume, but I have
17 no independent recollection.

18 Q Well, you say would have been involved. So what I'm
19 trying to get to is do you have any actual recollection of
20 meeting him before that date?

21 A Well, yes, I know there were conversations prior to
22 that date. I would not have spoken with him for the first
23 time ever on April the 30th the date of closing.

24 Q Do you have a fee agreement with Mr. Parker?

25 A No.

1 Q Did you have a financial understanding of the
2 relationship with Mr. Parker?

3 A No, sir.

4 Q Okay. Did you charge Mr. Parker?

5 A Did not charge him individually, no, sir.

6 Q Did you give him advice?

7 A Only in relation to this closing transaction.

8 Q What advice did you give him?

9 A Well, it would be reflected in the stock sale
10 agreement and that was the overall transaction.

11 Q Did you advise him with respect to the stock sale
12 agreement in person or by phone?

13 A I do not recall.

14 Q Okay. Is it fair to say you really don't have any
15 recollection you're testifying based on what you usually
16 do and what you customarily do?

17 A I think that would be a fair characterization.

18 Q Okay. Did you advise Mr. Parker that it was a good
19 idea for his wife to sign the promissory note to the
20 Carnells even though Mr. Curl's wife didn't have to sign
21 that promissory note?

22 A No, sir, as far as the terms thereof, I was not part
23 of the negotiation in relation to that.

24 Q So you would agree with me that it was not in
25 Mr. Parker's best interest for his wife to be on the note

1 that Mr. Curl's wife was not on, correct?

2 A The issue would not have risen to my knowledge.

3 Q Whether the issue did or did not arrive, that is in
4 representing Mr. Parker's interest that's not something
5 you would have decided to do, is it?

6 A I really can't speak to 12 years ago. I do not
7 recall that, Mr. Williams.

8 Q Okay. Well, let's just speak in general. If you're
9 representing two people in a transaction, both of them
10 would go buy something and their wives are not buying
11 anything, it would not be good legal advice to have one
12 wife sign papers that the other wife doesn't have to sign,
13 wouldn't it?

14 A I don't know that I can make a blanket statement in
15 relation to that, Mr. Williams. I think it might be
16 dependent on other circumstances in relation to the
17 financial arrangements and other things of that nature as
18 far as overrule contributions and understanding between
19 the parties, but I would like to qualify my response on
20 that basis.

21 Q All right. Defendant's Exhibit 2 which happens to be
22 the same as Plaintiff's Exhibit 6 the minutes of the call
23 meeting of shareholders. You did not talk with Walt
24 Parker about that document before the closing, did you?

25 A I do not recall actually speaking with him or even

1 Mr. Curl, I guess, for that matter, but this information
2 that was set forth herein was nothing that I came up with
3 independently would have been presented to me to basically
4 act as scrivener in relation thereto and was done in
5 conjunction with the overall transaction that day.

6 Q It was given to you by John Curl, correct?

7 A As I sit here today 12 years later, I cannot honestly
8 say it was. I don't deny it, but I don't remember.

9 Q Now, John Curl had been a client of McGowan Law Firm
10 for years, correct?

11 A He has been.

12 Q Okay. Principally of Kendall Hiller's but of the
13 firm as a whole and David Keller before that, right?

14 A Yes, sir.

15 Q Okay. Did you explain to Walt Parker corporate
16 formalities?

17 A Did I explain to him corporate formalities, no, I do
18 not recall doing that.

19 Q Okay. Florence Carpet and Tile is on a fiscal year
20 the same as calender year, correct?

21 A I do not know that personally. I did not do any
22 other services for -- in relation to this after this
23 closing to my best recollection.

24 Q Okay. But you did help draft the stock purchase
25 agreement, did you not?

1 A Yes, sir.

2 Q All right. The stock purchase agreement reflects the
3 buyers as Parker and Curl without any delineation of
4 ownership percentages, correct?

5 A I believe that is correct.

6 Q Okay. Let me ask -- it's already in the record and I
7 think I can say without dispute that the fiscal year of
8 Florence Carpet and Tile is a calender year, okay.

9 A Yes, sir.

10 Q Let's assume a company has a fiscal year that it is a
11 calender year and take my assertion that Florence Carpet
12 and Tile is one of those. What is the last full fiscal
13 year preceding April 30th 2007?

14 A Okay. The last full fiscal year proceeding the April
15 the 30th based on the calender year, that's the last full
16 physical year.

17 Q What is the last full physical year?

18 A The last full physical year of preceding April 30th
19 2007 and if the physical year is based on the calender
20 year, then that would have been the end of '06.

21 Q So December 31, 2006 would have the been full fiscal
22 year proceeding April 30th of 2007, correct?

23 A Yes.

24 Q Okay. And this corporation had been in existence
25 since 1960's, correct?

1 A I cannot testify to that.

2 Q Okay. So you didn't examine the corporate records in
3 connection with your this purchase?

4 A Well, if I did, it's just been a long time ago.

5 Q Okay. You will agree that it been in existence a
6 good while, correct?

7 A Yes, sir.

8 Q Okay.

9 MR. WILLIAMS: That's all the questions I have.
10 Thank you.

11 THE COURT: Redirect?

12 MR. PAYNE: No, sir, Your Honor.

13 THE COURT: Mr. Stewart, you free to leave.
14 Thank you very much.

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 MR. WILLIAMS: Call Steve Mikell.

18 THE COURT: Mr. Steven Mikell please come
19 forward. Yes, sir, place your left hand on the Bible and
20 raise your right hand as the clerk administers the oath.

21 THE CLERK: Do you swear or affirm that the
22 testimony you give will be the truth, the whole truth, and
23 nothing but the truth so help you God?

24 THE WITNESS: Yes.

25 THE COURT: Have a seat in the witness chair,

1 pull up real close to that microphone, speak loudly,
2 clearly and slowly in order that we can hear everything
3 that you have to say, let's start with your full name
4 please, sir.

5 THE WITNESS: Full name is Steven initial G last
6 name Mikell M-I-K-E-L-L.

7 THE COURT: Mr. Williams.

8 WHEREUPON,

9 Steven G. Mikell,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q Steve, you're an attorney here in Florence, correct?

14 A That's correct.

15 Q How long you been practicing law?

16 A Thirty-four years I believe.

17 Q And you know Walt Parker?

18 A Yes.

19 Q How long have you known him?

20 A I would say 30 years.

21 Q Okay. Has he been a client of yours?

22 A Yes.

23 Q Is he a client now?

24 A Yes.

25 Q Okay. Did he consult with you with respect to his

1 purchase of Florence Carpet and Tile at the time he was
2 making that purchase?

3 A I do not recall him talking to me about the purchase
4 prior to it. I was certainly not involved with it.

5 Q In front of you there's a white notebook, how about
6 turn to tab six exhibit six.

7 A Is that the minutes of the shareholders?

8 Q Yes.

9 A Okay.

10 Q Can you tell the Court approximately when the first
11 time you ever saw that was?

12 A Approximately probably two years ago, year and a half
13 ago maybe.

14 Q Okay. There was a shareholders meeting at which Tam
15 McBratney and you were present and I have a CD of it. In
16 relation to that meeting, had you seen it prior to that
17 meeting?

18 A I can't answer that just as a truthful statement
19 outright. I remember that meeting and it was around that
20 time probably when I would have first seen this, but I
21 couldn't say more specifically than that.

22 Q Okay. Do you need to take a moment to read this to
23 see what it says to get an idea of what the general
24 content is?

25 A Yes. Yes. Yes, I know what the general content is

1 I'm sorry.

2 Q Okay. In the meeting of where Mr. McBratney was
3 present of the shareholders of Florence Carpet and Tile,
4 how would you in general describe that meeting? I don't
5 mean what occurred I just mean in general how would you --
6 is it a nice friendly meeting, contentious or was it
7 neither?

8 A Well, it was some of both. It was a little
9 contentious because there was clearly some issues between
10 the parties. I perceived the meeting as an attempt to
11 have a general discussion and to see if some resolution of
12 the differences could be worked out.

13 Q Okay. Were the follow-up meetings to that between
14 Curl and Parker at which you were present?

15 A Yes.

16 Q Approximately when was that?

17 A Well, I couldn't put a date on it, but it seems like
18 we had another meeting within a couple of months three or
19 four months after the meeting you referred to earlier I
20 believe that was at John's office. And then there was at
21 least a couple of meetings at my office within the
22 following year. I'm going to say because I don't remember
23 specific dates.

24 Q Okay. Do you remember during that meeting whether or
25 not the subject of the 50/50 ownership transfer being due

1 to take place?

2 A To the best of my memory, Mr. Williams that subject
3 was on the table at every meeting.

4 Q Okay. Do you remember at the meeting -- the meeting
5 that occurred at your office with Mr. Curl and Mr. Parker
6 present?

7 A Yes.

8 Q What do you recall Mr. Parker saying to Mr. Curl's
9 responses?

10 A Well, again and I apologize the meetings kind of run
11 together in my head. I actually -- I think there was more
12 than two of them at my office, but anyway that issue was
13 always on the table as I said. And there was just a
14 general discussion about whether this agreement or this
15 requirement if you will had been met. And there was at
16 one meeting a discussion about how can I say it getting to
17 this if the requirement had not been met, then what's
18 needed to get to the requirement and satisfy the
19 requirement.

20 Q Okay. What was stated by Mr. Parker and what was Mr.
21 Curl's response on that?

22 A Well, I can't quote every word that was said of
23 course, but my memory is is the general conversation --
24 and I think this was probably the second meeting that we
25 had, I think, which ever one it was I'm going to tell you

1 what I remember being said.

2 Q Okay.

3 A And it was a discussion about some additional
4 businesses if you will that Walt had opened that were
5 operating, I guess, in conjunction. They were separate
6 businesses, but operate in conjunction with Florence
7 Carpet and Tile. And there were several reasons for that.
8 And in that particular meeting -- well, Walt's basic
9 position was that he had met the requirement. And the
10 response I have to say that John never outright said I'm
11 going to give you the three percent, but he acknowledged
12 what Walt was saying. Walt was talking about that and
13 explaining or stating his position on how he felt he had
14 met the requirement and done everything that he was
15 required to do. And the response from John was more
16 less -- again, I can't quote the words, but it was a, yes,
17 he was acknowledging that he would get the three percent
18 when it was done, the three shares, I mean, not
19 three percent, but that Walt had not done that.

20 Q And when you say that are you referring to the those
21 two other businesses?

22 A Yes, and it was primarily closing those businesses
23 doing away with them.

24 Q Okay. Have you ever seen any shares of stock in
25 Florence Carpet and Tile?

1 A I don't believe I have. I don't remember that.

2 Q Have you ever seen any stock ledger book or stock
3 book?

4 A I have not.

5 Q Okay.

6 MR. WILLIAMS: That's all the questions I have.
7 Thank you.

8 THE COURT: Cross-examination, Mr. Payne.

9 CROSS-EXAMINATION

10 BY MR. PAYNE:

11 Q I can't remember the minutes exhibit number there.
12 Mr. Mikell, y'all was looking at Plaintiff's Exhibit 6.
13 Just so I'm clear on this those minutes Plaintiff's
14 Exhibit 6 were provided to you at the meeting with -- that
15 Tam McBratney was at, is that right?

16 A Well, that's the part I'm a little unclear about. I
17 had seen this at that time, but I can't sit here and say
18 it was provided to me at that meeting. And it might have
19 been a week before that meeting, but I had seen this.

20 Q And at that meeting with Tam McBratney, you, John and
21 Walt which was John Curl's office, is that right?

22 A That's correct.

23 Q And it was May of 2015. You hadn't said okay ---

24 A I would not have said it that long, but I seem to
25 lose track of time, I guess, the older I get it goes fast.

1 Q At that meeting you made -- you ask is this a
2 shareholder meeting or a board member meeting you remember
3 asking everybody what kind of meeting it was?

4 A There was a discussion about what kind of meeting it
5 was.

6 Q And in exhibit six those minutes were presented by
7 John to be approved by the shareholders at that time. You
8 remember that?

9 A I do not recall. No, I don't recall. No, I do not.

10 Q And do you remember when at the meeting you asked
11 John whether the profitability had been met so that
12 additional shares would have been issued?

13 A Well, we -- I suppose I asked him that. There was
14 certainly a discussion about that.

15 Q Okay. And John told you that no shares had been
16 issued because the profitability had not been met?

17 A That was his position.

18 Q Okay. It was at the meeting in Tam McBratney's
19 office and John Curl's office?

20 A Yes.

21 Q Okay. And at that meeting there was never any
22 representation by you or Walt that he was a majority owner
23 of the stock in this company, was it?

24 A Well, I'm not sure I understand the question because
25 looking at this agreement I knew he would be the majority

1 owner he was at that time.

2 Q Right. John was -- now, John was the majority owner
3 at that meeting?

4 A Yeah, because part of the issue was whether he was
5 going to convey the three shares to Walt, that was part of
6 why we were there what was being discussed. So clearly
7 that had not been done yet at that time.

8 Q And the later meetings you said one happen within
9 three or four months?

10 A I apologize if I'm off on my time.

11 Q I don't know the dates, but there was some discussion
12 about another business that Walt owned and the discussion
13 was between John and Walt that Walt would close that
14 business, is that right?

15 A Yes.

16 Q Okay.

17 MR. PAYNE: That's all I have, Your Honor.

18 THE COURT: All right.

19 MR. WILLIAMS: Nothing further.

20 THE COURT: All right. You may step down. You
21 free to leave thank you, sir.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 THE COURT: You may call your next witness.

25 MR. WILLIAMS: Call Mike Barker.

1 THE COURT: Mr. Barker, please come forward ask
2 you if you could place your left hand on the Bible and
3 raise your right hand as the clerk administers the oath.

4 THE CLERK: Do you swear or affirm that the
5 testimony you give will be the truth, the whole truth, and
6 nothing but the truth so help you God?

7 THE WITNESS: Yes.

8 THE COURT: Yes, sir, have a seat in that
9 witness chair, pull up real close to that microphone,
10 speak loudly, clearly and slowly and let's start with your
11 first name -- your full name.

12 THE WITNESS: Full name is Michael middle
13 initial A last name Barker B-A-R-K-E-R.

14 THE COURT: Mr. Williams.

15 WHEREUPON,

16 Michael. A. Barker,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WILLIAMS:

20 Q Mike, have you ever testified before?

21 A No, I haven't.

22 Q Okay. You've seen it on TV just pretend it's the
23 same thing. If it's not, we'll correct you?

24 A Okay.

25 Q Mike, tells us how old you are and where you grew up,

1 a little bit about your education, background and work
2 history?

3 A I'm 60 years old, grew up in Florence. We moved here
4 when I was, I believe, eight years old, so essentially I
5 consider Florence my hometown, went to Frances Marion,
6 majored in chemistry and accounting but never finished my
7 degree, worked for 28 years at J.P. Morgan Chase and
8 actually was laid off slash retired. And then since 2014
9 I been working at Florence Carpet and Tile.

10 Q Who hired you at Florence Carpet and Tile?

11 A It was -- I would say Walt Parker did. John Curl had
12 approached me about it. And I talked to Walt and Walt was
13 the one that actually called and made the offer.

14 Q Okay. And how did you know John Curl?

15 A We went to church together and so that's really the
16 extent that I know him.

17 Q Okay. What were you hired to do at Florence Carpet
18 and Tile?

19 A I was hired as the general manager.

20 Q And what were your duties?

21 A Basically oversee the books, day-to-day operations,
22 payroll those type -- mostly back office issues.

23 Q Okay. Did you make the payments when you had vendors
24 that you owed money to other people?

25 A That's correct, yes.

1 Q Any checks that you didn't make the payments?

2 A Not that I'm aware of, no.

3 Q Okay. Did Mike -- I'm sorry Walt Parker give you any
4 instructions on the sequence of paying checks when money
5 was not available to pay everything?

6 A Yeah, he did. He did in fact ask my opinion and
7 then, you know, basically graded my answer in that he did
8 want the, I guess, deposits that received for goods were
9 suppose to be paid to the appropriate vendors first,
10 payroll overhead and then rent would be pretty much last
11 in the line.

12 Q Okay. And were there any other items in that
13 category other than rent that were last in line or next to
14 last, I guess, rent was last?

15 A Not that I they recall.

16 Q Okay. Where on that totem pole where did payments
17 due to Mr. Parker and Mr. Curl come like repaying debts to
18 them?

19 A They were down on the bottom as well along with rent.

20 Q Okay. Who was at the two or three categories of
21 people at the top?

22 A Would be vendors such as Shaw Mohawk, different, you
23 know, of course, the light company, our internet service,
24 phones things that we needed in day-to-day operations that
25 we had to maintain.

1 Q What about payroll?

2 A Payroll was up there as well that was, I guess, we
3 always felt if necessary payroll could be a little
4 flexible.

5 Q In terms of the day-to-day operations of the
6 business, were you -- have you been pretty much there
7 every day full time except for normal vacation?

8 A Yes.

9 Q Okay. What have you observed about who runs the
10 company and how decisions get made there?

11 A Well, Walt -- you know, Walt's in charge. He does
12 run the company. He oversees -- basically, he oversees
13 the operations, the selling, the installing and all of
14 that and also supervises me, but he's the one that gives
15 overall direction.

16 Q Okay. What is his -- how would you describe his work
17 ethic? How hard a worker is he?

18 A He's there every day. He's there every day that he's
19 not on vacation or otherwise. If he's out of the office,
20 it's usually doing a measurement or visit a customer's
21 house that type of thing.

22 Q And what are your working hours?

23 A From six to excuse me -- eight to six Monday through
24 Friday.

25 Q Okay. And typically when you get to work where is

1 Walt?

2 A Typically he gets in ten minutes after me maybe, so
3 he's there promptly and typically looking at the board for
4 instillations just trying to coordinate any jobs that he
5 has going out that morning that type of thing.

6 Q How about at quitting time?

7 A Yes, he's typically there right at the store closing
8 time unless again if he's out doing a measurement or
9 otherwise or has something else plan.

10 Q Okay. What about John Curl? What sort of presence
11 at the business does he typically have?

12 A See him occasional, but, you know, he's not involved
13 in the day-to-day operations typically I would say.

14 Q Okay. Is there anybody any more knowledgeable of the
15 financial operations of the business?

16 A Probably not, no.

17 Q When -- does Walt from time to time ask you financial
18 questions?

19 A Yes.

20 Q Does John Curl ask you from time to time financial
21 questions?

22 A He does. If we're -- if we're paying rent or need to
23 pay rent or that type of thing, he will.

24 Q Okay. Do you ever -- have you ever refused to
25 provide information to John Curl?

1 A Not to my knowledge, no.

2 Q Has Walt ever instructed you to deny information to
3 John Curl?

4 A No, he hasn't.

5 Q Okay. What is your relationship with the certified
6 public accountants for the company?

7 A Just a business relationship. I basically am the
8 liaison between Florence Carpet and Tile and Ann Marie
9 Hanna's office.

10 Q Okay. And who at Ann Marie Hanna's office do you
11 deal with?

12 A Charles -- Charles I can't remember his last name,
13 but Charles the bookkeeper.

14 Q Okay. Are you familiar with capital contributions
15 that had been made to the business Florence Carpet and
16 Tile?

17 A I am of some, yes.

18 Q Okay. Have some been made during your tenure there?

19 A Yes, they have.

20 Q And have you looked at the records of ones that were
21 made before your tenure?

22 A Only to the extent as they're on our accounting
23 system as historical transactions.

24 Q But the historical transactions are in fact on your
25 accounting system?

1 A Yes, that's correct.

2 Q Okay. Do you know approximately what John Curl's
3 capital contributions to the company itself have been?

4 A Not offhand, no.

5 Q Okay. You know a range approximately?

6 A I really don't. I'm not familiar with the
7 acquisition of the company and any contributions that were
8 made at that time.

9 Q Okay. How about since your tenure you familiar with
10 his since you got there in 2014?

11 A I am.

12 Q And with Walt?

13 A Yes.

14 Q What material difference, if any, has there been
15 between their capital contributions to the company during
16 your tenure?

17 A Regarding strictly cash, I would imagine that just
18 based on my recollection Walt has -- I've had to go to
19 Walt more frequently to ask for, you know, short-term
20 funding or whatever contributions to the business.

21 Q Okay. And has he provided?

22 A Yes, he has.

23 Q Okay. Could you tell me about -- tell the Court
24 about the granite business and the floor covering business
25 what are they?

1 A The granite business is -- of course, the floor
2 covering business is Florence Carpet and Tile which ---

3 Q I'm talking about the instillation business. I'm
4 sorry I said floor covering. I meant the instillation
5 business?

6 A The floor covering instillation business that was --
7 we call Palmetto Floor Covering installers PFI was the
8 acronym and that was a company was my understanding that
9 Walt had that would actually provide the floor covering
10 instillation services on behalf of Florence Carpet and
11 Tile. And he would pay the subcontractors weekly and
12 deduct whatever insurance if they did not have insurance
13 he would see to it that PFI had insurance that would cover
14 them, make those deductions and then make payments to the
15 subcontractors on a weekly basis.

16 Q Okay. And is that same with respect to the granite
17 business Florence Custom Countertops?

18 A Florence Custom Countertops is basically is a
19 business that has co-existed with Florence Carpet and Tile
20 in the same building and they provide fabricated
21 countertops for us to sell. Fabricating meaning cut,
22 polished, instillation that type of thing and provide the
23 stone to Florence Carpet and Tile the actual raw materials
24 for the countertops.

25 Q Okay. Do you recall on occasion in 2016, 2017

1 somewhere in that time frame two to three years ago that a
2 change occurred with respect to the instillation business
3 and the granite business?

4 A We did. Florence Carpet and Tile took over the
5 instillation payment directly to the subcontractors
6 roughly three years ago, I guess, just trying to
7 recollect.

8 Q And why -- how was it communicated to you that that
9 was going to happen and who communicated it to you?

10 A Walt communicated that to me and just said, hey, you
11 know, going forward Florence Carpet and Tile will be
12 paying the subs directly and then we in turn put them
13 under our insurance and for those that did not have
14 insurance. There some -- there were some self-insured and
15 some that were not. For those that were not self-insured,
16 we would deduct insurance from their pay and cover them
17 under our insurance and disburse their pay to them each
18 week.

19 Q And what about the granite business?

20 A The granite business maybe a couple years ago Walt
21 came and mention that the granite business was coming
22 under the umbrella of Florence Carpet and Tile and that we
23 needed to basically change the way we dealt with the
24 granite side of the operation.

25 Q Did he state to you why?

1 A He mention that there was a disagreement or an issue
2 between he and John Curl and that based on what he told me
3 John had agreed to bring that operation under the umbrella
4 of Florence Carpet and Tile in return for increased
5 ownership in Florence Carpet and Tile for Walt.

6 Q And did you -- were you in charge of effecting that
7 bringing it in under the umbrella of Florence Carpet and
8 Tile?

9 A Really the only thing that changed for me was how we
10 basically related to that side of the business. We began
11 to -- we still been operating it as with a separate bank
12 account and the -- Florence Custom Countertops provides us
13 with invoices. They show us what the margin is of the --
14 their invoices versus what we charge the customer. And
15 then we in turn pay those invoices for -- it's basically
16 for their cost for -- for the fabrication and instillation
17 and purchase of the granite products, so we pay them
18 weekly via invoice and then they disburse to their or our
19 vendors and installers and the fabricators.

20 Q And when you say that you pay them for their -- you
21 pay a component part of invoice on it, correct?

22 A We pay the -- we actually pay the full invoice. The
23 invoice is for stone and fabrication services.

24 Q Okay. Full invoice of stone and fabrication
25 services?

1 A Right.

2 Q And is there profit margin for Florence Custom
3 Countertops or the instillation built into those invoices?

4 A Not to my knowledge because they are basically
5 charging instillation and fabrication services at a
6 general market rate to us a market cost.

7 Q And who benefits from the -- since that time who
8 benefits from the profit generated by Florence Custom
9 Countertops?

10 A Profit generated by Florence Custom Countertops?

11 Q Uh-huh.

12 A If you're talking about the overall profit from
13 supplier to customer, that would be Florence Carpet and
14 Tile.

15 Q Okay. So the customer pays you guys more than you
16 pay Florence Custom Countertops?

17 A Exactly, yes, that's correct.

18 Q Okay. Is there any profit that would ordinarily
19 belong to Florence Carpet and Tile that instead goes over
20 to Florence Custom Countertops?

21 A Not to my knowledge.

22 Q Same question but with regard to the instillation
23 company?

24 A Not to my knowledge.

25 Q Okay.

1 MR. WILLIAMS: That's all the questions I have
2 answer any that -- no, I got one other. Mr. Payne, you
3 talked about some checks that were written to Florence
4 Custom Countertops, but I don't think they're an exhibit.

5 THE COURT: While he's looking at that, what's
6 the benefit of keeping those entities open rather than
7 just running everything through Florence Carpet and Tile?

8 MR. BAKER: I really know of no benefit for
9 doing it that way.

10 THE COURT: You can still have the installers as
11 independent contractors?

12 MR. BAKER: Right, that's correct.

13 THE COURT: That was never explain to you why
14 you going to keep them open?

15 MR. BAKER: No. And just to clarify, it was
16 only Palmetto Floor Covering is no longer exist.

17 THE COURT: The secretary of state shut it down
18 or it shut itself down sort of?

19 MR. BAKER: Yes, to my knowledge.

20 THE COURT: Okay. No tax returns were filed for
21 them?

22 MR. BAKER: Not to my knowledge, no.

23 THE COURT: How about the installers? The other
24 entity that installs the granite?

25 MR. BAKER: I believe they do still file a tax

1 return, but honestly I'm not involved in that side of the
2 business, okay. So I would -- I can't say with certainty
3 that they do or do not file a tax return.

4 THE COURT: All right.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. WILLIAMS:

7 Q You haven't filed a tax return for that company?

8 A I have not.

9 Q These are the checks that Mr. Payne asked Walt Parker
10 about. And I think you seen them before because I know
11 you and I've talked about them before, but look over those
12 checks each of them appear to be a check from Florence
13 Carpet and Tile to Florence Custom Countertops you see
14 them?

15 A Yes, it looks like all but one of our -- from
16 Florence Carpet and Tile to Florence Custom Countertops
17 and there is one looks like petty cash, check here as
18 well.

19 Q Did you write all those checks?

20 A Yes.

21 Q Do you know what they were written for and why?

22 A I don't know specifically, but I can say that the
23 Florence Custom Countertops checks were written for
24 invoices for stone for fabrication and instillation that
25 was done on behalf of the company on behalf of Florence

1 Carpet and Tile.

2 Q And how about the one for petty cash what do you know
3 about it?

4 A The petty cash check occasionally we will actually
5 maintain a cash fund at the business for incidental
6 purchases if somebody needs \$50 to file up the tank of the
7 truck, anyone who comes in with an invoice that wants to
8 be paid cash we pay that out. We maintain those receipts
9 and then at some point when fund is depleted, we write a
10 check against those receipts that we've accumulated and
11 replenish the petty cash fund.

12 Q Did that check for petty cash or any of those checks
13 for Florence Custom Countertops in any way benefit Walt
14 Parker?

15 A Not to my knowledge.

16 Q Did any of those funds represented by those checks
17 were those funds in any way half of which are 53 percent
18 of which or 51 percent of which should have gone to John
19 Curl instead or could have gone to John Curl?

20 A No, not to my knowledge.

21 Q Okay.

22 MR. WILLIAMS: That's all the questions I have.
23 Thank you.

24 THE COURT: Mr. Payne.

25 CROSS-EXAMINATION

1 BY MR. PAYNE:

2 Q Mr. Barker, I'm Jeff Payne we haven't met. Let me

3 grab those checks.

4 A Sure.

5 Q So y'all write petty cash -- you keep \$1100 in petty

6 cash?

7 A Yes, if we've paid out that much we do.

8 Q As to Florence Custom Countertops, that business is

9 still operating as a separate entity, right?

10 A We write checks to them, yes.

11 Q And they still have a bank account?

12 A Yes.

13 Q And they still have employees?

14 A Yes.

15 Q And the owner is Walt Parker?

16 A I'm not sure what ownership is and -- but, yes, to my

17 knowledge he is one of the owners.

18 Q And I think you said Florence Carpet and Tile pays

19 Florence Custom Countertops the market rate for whatever

20 they sell to Florence Carpet and Tile; is that right?

21 A That's correct.

22 Q It's not cost. It's the market rate?

23 A Well, it's the internal cost. It's the internal cost

24 based on a market rate of what it would cost to fabricate

25 just say x number of square feet of stone.

1 Q Would it cost in the market to buy not what it's
2 actually costing them though?

3 A No, it's actually what it's costing them.

4 Q You call that a market rate?

5 A Well, it's a market -- it's a mechanics rate. It's
6 not a financial rate. It's a cost rate on the cost of the
7 counting side.

8 Q And do you help prepare the Florence Custom
9 Countertops tax returns, are you involve in that?

10 A No, I'm not.

11 Q Okay. Florence this instillation company -- well,
12 let me ask you this, when did you start working for the
13 company?

14 A It was, I believe, May of 2014.

15 Q Okay. And there was a separate instillation company
16 that was doing the instillations for Florence Carpet and
17 Tile?

18 A There was, yes.

19 Q When you started that existed?

20 A Yes, it did.

21 Q When did it stop?

22 A I'm thinking 2015 maybe early 2016.

23 Q Okay. And prior to that when you were there, didn't
24 Florence Carpet and Tile do their own instillations, they
25 had some installers that work for them?

1 A Yes, we did when I got there. We had some installers
2 that were actually on the payroll of Florence Carpet and
3 Tile, but any subcontracted labor was run through Florence
4 Palmetto Floor Covering instillations.

5 Q But Florence Carpet and Tile had their own installers
6 too?

7 A We did.

8 Q Okay. That you paid through Florence Carpet and
9 Tile?

10 A Yes.

11 Q But Mr. Parker had his own instillation company over
12 here with Florence Carpet and Tile would pay to do
13 instillations?

14 A That's correct.

15 Q Right?

16 A Yes.

17 MR. PAYNE: That's all I have, Your Honor.

18 THE COURT: Any redirect?

19 MR. WILLIAMS: Just a little bit, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 Q Mike, are you actually privy to the actual ownership
23 records of Florence Custom Countertops?

24 A I am not.

25 Q But when you say Walt Parker is an owner -- can you

1 say that under oath if you know for a fact that he's an
2 owner?

3 A I cannot.

4 Q Okay. Does Florence Custom Countertops occasionally
5 periodically pay things to Florence Carpet and Tile?

6 A Yes.

7 Q What?

8 A They rent on an annual basis, but if I'm remembering
9 correctly, it's a \$500 a month rate and also \$100 a month
10 on an annual basis for forklift use and services. And I
11 believe it's \$50 a month for miscellaneous supplies that
12 type of thing.

13 Q So it pays annually \$600 payment and \$1,200 and a
14 \$6,000 payment?

15 A Yes.

16 Q Annually?

17 A Right.

18 Q How is that payment made?

19 A It's actually, I guess, a book transaction where
20 invoices are offset.

21 Q Okay. Is that what a float transaction is offsetting
22 invoices?

23 A Yes, right.

24 Q Like if I owe you \$10,000, you owe me \$9,000 and I
25 only owe you a thousand?

1 A That's correct.

2 Q Okay.

3 MR. WILLIAMS: Thank you.

4 THE COURT: You may step down.

5 (WHEREUPON, the witness leaves the witness
6 stand.)

7 THE COURT: Okay. You may call your next
8 witness.

9 MR. WILLIAMS: We don't have any additional
10 witnesses. Thank you.

11 THE COURT: Very good. Be happy to entertain
12 any motions or you may proceed, Mr. Payne.

13 MR. PAYNE: Your Honor, we do have a motion
14 defendant's would make under Rule 41(b) motion for nonsuit
15 in this case even based on what Mr. Parker has said today
16 in the evidence that they've tried to present here, he was
17 entitled based on his theory to additional shares in 2012
18 when he knew of the profits from what he says is seven,
19 ten and 11. At that time they submitted the tax return in
20 September of 2012. So he admitted that he would have
21 known at that time of the profit for that particular year
22 which would have been the third year of his
23 interpretation. And yet he's done nothing for those six
24 years and filed suit in October, but he's made no attempt
25 to ever demand those shares within that three-year period.

1 It would have run in September of '15 so ---

2 THE COURT: Let me ask you this, of course,
3 nobody's received any shares and your client hadn't asked
4 for any shares either?

5 MR. PAYNE: Because he's known along he's been
6 majority owner, Your Honor.

7 THE COURT: He's known that -- well ---

8 MR. PAYNE: He's known all along that he was the
9 minority owner and he's testified to that.

10 THE COURT: All right. Now, your motion is
11 based on statute of limitation?

12 MR. PAYNE: That's right.

13 THE COURT: All right. Now, this is a -- an
14 action in equity and it's for specific performance of
15 therefore the statute of limitations doesn't apply, does
16 it?

17 MR. PAYNE: It's a declaratory judgment, Your
18 Honor, it's not an equitable action.

19 THE COURT: What do you have to say about that,
20 Mr. Williams.

21 MR. WILLIAMS: Your Honor, I think it's a
22 declaratory judgment is an equitable action and I think
23 laches would apply rather than the ---

24 THE COURT: Certainly not a matter of law that's
25 why we're here. I mean ---

1 MR. PAYNE: Well, when you look at the statute
2 of limitations that applies to a declaratory judgment
3 action like this, the case is Felts vs. Richland County
4 383 Southeast Second 261. They look to the underlying
5 controversy of the particular claim and you look at what
6 kind of action it is ---

7 THE COURT: Which is what? Which is what?

8 MR. PAYNE: Well, he's pled it as a breach of
9 contract. He said that we breached the agreement. We
10 never gave him the additional shares if you look at the
11 complaint. So it's a three-year statute of limitations
12 that applies to this particular declaratory judgment
13 action which is based on breach of contract. He can't
14 just sit around for 11 years and then we have a
15 shareholder meeting and then all of sudden he says, no,
16 I'm 50 percent and I demand to be equal you can't do
17 anything because I'm equal.

18 THE COURT: The relief they're requesting is
19 that he be given the shares.

20 MR. PAYNE: Exactly he wants that.

21 THE COURT: Which is an equitable remedy I would
22 think.

23 MR. WILLIAMS: Your Honor, these people clearly
24 they were dealing with self-executing documents,
25 self-executing understandings. I would submit the statute

1 of limitations doesn't even begin to run -- were to run is
2 the day somebody fails to hand you a share certificate.
3 Mr. Curl doesn't have a share certificate. Mr. Parker
4 doesn't have a share certificate. Nobody has walked in
5 and -- the first time somebody said I demand my shares
6 certificate was when this shareholders meeting was called
7 and it's been the first occasion of which somebody said
8 give me my shares or ---

9 THE COURT: And that was held when?

10 MR. WILLIAMS: November of 2018 is when Mr. Curl
11 sent out a notice of the shareholders meeting to elect a
12 new board.

13 THE COURT: Right.

14 MR. WILLIAMS: It's clear -- one thing's clear
15 from the evidence without deciding any evidentiary issue
16 is both of them are shareholders in this company beyond
17 that they disagree on everything. Mr. Curl argues that he
18 still owns 53 percent when everybody would. The agreement
19 itself would -- say that the maximum would only be 51 even
20 if he's right by excluding year 2007, of course, we say
21 it's not.

22 MR. PAYNE: We're not demanding a share
23 certificate at all here, Your Honor. He's demanding his
24 three percent. And if you look at his complaint, it says
25 defendant has failed to transfer or direct or authorize

1 the appropriate officers to transfer three percent as
2 ownership to Walt Parker. The failure constitutes a
3 material breach of the contract memorialized in the
4 purchase agreement dated April 30th of 2007. I mean,
5 that's -- that's his complaint.

6 THE COURT: You know, but it's asking for an
7 equitable relief. It's asking for the three shares, not
8 asking for money. It's not asking for anything other than
9 the ---

10 MR. PAYNE: But it's still a breach of contract.
11 It doesn't have to be a damage. It's a breach of contract
12 cause of action.

13 THE COURT: I thought the case says you look at
14 the underlying action. I think the underlying action is
15 the giving of the ---

16 MR. PAYNE: Well, and I understand. I'll move
17 on, but it's -- I'm just looking at his complaint. And
18 you don't have to have damages as part of your request to
19 relief to make a legal claim and this is a breach of
20 contract claim where he wants what the contract required
21 of him to get, here it just happen to be shares additional
22 three percent, but I will move on. Anyway we think the
23 statute of limitations ran in September of '12. He knew
24 then and he had knowledge he was involved with these tax
25 returns. The clock would have started to run there. He's

1 done nothing. He's never even asked for them. He's never
2 demanded them. He's never even acted like he owned
3 50 percent of these shares during this five year, eight
4 year period that we're dealing with. We think it's too
5 late. It's barred by the statute of limitations and thus
6 requesting an order for nonsuit in the case. Thank you.

7 THE COURT: All right. Mr. Williams, would you
8 like to address that further?

9 MR. WILLIAMS: Nothing additional, Your Honor.

10 THE COURT: Okay, very good. All right.
11 Mr. Payne, you recognize you may call your next -- call
12 your first witness or second witness.

13 MR. PAYNE: Your Honor, we call John Curl.

14 THE COURT: Mr. Curl, please come forward. I'm
15 going to ask if you could once again to place your left
16 hand on the Bible and raise your right hand as the clerk
17 administers the oath.

18 THE CLERK: Do you swear or affirm that the
19 testimony you give will be the truth, the whole truth and
20 nothing but the truth so help you God?

21 THE WITNESS: I do.

22 THE COURT: Come around have a seat in the
23 witness chair, pull up real close to that microphone,
24 speak loudly, clearly and slowly in order that we can hear
25 everything that you have to say and let's start with your

1 full name please, sir.

2 THE WITNESS: My name is John middle initial C
3 last name Curl C-U-R-L.

4 WHEREUPON,

5 John Curl,
6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PAYNE:

9 Q John, tell us a little bit about your educational
10 background, you gone to college around here?

11 A Well, I kind of have a mixed education. I don't have
12 an actual college degree. I went to the University of
13 South Carolina and studied real estate some, ended up
14 getting my broker's license, real estate broker's license
15 in 1982. And I went to -- see I got my residential
16 builders license in 1986. I went to Horry Georgetown Tech
17 and completed a designation in construction management.
18 And I got unlimited general contractors license in 1991.

19 Q And what type of businesses have you been involved
20 with over the years?

21 A Primarily things related to real estate, but I've
22 also -- I owned a formal -- well, much like this
23 arrangement was to be, I was the person that backs -- I
24 back somebody in a formal wear business and they
25 eventually bought out the -- my interest in it. It was

1 called Black Tie. I owned a company that -- did make
2 frames, picture frames and pictures and I had no
3 day-to-day dealings with that operation. They bought my
4 interest in that over a period of time. I helped them get
5 started. I helped a jewelry store. I backed him and he
6 eventually bought out his interest in that business as
7 well.

8 Q Do you build houses?

9 A Oh, yeah, I built over 500 homes. I build
10 apartments. I build condominiums and commercial
11 buildings. I built one of the Checker's restaurants here,
12 a veterinary's office, a doctor's office. Done a number
13 of upfits for spaces and commercial space. I own a good
14 bit of commercial real estate and a good bit of income
15 producing residential real estate.

16 Q Are you married?

17 A I am.

18 Q Do you have children?

19 A I do.

20 Q How many children do you have?

21 A Two.

22 Q And how old are they?

23 A Thirty-one and 29.

24 Q One's about to have a baby.

25 A Yeah, my 31 year old is living in New Zealand and

1 today is her due date. So I'm looking for information any
2 minute on a grandbaby.

3 Q Tell us how you came to purchase the stock in
4 Florence Carpet and Tile?

5 A I knew Charles Carnell and had done business with him
6 since the 80's throughout my building career and he became
7 a friend and a little bit of a mentor. We would eat
8 breakfast probably one or two Saturday mornings a month
9 with a group of guys about five or six of us would get
10 together, pick a place and go eat and so I got to know
11 him. And I knew he had some health issues and he had
12 expressed that he had an interest in selling his business
13 and we talked numbers before. I knew what kind of
14 business he was doing. He specifically asked me if I be
15 interested and I told him at that time that it wasn't
16 something I would be interested in dedicating the time it
17 would take to run on a daily basis, but I was interested
18 in the business if I could find somebody that was
19 interested in running the business.

20 Q And how did you and Mr. Parker get together to buy?

21 A It had been a period of time and I can't tell you how
22 long since I had those initial conversations with Charles
23 Carnell. And he was also doing business with Ann Marie
24 Hanna as his accountant and she was my accountant. And he
25 said I'll go ahead and tell Ann Marie to make my books

1 available to you if you want to look them over. And I
2 said, okay, I appreciate that. And so I told Ann Marie
3 and, I mean, I took just kind of a cursory look at -- to
4 look at the gross volume he was doing and the
5 profitability of the business and kind of those things,
6 but I didn't pursue it. And I'm thinking it was probably
7 the better part of the year or more. And Ann Marie
8 actually asked me if he'd ever done anything more as far
9 as selling it if I was still interested. And I said, I am
10 still interested, but I hadn't found someone and she told
11 me that she knew someone that might be a candidate to run
12 the business and told me that he was from her hometown. I
13 thought it was somebody that he knew. I didn't know until
14 today that it was through their mothers that they actually
15 knew each other. I thought they knew each other
16 personally, but at any rate she made the connection and
17 asked Walt to come see me, so he did and we talked. And
18 kind of basically went through a little bit of an
19 interview process basically and he told me he had a degree
20 in business and had a master's MBA and that he had worked
21 for a number of businesses, but he really wanted to do
22 something for himself. And so we had a couple of
23 conversations and we met a couple of times. And
24 eventually I called Charles Carnell and ask him permission
25 to share his information -- Florence Carpet and Tile's

1 information with someone else that I was talking to and he
2 gave me permission. And so we continued to have
3 discussions and I eventually asked Walt what kind of
4 capital contribution he would be in a position to make.
5 And he said that he really wasn't in a position to make
6 much of a capital contribution, that he was hoping it
7 would be something that he could work towards the
8 ownership of and so I pursues it from that angle. There
9 were two separate transactions. Charles Carnell's wife
10 actually owned the real estate. Charles did not and they
11 didn't own it together. So I ended up and he had express
12 from the get go that he didn't really want to sell the
13 business without the real estate nor did he want to sell
14 the real estate without the business. He thought they
15 were hand and glove. They went together. And so I talked
16 to him and her about purchasing the real estate. And
17 simultaneously I was talking to BB&T about the way to
18 structure a deal. So I actually brought the real estate
19 and had to put real money several \$100,000 into the
20 purchase of the real estate and structured the deal in
21 such a way that we were basically borrowing all of the
22 money a \$1,040,000 -- a \$1,080,000 540 from each
23 Mr. Carnell and BB&T, but they also both wanted me to have
24 Curl Properties which was buy the real estate to guarantee
25 their loan. So Curl Properties guaranteed both BB&T and

1 Charles Carnell. And I also literally pledged the real
2 estate, the specific real estate that I was purchasing.
3 We called it cross collateralizing the two loans with the
4 bank. And I had to put up a CD at BB&T that was basically
5 to keep Walt and I on an equal footing as far as not
6 having to put up cash for the business. I ended up
7 putting up a certificate of deposit that was pledged to
8 BB&T as additional security for the loan.

9 Q Now, what was your role going to be with Florence
10 Carpet and Tile once y'all bought it?

11 A Well, basically my role was the backer, the money
12 person behind the deal and I don't think there was ever
13 any misunderstanding about that. I was a little surprised
14 earlier to hear that Walt believed or imagined that there
15 was going into it was 50/50. We actually had that
16 discussion. I can't imagine anybody going into an
17 arrangement where you borrowing over a million dollars and
18 not having that discussion that I had done a number of
19 different business deals where I was basically a half
20 owner either majority or a minority owner. We're like
21 45/55 and that's what we had talked about.

22 Q We ---

23 A Walt and myself, that's what had been planned that
24 was the intention, but one of the people that I was in
25 business with previously and he was my mentor and he was

1 the money person at that point in time. We were going
2 into it 45/55, but before we got to the point of closing
3 on it, he said what I want to do is structure it in such a
4 way that you're incentivized to make sure this does good.
5 So I'll let you earn up to the 50 percent over the first
6 five-year period of time. So I borrowed that idea from
7 someone else. And it was basically a gesture of goodwill
8 in an effort to -- in hopes that Walt would do good and
9 make sure that Florence Carpet and Tile continued to be
10 profitable and continued to grow.

11 Q What was Walt's role going to be with the company?

12 A Walt's role was to run all of the day-to-day
13 activities. He was going to be responsible for everything
14 as far as the management and operations of the business.

15 Q And prior to the closing on April 30th 2007, you and
16 Walt had discussed what the percentage of ownership was
17 going to be?

18 A It had been discussed pretty early on in the process
19 probably when we are talking about him wanting to earn
20 equity in a business. I mean; obviously if I'm putting up
21 all of the money or guaranteeing the loans with my
22 resources and my financial statement, then based on all my
23 previous experiences both being a minority owner and
24 majority owner the person with the money or the ability
25 to get the money is the one that has the majority

1 interest.

2 Q And what percentage did y'all initially discuss?

3 A I would have 55 percent. Walt would have 45 percent.

4 Q So you ended up getting BB&T to loan \$540,000, is
5 that right?

6 A That is correct.

7 Q And you had to pledge a CD of \$100,00 to BB&T?

8 A I think the CD was more than 100,000. I think the
9 whole total amount of the CD was either 150 or \$200,000.

10 Q And Mr. Carnell financed the other \$540,000, is that
11 right?

12 A That is correct.

13 Q And he required in exhibit one that you get a
14 guarantee from Curl Properties?

15 A That is correct.

16 Q And Curl Properties signed the personal guarantee?

17 A Yes.

18 Q And Curl Properties actually had to mortgage one of
19 the pieces of property to Mrs. Carnell who actually owned
20 the property, is that right?

21 A That is correct.

22 Q Okay. Now, and after the sell the Carnell's
23 continued to work for the business?

24 A They did.

25 Q And was that something you were insisting on when you

1 were structuring the purchase agreement?

2 A I think it was agreed with everybody because it was a
3 business that had been around for a very long time nearly
4 four years. And so Mr. Carnell's historical knowledge of
5 the business and knowledge of all of the vendors and
6 contractors and subcontractors, I think, was a large part
7 of what we were purchasing. It wasn't just inventory and
8 goodwill. It was his knowledge and ability to continue
9 the business in the way it had been run and the things
10 that he had learned through the years. So, yes, it was
11 mutually agreed upon that it would be in everyone's best
12 interest including Mr. Carnell because I think obviously
13 he wasn't walking away with all of his money. He was
14 going to be holding a note for \$540,000. So he wanted to
15 make sure that it was going to be successful as well.

16 Q And let's see his wife worked there I believe, is
17 that right, she kept working?

18 A That is correct.

19 Q And Mr. Carnell's son was working in the business
20 office, is that correct?

21 A That is correct.

22 Q And did he work -- did the son work beyond 2007, do
23 you remember?

24 A You know, I thought that Scott worked until sometime
25 in mid 2008 honestly. I felt like he was there beyond

1 Charles and Bobby and he worked in the business office.

2 And he decided to open up his own small business nothing
3 in the floor covering business at all. And then he
4 eventually went -- he was a pretty tech savy person and
5 eventually went to work for someone in the IT field.

6 Q Okay. Exhibit two that's in front of you there we
7 talked about here today. Did you sign exhibit two?

8 A I did.

9 Q And where were you when you signed exhibit two?

10 A I was at the McGowan Law Firm.

11 Q And when did you sign those?

12 A The day that we signed all of the closing documents,
13 it appears it was April the 30th of 2007.

14 Q Okay. Now, the minutes state that you own
15 53 percent, is that right?

16 A That is correct.

17 Q And was that the correct percentage?

18 A Yes, and I was -- once again, I was a little
19 surprised today to hear that Walt felt that he was, you
20 know, blindsided or surprised that -- if it were any
21 surprise at all, I would have thought it was a good
22 surprise that we went ahead and memorialized that he had
23 the opportunity to earn an equal amount because all we had
24 ever talked about previous to agreeing to this was
25 55 percent and 45 percent, but I did do it much the way

1 someone treated me. The other -- and it was successful in
2 my case that we -- it was successful and I did end up with
3 50 percent and long term the relationship went very well.
4 But the goal was that he would be successful and he would
5 be profitable out there. And that ultimately he would
6 earn those three percent and that was my idea. I came up
7 with offering him the opportunity to earn the
8 three percent. It wasn't something that was negotiated
9 because all we'd ever talked about was the 55 and 45.

10 Q The closing with the Carnells happen before y'all
11 were discussing exhibit two, is that right?

12 A You know, there were multiple things that occurred
13 that day including the real estate transaction I think
14 happened before we actually closed on the stock purchase.
15 And I know there's been discussion here today about there
16 not being shares of stocks and not being a book with
17 bylaws and that kind of stuff, but that book did exist.
18 That book was there that day and Mr. Carnell did sign the
19 shares of stock. Those shares of stock were placed in --
20 there's a sleeve inside that notebook that you can stuff
21 loose documents into. They were stuffed back inside that
22 book. The bylaws were in that book. And it was slid
23 across the table and so, you know, put this back in the
24 business office at Florence Carpet and Tile, that's where
25 it had been kept previously. I saw that book in the

1 business office early on after we purchase the business.
2 And they moved around offices and there had been a leak
3 and they -- stuff happened, but, you know, the whole issue
4 came up about needing the articles of incorporation and
5 the bylaws when some new bank regulations came out and
6 this is a C corporation and the bank started asking for
7 the articles of incorporation and the bylaws of the
8 corporation. And so I called out and talked to Walt. And
9 I called out there several different times. I ended up
10 sending an e-mail. This is very important because the
11 bank needs it and they're going to be out of compliance
12 with the regulators if we don't provide them this
13 information.

14 Q But when you left the closing who had the stock book?

15 A I really thought Walt had the stock book. I didn't
16 have it. I wasn't going out to Florence Carpet and Tile,
17 he was. I mean, the instruction was to put it back in the
18 business office.

19 Q But you later after the closing saw the book?

20 A I saw the book. The book was in the business office
21 at Florence Carpet and Tile. It was on a shelf with a
22 number of other business related books.

23 (WHEREUPON, Defendant's Exhibit No. 10 was
24 marked for identification only.)

25 THE COURT: So your testimony is that you were

1 issued stock?

2 MR. CURL: Yes, sir.

3 THE COURT: And so was Mr. Parker?

4 MR. CURL: Yes, sir. I don't think -- I believe
5 much like a number of other companies I have stock in, I
6 don't think those shares of stock were taken away
7 separately from the book, the corporate book. I think
8 they were stuck back inside the sleeve of the corporate
9 book. Honestly, I think the shares of stock that Charles
10 Carnell was issued when he purchased the business where
11 inside that same sleeve. I mean, his shares of stock were
12 in that book.

13 THE COURT: So you all actually bought the
14 corporation. You didn't open up the corporation and buy
15 stock and ---

16 MR. CURL: We brought -- the purchase was -- a
17 purchase of the C corporation and all of the shares of
18 that C corporation.

19 THE COURT: Okay.

20 BY MR. PAYNE:

21 Q Mr. Curl, let me show you what we marked as exhibit
22 number 10. Tell me what exhibit 10 has on it?

23 A This appears to be an e-mail from me to Walt Parker
24 dated February the 5th of 2015. The subject is book for
25 bank. The e-mail says the original articles of

1 incorporation and bylaws are normally kept in the book. I
2 will check at the attorney's office and make sure they
3 don't have it at their office. The bank needs the
4 articles and bylaws to make sure that they are
5 in compliance.

6 Q Now, that e-mail from you was in response to one
7 Mr. Parker had sent to you, is that right?

8 A That is correct.

9 Q And what was Mr. Parker's reasoning for e-mailing
10 you?

11 MR. WILLIAMS: Objection.

12 BY MR. PAYNE:

13 Q Well, what does it say, what does the e-mail say that
14 -- the one to you that you responded to?

15 A It says John Mike ask me if I had the book for
16 articles of incorporation for Florence Carpet and Tile and
17 that the bank needed it. What is it for? Is it critical?
18 If so, we will have to initiate a pretty comprehensive
19 search because with all of the moving we have done nobody
20 can readily put their hands on it.

21 Q And that's an e-mail that you got from Mr. Parker in
22 February of 2015?

23 A That is correct.

24 MR. PAYNE: Your Honor, we move to introduce
25 exhibit ten.

1 MR. WILLIAMS: No objection.

2 (WHEREUPON, Defendant's Exhibit No. 10 was
3 admitted into evidence.)

4 BY MR. PAYNE:

5 Q Now, back to the -- the book was never found?

6 A No. No, I don't have no idea what happened to the
7 book.

8 Q Mr. Parker was unable to find it at the business?

9 A That is correct. And I did ask for copies of
10 everything that the McGowan Law Firm had in their file
11 related to the closing in an attempt to gather at least
12 copies of what was in the book and they did not have
13 copies of everything. And I also made a request and I
14 think paid \$15 or something to the secretary of state for
15 copies of what they had on file in an attempt to satisfy
16 the bank. One again, the bank is screaming at me as the
17 primary guarantor of the loan to get them what they need
18 to be in compliance with the regulators.

19 Q All right. Back to exhibit two there, did Walt at
20 the meeting on April 30th did he ever object to the
21 percentage that was stated in exhibit two?

22 A No, I don't remember any objection at all.

23 Q Okay. Now, what were the terms of your proposal to
24 give him additional shares that are outlined there in
25 exhibit two?

1 A That if the business was profitable three out of the
2 first five years that he would get three additional
3 percent or we would then become equal owners.

4 Q Now, were the results from 2007 going to be included
5 in that analysis?

6 A Never in my mind. I watch CNBC way too much. All
7 the stuff I've ever seen when a new CEO takes over a
8 company he neither takes the blame nor the credit when he
9 takes over.

10 MR. WILLIAMS: Nonresponsive.

11 THE COURT: Pardon?

12 MR. WILLIAMS: It's nonresponsive.

13 THE COURT: I'll allow him. It's non-jury I'll
14 allow him to answer.

15 A It's accepted in corporate businesses that --
16 stock-held businesses that hire CEOs that their neither
17 blamed nor take the credit if they're hired mid year.
18 Their first year is a full year, a of full physical year
19 once they been in that position. But in this case aside
20 from it not being a full year, we were paying Mr. Carnell
21 what he had been paid basically and or more to be there
22 and oversee and trained Walt for that first year. He was
23 basically in my mind -- Mr. Carnell was responsible for
24 2007. And I think whether it was going to be a good year
25 or bad year, I still would have given that credit and or

1 blame to Mr. Carnell because he was still there and in
2 charge and training Walt what to do.

3 Q And how much were y'all paying him what was he ---

4 A Well, it would have equated to over \$90,000 a year on
5 an annualized basis. It was 200 and, I think, 60
6 something dollars a day.

7 Q So in your -- what was the first complete physical
8 year that you were going to take into consideration your
9 analysis?

10 A 2008.

11 Q Okay. So that would mean that you would look at what
12 five years and eight, nine, 10, 11, 12?

13 A That is correct.

14 Q Okay. Now, how -- what did you determine -- or how
15 were you thinking of profit? What was your basis of
16 profit that would be for the business?

17 A Well, the basis on which we evaluated the business
18 and we purchased the business was based off of its assets
19 and its income. So I felt like they were both equally
20 important when you're evaluating. When we purchase
21 Florence Carpet and Tile, it had over \$500,000 in
22 inventory and it had cash in the bank. So I expected that
23 the inventory would, you know, be growing and or the cash
24 in the bank would be growing as the business grew. Now, I
25 admit that, you know, the -- when the real estate bubble

1 crashed in late 2008, a lot of things changed, but they --
2 I think what surprise me when I started looking at the
3 numbers as we went from 2007 into 2008 basically 2008 was
4 a good year. Gross volume was very similar to 2007. But
5 what surprised me was how much money we lost in 2008 not
6 just from an operations standpoint, but we also somehow
7 another managed to spend or decreased the inventory by
8 over \$100,000. So we lost 100,000 in operations and then
9 we also managed to deplete over \$100,000 in inventory and
10 basically ended up flat line with cash. So the cash
11 situation went away as well as the inventory in 2008.
12 2008 was still a good year. 2009's really been the impact
13 of a downturn of real estate, really started to affect
14 businesses. There's no surprise to anyone in 2009 was a
15 bad year. A bad year for everybody related to housing,
16 but 2008 should not have been. That was my first concern
17 was when your very first year once Walt took over without
18 Mr. Carnell what dramatic shift we had.

19 Q I'm going to show you look exhibit number nine and
20 just briefly in your profitability analysis when you're
21 looking at the return on the assets explain this to us if
22 you would?

23 A Okay so -- and this information I actually got from
24 the accountant's office. I put it onto an Excel
25 spreadsheet, so this is actually my spreadsheet. So I

1 actually used 2007 as a benchmark. So that was what we
2 would be comparing year over year profitability from. So
3 the 2007 year gross sales were just over 3.5 million
4 dollars and the profit from operations was \$153,000 and we
5 had \$509,000 in inventory. And in 2008 the gross volume
6 was pretty close. It was still up there at \$3,445,000,
7 but we lost on as far as from operations \$85,574. We also
8 decreased our inventory by \$1005,000, so in my view we had
9 a lost of \$192,000 that year.

10 THE COURT: How do you account for that losing
11 cash and inventory?

12 MR. CURL: How do I account for that? Well, I'm
13 not sure what happened, but typically you want your
14 inventory to grow or either be replaced. So when
15 you're -- sometimes when you have ample inventory and
16 you're not doing so good on the operations side, you spend
17 inventory to keep your operations up. So a business that
18 has -- a retail business that has inventory that's not
19 too unusual, that's one of the ways that they can defer
20 tax consequences. You can actually get to an end of the
21 year and have a pretty good year, but rather than paying
22 taxes on that money, you can reinvest that money into the
23 business and purchase inventory because it's booked in at
24 a wholesale value. So you won't necessarily show that
25 much in profit, but what concern me a great deal was we

1. had losses by operations and we had losses in inventory,
2 so you're spending inventory to cover losses and
3 operations and still had losses and operations. So our
4 total losses of inventory and operations was almost
5 \$200,000 in that first year of operations.

6 Q Look at 2011 if you would, that's a year that the tax
7 return indicated an operation profit. Tell us what
8 happened on 2011 and why that's in your mind not a
9 profitable year?

10 A Well, in 2011 the gross sales were right at three
11 million dollars, just over three million dollars. And by
12 operations on the tax returns, it shows that we actually
13 made \$22,000, but it also show we had a negative balance
14 in the checking account of \$5,416. So our cash balance
15 was a negative balance and we lost -- I shouldn't say
16 lost. We spent \$120,000 in inventory. So actually our
17 total from operations and from assets would have been a
18 lost that year and we would have lost \$103,000. We
19 basically spent inventory to show that you made a profit
20 of \$22,000. So it's kind of ---

21 Q So the inventory went down \$119,000 per year in 2011?

22 A That is correct.

23 Q Okay. Now, has Walt ever demanded any additional
24 shares from you as a result of this proposal that's on
25 exhibit two?

1 A No.

2 Q Has he ever claimed anything that he was an equal
3 shareholder with you 50/50?

4 A No.

5 Q Have you seen any document that indicates that the
6 shares are divided 50/50 in this company?

7 A No.

8 Q Okay. Now, you heard some testimony about the May
9 12th meeting -- I believe May 12th 2015 that was at your
10 office?

11 A Yes.

12 Q And were you present at the meeting?

13 A Yes.

14 Q And the meeting was actually taped, is that right?

15 A That is correct.

16 Q And everybody acknowledged that it was taped?

17 A Yes.

18 Q Who was all present?

19 A Well, Walt was present and he came with Steve Mikell.
20 And I'm not sure if I was aware in advance he was going to
21 bring Steve or I found out that morning that Steve was
22 going to be there. The office building where my office is
23 I actually own it and Tam McBratney's office is in that
24 building. He's a tenant of mine, so it really wasn't
25 until that morning when Walt showed up with Steve Mikell

1 that I went and asked Tam to come sit in on the meeting
2 and be there and that's kind of how we had that meeting.
3 That meeting came about out of a lot of -- a lot of
4 frustration it had to do with just not being able to get
5 Walt to get me information that was needed by the bank and
6 willfully delinquent tax returns for no good reason. He
7 just wouldn't get the information to the accountant's
8 office and get them done. He wouldn't get the bank. At
9 one point in time my banker called me and just said can
10 you please talk to Walt or send an e-mail or carrier
11 pigeon or something and let him know we got to have his
12 personal tax returns and his financial statements to keep
13 the loans in compliance. He said I left him 22 messages
14 and he won't return my call. So, I mean, it was -- while
15 he may claim that he's out there taking care of the
16 business, I think he's maybe out there trying to take care
17 of customers. I don't doubt that, but he really isn't out
18 there taking care of the business. He doesn't tend to the
19 things that our needed to carry on a business in a
20 business environment. Whenever a crisis would arise, I
21 know he said I didn't take -- I wasn't out there on a
22 regular basis, but there was an incident where they just
23 simply neglected to pay the South Carolina Department of
24 Revenue their sales tax for like three months and we got
25 in trouble and he called me. I had to intervene and deal

1 with those people and get that straightened out. And he
2 got in trouble with the South Carolina -- the people that
3 oversee employees complaints. I'm not sure of that
4 division, but he got in trouble with a employee dispute.
5 And I had to get involved in that and get it taken care
6 of. He had a vendor that was going to cut him off for
7 non-payment or bad payment. I had to talk with them and
8 they sent me documentation that I guaranteed they would
9 get their money repaid, so that we could continue to get
10 supplies from them. So there been a number of things that
11 I had to get involved with and I shouldn't be involved
12 with because they're on the business side. He just would
13 not tend to things with the day-to-day business side of
14 the business.

15 Q And you had a -- that meeting at your office was a
16 shareholder's meeting you noticed?

17 A That is correct.

18 Q And at that meeting did you start out trying to get
19 the minutes of exhibit two approved?

20 A I did.

21 Q And at the meeting did Mr. Mikell ask you any
22 questions about those minutes?

23 A He did.

24 Q And did he ask you about profitability of the company
25 and additional shares being owed to Walt?

1 A He did ask me if there -- what was the status of the
2 profitability.

3 Q What did you tell him about additional shares being
4 issued?

5 A I told him that there had not been profitability
6 actually from 2008 until 2013 total losses operations and
7 inventory we went from over \$509,000 in inventory all the
8 way down to right at \$100,000 in inventory, that our total
9 losses between operations and inventory was just under a
10 half a million dollars \$185,000.

11 Q And at that meeting at your office it was discussed
12 that you were the majority shareholder?

13 A Yes.

14 Q And did anybody complain or say you weren't the
15 majority shareholder?

16 A No.

17 Q And did they make any demands for additional shares
18 at that point in time?

19 A No.

20 Q Let's issue some stock or you owe us some more or
21 anything like that from either Mr. Michael or Mr. Parker?

22 A No.

23 Q We gone through with the other witnesses the tax
24 returns which I believe from '08 forward indicate that the
25 ownership is 51 percent 49 percent. And had you ever

1 noticed that when you looked at the tax returns?

2 A No, I never noticed it. I think I know how it ended
3 up being that way, but I never really noticed.

4 Q Well, did you ever have discussions with Ann Marie
5 Hanna's office about ownership and percentages?

6 A I did. So the first probably 2007 2008 the actual
7 bookkeeper that was handling the bookkeeping for Florence
8 Carpet and Tile left. They were working on becoming an
9 accountant and I think became one and they left. So I'm
10 not sure where the original bookkeeper or Ann Marie ever
11 got the first numbers from where it said I was -- I owned
12 46 percent. I don't -- I never believed I owned 46. If
13 there was any number greater than 43, it would have been
14 45.

15 Q Now, is that you or Walt own 46 percent?

16 A I mean 56. So I think that the very first years it
17 showed that I owned like 56 percent or something like
18 that.

19 Q Let me -- look at Mr. Reynolds exhibits. Here's some
20 of the returns here. Seven and eight if you can look at
21 those which are part Plaintiff's Exhibit 1. What does it
22 indicate on the bottom of page one of exhibit one? It's
23 on the bottom of page two. Excuse me page three of the
24 first return.

25 A Okay, so this shows the ownership at 46 54.

1 Q What percent do you own on the 2007 return?

2 A It shows that I own 54 percent.

3 Q All right. Now, explain how the percentages ---

4 A I'm not -- that's what I'm unclear about because it's
5 never been that, that's not what the stock certificates
6 were issued for, that's not what the agreement says. So
7 I'm not sure how it got there. I think it was just
8 initially entered wrong. So I think that first year or
9 the first two years actually were just mistakenly off by a
10 percentage point.

11 Q On any of the documents that you've seen tax returns
12 or anything the accountants prepared, have you ever been
13 less than 51 percent owner of this company?

14 A No. And that's why I was going to say what happened
15 was when so when they a got new bookkeeper and they called
16 me and I was -- asking me about the percentage and they
17 asked if that was the right amount and I said I don't
18 think that that is the right amount. I think that I
19 actually owned less, but I don't know. And I wasn't in a
20 place where I could readily answer that question. And
21 they said, well, are you majority shareholder. I said,
22 yes, I am the majority shareholder, but I don't think I
23 own 54 percent. That point didn't matter and really at
24 this point it hadn't matter. I know where it shows
25 distribution and dividends, that's not actually money

1 that's paid to me or Walt. The way the loans were
2 structured since -- we borrowed the money individually.
3 We being Walt and myself borrowed the money individually
4 to buy the stock of the company. So when the company pays
5 the indebtedness every month the payments to the bank and
6 the payment to Charles Carnell, it's those amounts that
7 are being 1099. That's the money that's being shown a
8 dividend. I've never gotten a penny out of Florence
9 Carpet and Tile, that's the money being paid to the bank
10 and Florence Carpet and Tile as being represented as
11 dividend money. So it wasn't a thing of how much money I
12 might get. I'm I getting 55 percent, 54 percent, 53
13 percent. It was completely immaterial it didn't matter
14 because it was just a matter of the bank and Charles
15 Carnell was getting the same amount of money every month
16 and the percentage amount really did not matter at that
17 point. But whenever I told them that I believe that I did
18 own 54 it was an amount less, I don't think I ever -- they
19 followed up nor do I think I followed up. I think they
20 just put me in as the majority shareholder being
21 51 percent and him being 49. And then subsequently each
22 year they would say has there been any change to the stock
23 ownership and I say no, so it just stayed that way. I
24 don't think there was any deliberate effort to say what
25 the percentages were. It was has there been any change in

1 it. Well, the problem was they just put it in wrong when
2 they changed it from the wrong amount the first time. It
3 never was what they had in there when they said I had
4 54 percent and I still believe and as far as I know the
5 stock certificate was issued to me was equivalent to
6 53 percent of the business. I never transferred of any it
7 away, so I would still own 53 percent of the business.

8 Q There's been some testimony about some subsequent
9 meetings at Steve Mikell's office. Did you ever agree to
10 transfer additional shares to Walt?

11 A You know, I don't. I don't remember. I think after
12 we had the 2015 meeting that Tam was at and Steve Mikell
13 was at. My frustration level was pretty high. There were
14 a few things that Walt did that were in an effort to
15 remedy some of the problems I was concerned about and he
16 did get to work on trying to get some past due tax returns
17 taken care of and some other stuff, but the biggest thing
18 at that point in time was we agreed that the goal was for
19 him to make arrangements to buy me out. So we had several
20 meetings where he would say that he had a partner that was
21 gone come in and help him to buy me out and then he would
22 say that he was working on pursuing an SBA loan that he
23 needed a little bit more time. And A lot of those
24 meetings had to do with putting together an agreement to
25 buy me out which never happened. It was always some

1 reason why he couldn't or wouldn't do it, but my goal was
2 simply to get out. It wasn't about. It was no longer
3 about expecting to make any money and there was a
4 reference to when I bought the business that I was only
5 buying it because I was interested in the real estate part
6 of the business, that's simply not true. I bought the
7 business because I was interested in making money from
8 Florence Carpet and Tile. I've never bought a business
9 particularly one where I had to guarantee over a million
10 dollars in loans just simply to facilitate owning some
11 real estate. I own lots of real estate and there's
12 opportunities to buy a lot of real estate where I don't
13 have to buy businesses. So I certainly wouldn't do that.
14 I bought the business with the intention of making money
15 from the business. Once I realized that Walt's ideas and
16 methods of doing business were not similar to mine and I
17 just could not deal with that, I really wouldn't part ways
18 in whatever means or methods I had to -- the classic
19 saying is, you know, I was -- I may have been the rat in
20 the trap, but I no longer wanted the cheese. I just
21 wanted to get out the trap. So I didn't care about
22 whether I was going to make money or lose money or
23 whatever I just wanted to figure out a way to part ways
24 and that's what he kept assuring me was going to happen.
25 So to get back your question, I'm sorry. I wondered. As

1 he came back and asked me for -- he did, yes, ask at one
2 of those meetings with Steve Mikell he said what can I do
3 to get the three percent. I said it's not about getting
4 the three percent. You can get a 100 percent. I'm not
5 worried about the three percent. I'm worried about
6 getting you to 100 percent ownership. I said but at this
7 point in time if you can't buy the business or won't buy
8 business, I'm going to have to try to move forward and
9 find somebody to put in their -- that will make it
10 profitable, turn it around and be able to buy the
11 business. I want out of the indebtedness. And if you're
12 not going to do that which is really two years ago, I let
13 him know very specifically because when we talked in 2006
14 and seven I told him at that time I said my goal is for
15 the business to grow, be profitable, pay down the
16 indebtedness and then you buy me out in some period of ten
17 years or less. That would be my goal. So we're not past
18 ten years. So I told him two years ago I said, you know,
19 we're past my original goal that we talked from the get go
20 to buy me out. And you continued to give me reasons why
21 you can't or either won't. And if you're not going to do
22 that, I need to get somebody else in here who will, who
23 will buy the business. I don't want to be around. I'm to
24 the point in my life where I'm trying to clean stuff off
25 of my plate. My children are grown. And I got one in New

1 Zealand and the other one is gone away. They're not
2 interested in any of my businesses. So I'm sorry.

3 Q The meeting at Steve Mikell's office just so we're
4 clear did you ever agree to share -- sell Walt additional
5 shares of stock, this additional three percent if he did
6 anything with Florence Custom Countertops or any of these
7 other businesses he was running out of the company?

8 A No. No, I -- and there's letters you want me to get
9 into them now, no, and there's been multiple conversations
10 and it was talked about extensively with that meeting with
11 Tam McBratney. Those businesses were a huge concern of
12 mine that they were conflict of interest being operated
13 out of Florence Carpet and Tile and not to the benefit of
14 Florence Carpet and Tile.

15 MR. PAYNE: That's all I have.

16 THE COURT: All right. How long do you
17 anticipate -- we got the luxury of time. We got all day
18 tomorrow. How much longer do you anticipate or how long
19 do you anticipate the cross-examination taking?

20 MR. WILLIAMS: I'm the worlds worse anticipator
21 with things like that.

22 THE COURT: I tell you what we going to do. We
23 going to take a five minute recess. We going to come back
24 and go to 5:30 how about that. Then we'll recess and
25 we'll come back in the morning.

1 MR. WILLIAMS: Okay.

2 THE COURT: And if you can just remain on the
3 stand and if you need to use the restroom, fine, but don't
4 discuss it with the lawyers. Your testimony with the
5 lawyers.

6 (WHEREUPON, a break was taken.)

7 THE COURT: Okay. All right. Mr. Williams, you
8 recognize.

9 MR. WILLIAMS: May it please the Court.

10 THE COURT: Did you want to address something?
11 Hang on just a minute, Mr. Williams.

12 MR. CURL: I only wanted to ask you about your
13 -- you mention this scheduling prospects tomorrow morning.
14 I'm a hearing officer for the department of labor license
15 and regulation. I'm supposed to be there at ten o'clock
16 tomorrow morning. I thought we were going to be done
17 today. It won't take me long what I got to do, but I'll
18 be back. I usually do hearings on Thursday's there and I
19 had plan to go -- I had something scheduled to take care
20 of in the morning.

21 THE COURT: All right. Well, let's see if we
22 can finish it today.

23 Go ahead, Mr. Williams.

24 CROSS-EXAMINATION

25

1 BY MR. WILLIAMS:

2 Q Mr. Curl, you referred several times to your stock
3 certificate. What are you talking about when you say your
4 stock certificate?

5 A The certificates that were issued the day of closing.

6 Q You signed the certificates that day?

7 A Charles Carnell signed the certificates, signed them
8 over to myself and to Walt.

9 Q Did he hand it to you?

10 A They were there. They stuck them inside the sleeve
11 of the book.

12 Q Did you look at it?

13 A Yes, sir.

14 Q What was your certificate for, how many shares?

15 A Honestly, I don't know remember the number of shares.
16 You know, our shares were based on the percentage of
17 ownership. It seems like to me that there was an odd
18 number of shares that the original number of outstanding
19 shares was like 2,000 shares or something, so it would
20 have been 53 percent of 2,000.

21 Q Okay. The record that the secretary of state's
22 office -- turn to the yellow, I'm sorry. The white
23 notebook in front of you tab number nine. You have that
24 in front of you?

25 A I do.

1 Q Okay. That exhibit reflects that the corporation is
2 authorized to issue a grand total of 200 shares, does it
3 not?

4 A It does.

5 Q Okay. So your memory's wrong about 2,000 shares?

6 A It's 200.

7 Q All right.

8 A It was an odd number, but nonetheless it's 200 not
9 2000.

10 THE COURT: An unusual number not an odd number.

11 MR. CURL: That's right. That's right.

12 THE COURT: Lake City that's even under the
13 beast. Go ahead.

14 BY MR. WILLIAMS:

15 Q Let me reask my question. The certificate that
16 Mr. Carnell issued to you what certificate number was it,
17 do you know?

18 A No.

19 Q Do you know how many shares it was for?

20 A Well, if I'm doing the math right, it would seem like
21 it is 106 shares.

22 Q I'm not asking about today what math you're doing
23 right now today. I'm asking you do you remember how many
24 shares it was that day?

25 A I would say it was 106 shares.

1 Q Are you saying that or do you remember that?

2 A Well, Mr. Williams, I believe, we've all agreed that
3 that day I had 53 percent. And if you do 53 percent of
4 200, that's 106.

5 Q So you specifically recall seeing a certificate
6 issued to you by Charles Carnell for 106 shares?

7 A There was a certificate issued to me for 53 percent
8 of the stock which equals 106 shares.

9 Q But Mr. Carnell was not present at a meeting of the
10 shareholders that didn't take place for about ten or 15
11 minutes later, was it?

12 A Mr. Carnell was there and handed over the book.
13 Mr. Carnell brought the book and had the shares of stock
14 and also in the -- I know that earlier when some folks
15 were questioned about who all was there. One of the
16 people that was left out was Gary Crawford. He was
17 actually physically present at that transaction as well,
18 so Mr. Crawford was also there.

19 Q Okay. Did Mr. Carnell not just signed the
20 certificate, his certificate, one certificate that he had,
21 isn't that what he signed?

22 A Well, that may have been what he signed.

23 Q Okay. Because he would have no authority once he
24 divested himself of his shares to issue any shares on
25 behalf of the corporation, would it? He had no more

1 interest in the corporation..

2 A Well, that would be correct.

3 Q All right. So aren't you mistaken then that he
4 issued 106 shares to you on behalf of the corporation?

5 A Well, I don't have it. We've all acknowledged that
6 the book is missing, so I can't tell you what's in that
7 book that we don't have. I don't know.

8 Q Did you not appoint yourself with Mr. Parker's
9 agreement as vice president, secretary and treasurer of
10 the company on that date right then?

11 A That sounds right, yes.

12 Q Okay. Wasn't it your duty to issue those
13 certificates?

14 A Well, I don't know.

15 Q All right. Well, let me back up then. It's
16 uncontrovertible that you as secretary treasurer of the
17 corporation had never issued any shares on behalf of the
18 corporation, have you?

19 A I don't remember.

20 Q Okay. You don't remember or you didn't?

21 A No, I simply don't remember. I mean, unless it was
22 done there that day, no, but I don't remember.

23 Q Okay. But you have just said that you remember some
24 action taken by Mr. Carnell?

25 A I do. I do remember that. I do remember Mr. Carnell

1 signing the stock certificate.

2 Q Okay. You do remember him signing the stock
3 certificate?

4 A Absolutely, yes.

5 Q All right. But you don't remember you signing the
6 one and you don't remember Mr. Parker signing one?

7 A I do not.

8 Q Okay. What is the current ownership according to you
9 of Florence Carpet and Tile, Inc. what percentage and by
10 whom?

11 A I own 53 percent and Walt owns 47 percent.

12 Q Okay. Today?

13 A Today.

14 Q Okay. Does Walt have a right to own more than
15 47 percent?

16 A Not no longer.

17 Q Okay. No longer?

18 A He would have if he had been profitable the first
19 five years of operation, but those five years are long
20 since gone.

21 Q And it's your position that he had to be profitable
22 how many of those first five years?

23 A Three.

24 Q Okay. And it's all or nothing?

25 A That is correct.

1 Q Okay. And what do you base that on?

2 A I base that on what I believe the document says the
3 shareholder agreement that we both signed.

4 Q All right. Turn to exhibit six in the white
5 notebook. Is that the document you're talking about
6 exhibit six?

7 A It is.

8 Q Okay. And you heard -- Porter Stewart testified
9 earlier this afternoon said he was a mere scrivener of
10 that document. Do you know what a scrivener is?

11 A I do.

12 Q And what is it?

13 A The person that prepares a document.

14 Q Writes it down?

15 A Writes it down, correct.

16 Q Did he write it down based on what you told him to
17 write down?

18 A Well, I think that there were multiple contributors
19 to this document including Gary Crawford and or the
20 Carnells based on what I'm seeing that's written here.

21 Q So do you have an -- you said you think. Do you have
22 an actual knowledge that Gary Crawford would participate
23 in writing minutes of shareholders meeting for
24 shareholders who own the corporation after he was no
25 longer involved with it?

1 A Well, part of the transaction provided for future
2 employment for the Carnells. This document acknowledges
3 that. So I think that, yes, Mr. Crawford was a
4 participant because he wanted to make sure that they were
5 protected by the shareholder agreement.

6 Q This document Plaintiff's Exhibit 6 nowhere in it
7 mentions any employment by Mr. Carnell, does it?

8 MR. PAYNE: Which exhibit?

9 MR. WILLIAMS: Plaintiff's Exhibit 6 the minutes
10 of the called meeting of shareholders.

11 MR. PAYNE: I believe he's looking at the other
12 one.

13 BY MR. WILLIAMS:

14 Q Is that what you're looking at?

15 A Maybe it doesn't talk about the employment in this
16 agreement.

17 Q So you and I have been talking about this same
18 document?

19 A Well, no, I was confusing information from the buy
20 sell agreement and the actual shareholder meeting.

21 Q Okay. So Gary Crawford had nothing to do with
22 preparing these minutes, did he?

23 A I would say not.

24 Q Okay. My question to you is did you tell Porter
25 Stewart or handed Porter Stewart this language?

1 A I did part of it I would say. I mean ---

2 Q Which part?

3 A The -- I feel certain that I did explain to him that
4 we would put a provision in there allowing for Mr. Parker
5 to earn three additional percentages of ownership over the
6 first five years.

7 Q So that's -- that part of it is your language that he
8 wrote down, correct?

9 A I would say some form, yes, some form of my language.

10 Q Okay. Didn't you actually bring to the shareholders
11 meeting this document already written?

12 A No.

13 Q Okay. Look at exhibit three from that book.
14 Plaintiff's Exhibit 3 the stock sale agreement and exhibit
15 six compare those two. Isn't it a fact that those two are
16 written on two different -- I say typewriters, but I
17 presume two different computers with two different fonts
18 and two different size fonts?

19 A Mr. Williams, you asking me stuff outside of the
20 scope that I'm prepare to -- I'm not an expert on fonts
21 and typewriters.

22 Q I'm just asking you to look at them from a layman's
23 language point of view and doesn't the wording, spacing
24 and size of the letter look different?

25 A I mean just from appearance they appear to be

1 different.

2 Q So now I'm trying to see now if it refreshes your
3 memory that maybe you did in fact bring these minutes to
4 the meeting, give them to Porter Stewart so that y'all
5 could address it during the meeting?

6 A No.

7 Q Okay. You did discuss with and give to Porter
8 Stewart the language about the 53, 57 percent, correct?

9 A Yes.

10 Q All right. Let's read that language, let's go to
11 that. I'm talking now about the second paragraph. The
12 first long paragraph of Plaintiff's Exhibit 6 the minutes
13 of the call meeting and shareholders of April 30th 2007
14 and I'm going to start reading -- it started in the middle
15 of the first sentence. I'm going to start reading right
16 after where it says 47 percent shareholder. You see where
17 I am?

18 A Yes.

19 Q Okay. And I'm doing this because it seems to me this
20 is the important part of the language. The shareholder
21 would agree for a transfer of share ownership from Curl to
22 Parker within the period of the first five years of one
23 percent of share ownership from Curl to Parker for each
24 complete fiscal year of operation of said corporation at a
25 profit as determined by the accountant for the corporation

1 up to a total of three percentage points. The effect of
2 which would be to allow for an ownership of 50 percent to
3 Curl and 50 percent to Parker if the corporation operated
4 at such profit for a minimum of three of the first five
5 years, correct?

6 A Yes.

7 Q Did I read that right?

8 A Yes.

9 Q All right. And it's your contention that that last
10 phrase at such profit for a minimum of three of first five
11 year means that it is all or nothing that all of it -- all
12 of the three years have to occur or you don't get any
13 stock?

14 A Yes.

15 Q Okay. Right before that it said -- it says there
16 will be a transfer of one percent of share ownership from
17 Curl to Parker for each complete fiscal year of operation
18 said corporation, correct?

19 A Yes.

20 Q Okay. And there's no modifier there that -- if the
21 corporation operated and such profit for a minimum of the
22 three of the first five years, correct?

23 A Yes.

24 Q Okay. What it says next is up to a total
25 the percentage points the effect of which referring to the

1 effect of three percentage point correct says the effect
2 of which?

3 A I would think that's correct.

4 Q Would be to allow for an ownership of 50 percent to
5 Curl and 50 percent to Parker if the corporation operated
6 such a profit for a minimum of three of the first five
7 years. Now, wouldn't that make more sense and doesn't
8 that actually read this you not getting the 50 percent
9 unless you've operated for three of the five, but you
10 might get the 47 or 48 or 49 depending on the operation,
11 correct?

12 A Well, you know, not in my mind, no.

13 Q Do you think it's reasonable to interpret it the
14 other way?

15 A I don't think there's ever been any belief that was
16 interpreted the other way from anybody.

17 Q Doesn't it appear that Ann Marie -- I'm sorry, go
18 ahead.

19 A No, I'm just saying from anybody. I don't believe
20 there's ever been any belief of that.

21 Q Didn't Ann Marie Hanna interpret it that way?

22 A No.

23 Q Okay. How do you know that?

24 A Ann Marie Hanna did not do anything to change the
25 stock ownership. They've never done anything to change it

1 except for when they initially had it wrong, they asked
2 what the percentage was. And I said that it was not the
3 right one that they had, but I wasn't sure of the right
4 one. I needed to let them know, but I knew I was the
5 majority owner.

6 Q So you did have a discussion with Ann Marie about the
7 stock ownership?

8 A Not with Ann Marie. No, I had discussions with the
9 bookkeeper that work for Ann Marie.

10 Q Charles?

11 A Yes.

12 Q Okay. Her agent servant employee?

13 A Right.

14 Q Okay. So you talk with him about stock ownership,
15 correct?

16 A Yes.

17 Q Okay. So you agreed with me that none of us should
18 give any credence to Ann Marie Hanna's interpretation of
19 who owned what stock, correct?

20 A Well, we've never asked Ann Marie Hanna to actually
21 do that. I mean, she's not been tasked with interpreting
22 the profits and losses to allocate stock shares. She was
23 never tasked with that, that wasn't something that she was
24 asked to do. She asked what the stock ownership shares
25 were or he ---

1 Q Charles.

2 A Charles did asked what they were. She made no
3 interpretation to change them.

4 Q So you agree with me that what's written on those
5 income tax returns should not be given any weight in
6 making a determination of who actually own stock in
7 Florence Carpet and Tile, correct?

8 A No, I don't agree with you.

9 Q So do you say -- are you saying that you at one time
10 did own 54 percent of that stock?

11 A No. You ask if I -- I would give no credit. I give
12 credit that I acknowledged that I'm the majority owner. I
13 don't give credit that they acknowledge the right
14 percentages.

15 Q So your position is give credit to the part that
16 helps you and not to the part that hurts you?

17 A No, I'm just saying what it is. You're asking me to
18 say something that's not true.

19 Q All right. I got your answer to that. So let me go
20 back to my earlier question. You agree based on the
21 discussion you and I had about 50 percent all or nothing
22 49 percent, 47. That it's reasonable to interpret that
23 that modifier at a minimum of the three of the first five
24 years may only apply to that ultimate 50/50 thing and not
25 just the intervening steps, correct?

1 A My belief is that you had to be profitable for three
2 of first five years period. You had to be profitable
3 three out of five to get the three percent. It was not
4 graduated of if you're profitable this year, you get a
5 percent. If you're profitable this year, you get another
6 percent, no. If you're profitable three out of five
7 years, you get the three percent making us equal. That
8 was the intention, that was my belief. That's what it
9 says.

10 Q Let's go -- I want us to go back. That's what it
11 says. So you say that can mean and can only mean that you
12 have to hit the target three out of the years or you get
13 nothing?

14 A That is correct.

15 Q Okay. And that it's not possible to believe that for
16 each year out of three you get a percent with a maximum of
17 achieving 50 percent?

18 A That's not what it says.

19 Q Okay. Could a reasonable person believe that it says
20 that?

21 A I don't think so. I don't think that's what it says.
22 I think I'm a reasonable person but...

23 Q All right. Now, let's talk about the years what do
24 you believe -- what do you contend is the first complete
25 fiscal year of operation of said corporation, that's

1 applicable to these circumstances?

2 A 2008.

3 Q Okay. What was the last full fiscal year of
4 operation prior to the date of this agreement?

5 A 2006.

6 Q Ending on December 31st, correct?

7 A That is correct.

8 Q What was the year 2007 was that a ---

9 A That was a partial year of ownership under Charles
10 Carnell and it was a partial year of ownership for us.

11 Q Exactly. But as to the corporation that was the
12 corporation's fiscal year, was it not? And this
13 corporation been in existence since the 60's and had a
14 fiscal year of operation every year continuously since
15 then?

16 A Yeah, but based on your -- what you're saying you
17 want to start counting year from the 60's. We didn't buy
18 it in the '60's. We bought it in the middle of 2007.

19 Q In the middle of a fiscal year of operation?

20 A That's correct. We bought it in the middle of a
21 year.

22 Q Does this agreement say that in 2007 it's not to be
23 counted?

24 A Says complete years and we didn't own it for a
25 complete year in 2007.

1 Q Does this agreement say you had to own it for the
2 complete fiscal year?

3 A In my mind it does, yes.

4 Q Does it -- in your mind is one thing. I want to know
5 what words in this agreement make you say it's a full
6 fiscal year?

7 A I think that's for the judge to determine. You're
8 asking me to interpret legal stuff here and I'm telling
9 you what I believe. If you want to know what I believe, I
10 believe that 2007 was a partial year and it did not count
11 towards Mr. Parker earning additional shares. I don't
12 think it ever counted. I don't think he thought it ever
13 counted.

14 THE COURT: You know, I have the document before
15 me. I know what it says and I know what he think it says.
16 And I imagine probably in the end it probably makes a
17 difference what I think about it.

18 BY MR. WILLIAMS:

19 Q All right. And that says a fiscal year, right?
20 Correct?

21 A Complete physical year that is correct.

22 Q Okay. All right. Let me move you two lines in this
23 document says would agree for a transfer of share
24 ownership from Curl to Parker within the period of the
25 first five years, that's the first five years of what

1 ownership?

2 A First complete five years of ownership, that is
3 correct.

4 Q Now, it doesn't say the first complete five years of
5 ownership, does it? It says within the period of the
6 first five years?

7 A Well, as you mentioned earlier, the sentence that
8 preceded it talks about complete years. Now, it's talking
9 about first five years, so yeah.

10 Q All right. A transfer of share ownership within the
11 period of the first five years of ownership is implied in
12 there, correct? First five years of ownership?

13 A Of complete years.

14 Q Does it say complete?

15 A It does in the preceding sentence, yes, sir.

16 Q In the preceding sentence. Where is that?

17 A Where it talks about the complete physical years or
18 complete years of operation. It says for each complete
19 physical year of operation of said corporation.

20 Q All right. That's later not earlier. I'm going back
21 earlier in the language, okay.

22 A Okay.

23 Q Would agree for a transfer of share ownership from
24 Curl Parker within a period of the first five years,
25 right?

1 A Okay.

2 Q And that's five years of ownership, right? You agree
3 to that?

4 A My belief it's of complete years. Yes, I do agree of
5 complete years.

6 Q But it does not have the word complete there?

7 A But it does talk about being complete years in the
8 paragraph.

9 THE COURT: I think I do have the point you're
10 trying to make there.

11 BY MR. WILLIAMS:

12 Q Would the first five years -- does it say the first
13 five fiscal years or does it say the first five years of
14 ownership? Look down at it does it not just say the first
15 five years?

16 A It does say the first five years.

17 Q It doesn't say fiscal years, does it?

18 A But there's no lines of demarcation of how successful
19 Mr. Carnell's operation was there was no -- we never
20 separated out. There's no delineation during that year of
21 2007. So we can as easily assume that every bit of the
22 profit that was made in 2007 was attributable to
23 Mr. Carnell and as the other way around, but there was no
24 way of determining that.

25 Q You're anticipating a question I'm not asking. My

1 question was a very simple one in the language I just
2 quoted it does not say for the first five fiscal years,
3 does it?

4 A It does not.

5 Q All right. So the first five years following
6 April 30th 2007 would be April the 29th 2012, correct?
7 Correct?

8 A If you're talking about the years in the terms of 365
9 days, yes.

10 Q And there only two times a year, right?

11 A We're not. We're talking about corporate years.

12 Q There's two kinds of years calender years and fiscal
13 years, correct?

14 A That's correct.

15 Q And in this document when you wanted to talk about
16 fiscal years you used the word fiscal, didn't you?

17 A I don't think it needed to be redundant. We were
18 talking about physical years.

19 Q Well, I'm talking about the very first time you said
20 it, so it can't be redundant. It would be the first time
21 you used it five years. You did not say fiscal years, did
22 you?

23 A I did not. I did not repeat it, that is correct.

24 Q Okay. You didn't repeat it for the first time,
25 correct? You did not use the word fiscal years at any

1 point prior to that in these minutes, had you?

2 A No.

3 Q Okay. As of April 29th 2012, the last complete
4 fiscal year of operation of this corporation had been
5 December 31st 2011, correct?

6 A That is correct.

7 Q Okay. You referred both in your deposition and here
8 today about your real estate being cross collateralized
9 with BB&T. What do you mean by cross collateralized?

10 A They guaranteed the loan for the purchase of the
11 stock the \$540,000 loan.

12 Q Who guaranteed it?

13 A BB&T had a mortgage on the real estate that was
14 purchased to -- was in turn leased to Florence Carpet and
15 Tile. They didn't just take a mortgage on the real
16 estate. They also made me pledge the real estate as
17 additional collateral for the \$540,000 loan that was
18 separate from the purchase of the real estate which I had
19 put money into.

20 Q When you say the real estate, you talking about the
21 real estate at 1706 Pamplico Highway?

22 A That is correct.

23 Q Why is it that there is no mortgage recorded in the
24 records of the clerk of court of Florence County for a
25 mortgage from Curl Properties, LLC to BB&T for which that

1 property -- that real estate serves as collateral?

2 A When are you talking about?

3 Q I'm talking about -- you said it's cross
4 collateralize to BB&T. Either way you collateralize --

5 A It ---

6 Q Wait for my question. Is it the way you
7 collateralize real estate by executing a mortgage,
8 delivering the mortgage to the lender and then the lender
9 recording that mortgage in the courthouse so that the
10 public has notice of your mortgage?

11 A That is correct. They had a mortgage on the real
12 estate from Curl Properties. They also took -- I signed
13 additional paperwork. Whether or not they recorded it or
14 not, I don't know. You'd have to talk to them, but I
15 signed additional paperwork pledging the real estate that
16 they already had mortgage on as additional collateral for
17 the \$540,000 loan.

18 Q The mortgage -- the real estate that you bought from
19 Mr. Carnell is not pledged with BB&T, is it?

20 A I didn't buy real estate from Mr. Carnell.

21 Q From Mrs. Carnell?

22 A That's correct.

23 Q It's not -- and their nephew I think. It's not --
24 it's not pledged to BB&T as a mortgage, is it?

25 A You talking about right now?

1 Q I'm talking about ever?

2 A Yes.

3 Q Are you saying there was a mortgage that the clerk of
4 court has misplaced or lost?

5 A I will be shocked if they didn't have a mortgage, I
6 owed them over a million dollars.

7 Q Whether you're shocked or not, there is no mortgage
8 and the Court can take judicial notice of whether there is
9 or is not such a mortgage. But if there's no mortgage
10 recorded, then you were in error when you thought that
11 this property was cross collateralized, aren't you?

12 A No. Well, I signed documentations. What they did
13 with them as far as recording, I don't know.

14 Q Well, you have a specific memory of everything you
15 signed that day?

16 A No.

17 Q Okay. Do you have a specific memory of signing a
18 mortgage to BB&T?

19 A Yes.

20 Q But no specific memory of signing any stock
21 certificates?

22 A No.

23 Q Okay. So we can be pretty sure that you did not sign
24 any or issue any stock certificates that day, isn't that
25 correct?

1 A I simply can't tell you I remember it.

2 Q All right. You have -- you also said today -- and in
3 fact the stock purchase agreement which is turn to exhibit
4 three and on page Curl 002 section 1.4 of the stock
5 purchase agreement. The last sentence of paragraph that
6 has -- that bear numeral two says the note given -- that's
7 talking about the \$540,000 note to Mr. Carnell, correct?

8 A Yes.

9 Q The note given shall be guaranteed by Curl
10 Properties, LLC, correct?

11 A That's correct.

12 Q You never signed any such guarantee, did you?

13 A Yes.

14 Q May I see a copy of it?

15 A I don't have it with me.

16 Q Didn't I ask your attorney for copies of relevant
17 documents in discovery?

18 A I mean, you may have. I don't know where it is.

19 Q Did you furnish your attorney with a copy of that
20 guarantee?

21 A I don't know.

22 Q You don't know? Did you discuss with him ask for the
23 interrogatories and producing documents?

24 A It wasn't something specifically discussed.

25 Q Okay. In January of 2015, you didn't have any of

1 your paperwork relevant to this transaction when I'm
2 referring to the purchase of stock? You didn't have any
3 of it, right?

4 A I'm not sure what you're asking.

5 Q Didn't you write Kendall Hiller and said Kendall you
6 send me all the records relevant to that transaction?

7 A No.

8 Q If you guys have it?

9 A No.

10 Q But you called him?

11 A Yes.

12 Q Okay.

13 A But I didn't ask for anything. What I was looking
14 for were copies of the bylaws and of anything that was in
15 the stock book that Walt lost.

16 Q So your lawyers had possession of the stock book?

17 A No, they did not. I was asking if they had copies
18 because I was trying to get information for the bank that
19 they needed to be in compliance with the regulators.

20 Q Okay.

21 A I was simply trying to track down by the best means
22 and methods I could think of who might have copies of
23 these documents since they been lost.

24 Q In any event you asked Kendall Hiller for copies of
25 the documents -- of relevant documents, all documents they

- 1 had relevant to this transaction?
- 2 A That is correct, yes.
- 3 Q And he responded in writing?
- 4 A That is correct.
- 5 Q And delivered those documents to you, correct?
- 6 A That is correct.
- 7 Q By hand delivering if you look at Plaintiff's Exhibit
- 8 3 it's the very first page, correct?
- 9 A Yes.
- 10 Q The transmittal letter from Kendall Hiller?
- 11 A Yes.
- 12 Q With a copy of it to Walt?
- 13 A That is correct.
- 14 Q Okay. Then he says we have retrieved our file from
- 15 storage, thoroughly reviewed it and in the response to the
- 16 request enclosed herewith any list -- he list six
- 17 documents, right?
- 18 A Yes.
- 19 Q Okay. None of which are guarantee of Curl
- 20 Properties, LLC of the loan to Mr. Carnell, correct?
- 21 A Well, apparently they didn't keep all documents that
- 22 were signed because he also didn't have copies of the
- 23 bylaws or some other information that was there that day.
- 24 I don't know that they have to keep copies of everything.
- 25 Q Do you have a specific memory of Curl Properties, LLC

1 signing that guarantee?

2 A Yes.

3 Q Where is it now?

4 A I don't know.

5 Q Were there any copies of it?

6 A I would assume that Mr. Carnell has his.

7 Q You do not know that, do you?

8 A You know, he may lose stuff also. I don't know.

9 Q Okay. You were at the meeting on April 30th 2007 at
10 the shareholders meeting of the new shareholders of
11 Florence Carpet and Tile you and Walt. Did you appoint
12 you and Allison and Walt to the board of directors?

13 A Honestly, I didn't remember appointing Allison at
14 all.

15 Q Did you state to her and to Walt that he was the
16 president, you were the vice president and secretary,
17 treasurer?

18 A Yes.

19 THE COURT: Mr. Williams, we going to take a
20 break there. Let's have a discussion about the timing.
21 You say you have to be where?

22 MR. CURL: In Columbia Department Labor
23 Licensing and Regulation. I mean, I might can shift it
24 around. I needed to be there.

25 THE COURT: Are you a member of a board of some

1 sort?

2 MR. CURL: I'm a hearing -- I served on the
3 commission for like 13 years and was a chairman. And
4 while I was doing that, I became a hearing officer. And
5 since then the state has contracted with me to continue to
6 do hearings. I serve as a hearing officer for the
7 Residential Builders Commission and the Contractors
8 Licensing board.

9 THE COURT: All right. What do you all have to
10 say about that?

11 MR. WILLIAMS: Your Honor, it's been here for a
12 good while for these two days. I've got at least a half
13 an hour probably more of cross-examination.

14 THE COURT: What do you have to say about that,
15 Mr. Payne?

16 MR. PAYNE: You know, I don't have -- this is it
17 for us. You know, sounds like most we talking an hour
18 based on those statements. I like to do it in the morning
19 obviously.

20 MR. CURL: I can probably push it back. It's
21 easier if I get up really early and go over there, but the
22 people won't be there until 10. But I can probably push
23 it back if I have to. I just -- I've got to go tomorrow
24 though, I've got to be there. I can't ---

25 THE COURT: Well, what time would you all like

1 to start in the morning?

2 MR. PAYNE: Can we do 8:30?

3 THE COURT: Yeah, we can do 8:30.

4 MR. WILLIAMS: I'm totally open.

5 THE COURT: Sometimes if you sit and ponder and
6 assimilate overnight it gets shorter ---

7 MR. WILLIAMS: That happens.

8 THE COURT: --- sometimes. All right. Well,
9 good. We'll start at 8:30 in the morning.

10 MR. WILLIAMS: Thank you.

11 (WHEREUPON, the proceedings were concluded for
12 the day to be reconvened on March 22, 2019.)

13 THE COURT: You may proceed.

14 MR. WILLIAMS: Good morning, Your Honor.

15 THE COURT: Good morning. Sir, I'm going to ask
16 if you can have a seat in the witness chair, reminding you
17 that you're still under oath.

18 MR. CURL: Yes, sir.

19 CROSS-EXAMINATION CONTINUED

20 BY MR. WILLIAMS:

21 Q Good morning, John. First let me clear up a line of
22 questioning yesterday. You recall I was questioning you
23 about the BB&T mortgage and your assertion that everything
24 was cross collateral?

25 A Yes, sir.

1 Q Okay. There is in fact a mortgage from Curl
2 Properties, LLC to BB&T that was recorded on May the 3rd
3 2007, correct, for the land purchase?

4 A I believe that to be correct, yes, sir.

5 Q Look in front of you I've got a copy of that
6 mortgage. It's not in the notebook, but it's exhibit 21
7 for identification. You see that?

8 A Yes.

9 Q Okay. And if the mortgage itself is for \$1,145,000
10 and I think the purchase price from the land from the
11 Carnells was \$1,322,000, correct?

12 A That sounds correct.

13 Q Okay. You can go back to the exhibits that are in
14 evidence. I think it is exhibits -- Plaintiff's Exhibit 4
15 has those two deeds. You can get those figures. The
16 mortgage is from Curl Properties, LLC in the amount of
17 \$1,145,000. It's secured by this real estate, correct,
18 Florence Carpet and Tile real estate?

19 A That is correct.

20 Q Okay. And there's a future advance clause, correct?
21 Look at paragraph two on page one?

22 A Yes.

23 Q Okay. But there's nothing in that mortgage that
24 makes the service last collateral for your loan from BB&T
25 or Walt Parker's loan from BB&T to purchase the stock in

1 this enterprise, is it?

2 A I'm sorry what are you asking?

3 Q Is there anything in this mortgage that reflects that
4 it serves as collateral for your personal debt to BB&T and
5 Walt Parker's -- and or Walt Parker's personal debt to
6 BB&T?

7 A No, this was -- this is a mortgage from Curl
8 Properties ---

9 Q Correct.

10 A --- to BB&T.

11 Q To BB&T?

12 A That is correct.

13 Q And the only thing securing is the purchase money
14 loan from the BB&T to you to Curl Properties to buy this
15 real estate?

16 A This particular document that would be correct, yes.

17 Q Okay.

18 A There was another document with BB&T that -- why
19 would they need to record a second mortgage for the exact
20 same amount of money that they already have a mortgage
21 for, it makes no sense. They had an additional document
22 that was an internal document that guaranteed the loan for
23 Florence Carpet and Tile.

24 Q You're not a lawyer, are you, Mr. Curl?

25 A No, I'm not.

1 Q Okay. There is no document of record mortgaging this
2 property to support a debt from you and Walt to BB&T to
3 purchase the stock, is there?

4 A There was a document of guarantee to the bank.

5 Q But you do not have?

6 A I do not.

7 Q Okay.

8 A I'm not the bank.

9 Q Okay. But it is a guarantee document?

10 A There is.

11 Q Okay. That's not in dispute. What's in dispute is
12 your assertion of cross collateralization. You admit that
13 there's nothing cross collateralizing this real estate to
14 BB&T for your debt and Walt Parker's debt?

15 A There is a absolutely nothing to do with the real
16 estate Walt Parker's debt. Curl Properties guaranteed the
17 loan for Florence Carpet and Tile with this real estate.

18 Q Okay. With this real estate?

19 A That is correct.

20 Q But not with a mortgage? Will you admit there's no
21 mortgage evidencing that what you call a cross
22 collateralization?

23 A I don't think they would duplicate a document. There
24 was a -- I think they actually -- the document they used
25 actually said it was a cross-collateralization document.

1 It was a bank document. It was not a mortgage.

2 Q Okay.

3 MR. WILLIAMS: Your Honor, I have a mortgage
4 index from Florence County for Curl Properties. I'll be
5 glad to exhibit it to the Court and ask the Court to take
6 judicial notice that there's no such recorded mortgage.
7 And I would move this mortgage into evidence as
8 Plaintiff's Exhibit 21.

9 (WHEREUPON, Plaintiff's Exhibit No. 21 was
10 admitted into evidence.)

11 BY MR. WILLIAMS:

12 Q Mr. Curl, is Allison Parker on the board of directors
13 of Florence Carpet and Tile?

14 A No.

15 Q Was she ever?

16 A No.

17 Q Okay. You knew she was on the payroll, correct,
18 that's no surprise to you?

19 A She wasn't -- I didn't know she was on the payroll
20 until after we purchased the business. She was -- it was
21 my understanding she was still working for a doctors
22 office. And then she came to work at Florence Carpet and
23 Tile after we had purchase the business.

24 Q Okay. When I took your deposition last week, didn't
25 you cite as justification for her being a guarantor of the

1 loan to the Carnell's and to BB&T, that she was benefiting
2 from the business that she was on the payroll? Was to be
3 on the payroll?

4 A I don't recall, no.

5 Q Okay. When this lawsuit was initiated, you received
6 the lawsuit and Walt Parker's affidavit, did you not?

7 A I did.

8 Q Okay. And then later when you wanted to have the
9 temporary injunction lifted, he submit another affidavit
10 do you recall that?

11 A I do.

12 Q Okay. In each of those affidavits, he asserted that
13 the board of directors was -- consisted of you and he and
14 Allison Parker, correct?

15 A That may have been his assertion. I never believed
16 that to be true.

17 Q Okay. You yourself filed two affidavits and never
18 denied that assertion, did you?

19 A I don't know.

20 Q You want to see your two affidavits?

21 A If you would like.

22 Q But my question is would you accept that you did not
23 deny it or do you want to look at the affidavits and see?

24 A Whether I denied it in -- based on what I -- my
25 responses are mine. I've never believed that she was a

1 director. There's nothing that ever has indicated that
2 she's a director. She never has been a director.

3 Q Well, when you say there's nothing that's indicated,
4 what would indicate whether she's a director or not?

5 A I would think the corporate minutes.

6 Q All right. There aren't any corporates minutes, are
7 they?

8 A Well, they were. They're in the book.

9 Q There's no evidence that you were on the board of
10 directors in existence as far as you know, is there?

11 A Well, there is in the book. There are minutes and
12 then there are the minutes that were approved from the
13 original board meeting.

14 Q Okay. Those minutes don't name directors of the
15 corporation, do they?

16 A I don't believe they do.

17 Q Plaintiff's Exhibit 6 of the April 30th 2007 minutes
18 there in the white book there if you want to refresh your
19 memory. And there no directors elected or named in those
20 minutes, are they?

21 A No.

22 Q Okay. You as secretary of the corporation you've
23 never prepared any minutes reflecting that you're -- who
24 the directors are, have you?

25 A I believe there were minutes that were into the

1 corporate book from the very first day. There were
2 minutes, yes, sir. There were minutes done in conjunction
3 with -- that there was information in addition to these
4 minutes that were in the corporate book.

5 Q They would have been -- that meeting occurred as the
6 McGowan Law Firm, correct?

7 A That is correct.

8 Q Okay. And you asked them for everything that was
9 done that day, correct?

10 A I ask them for everything they had copies of, that is
11 correct.

12 Q And there are no such minutes, are there?

13 A That they gave me what they had copies of.

14 Q And for eight years the tax returns of this
15 corporation reflected that you and Walt Parker and Allison
16 Parker were on the board of directors without any
17 objection from you, correct?

18 A I don't think so.

19 Q You don't. You haven't looked at those?

20 A Show me. I don't think that the tax returns show her
21 as a director.

22 Q Look at Plaintiff's Exhibit Number 1 and turn into
23 page 0043 which if you will turn to the previous page
24 you'll see -- previous two pages you will see that that's
25 the Florence Carpet and Tile, Inc. tax return for the

1 calender year and fiscal of year 2008, correct?

2 A I'm not ---

3 Q You see page 0043?

4 A I do.

5 Q You see page 0040?

6 A I do.

7 Q All right. Page 0040 says this is Florence Carpet
8 and Tile's tax return for 2008, correct?

9 A It does.

10 Q And then the next page is a continuation of that
11 information tax return. And then if you turn to page --
12 to schedule E on that tax return down at the bottom of the
13 page schedule E reflects that Walter Parker, John Curl and
14 Allison Parker?

15 A It reflects those people as officers. It says
16 nothing about directors, Mr. Williams, officers. I can
17 name my dog an officer. It doesn't mean that he has
18 anything to do with the ownership as a director. It also
19 reflects that she has no stock, zero, if you look under
20 column D. It shows that I have 54 percent and Walt has
21 46 percent and she has zero. She was named as an officer,
22 so she would have the ability to sign checks for the bank
23 and so forth.

24 Q In response to your attorney's questioning yesterday,
25 didn't you go through all of the tax returns for all of

1 the years and reflect that you and Allison and Walt were
2 the directors of the corporation?

3 A No.

4 Q Okay.

5 A Did not, never, reflected that she was an officer
6 never a director.

7 Q What officer was she?

8 A She was if I'm not mistaken I could look at the bank
9 documents. I think she was actually put on there as
10 treasurer. She was added as treasurer or either vice
11 president.

12 Q All right. Isn't it a fact that it was not until
13 March 1, 2009 in the discovery in this case that you ever
14 denied that Allison Parker was a director of this
15 corporation?

16 A No.

17 Q Isn't it true on -- all right, on what other occasion
18 in writing did you deny that she was a director of the
19 corporation?

20 A Well, I've never denied that the Easter bunny was a
21 director. Why would I need to, she's never been a
22 director.

23 Q Okay. So it is in fact then true that March 1, 2019
24 is the first time that you have ever denied that she's a
25 director of this corporation?

1 A She's never been a director.

2 Q All right. You're continuing your denial, but you
3 never denied it before March 1 of this year, right?

4 A I deny it now. If I had ever been asked previously,
5 I denied. She's never been a director.

6 Q You didn't deny it in connection with rebutting
7 Mr. Parker's affidavits which you had every reason to want
8 to rebut, correct?

9 A If it wasn't denied, it was an oversight. She's
10 never been a director.

11 Q Okay. Do you recall answering interrogatories in
12 this case dated March 1 and your answer being dated
13 March 1, 2019?

14 A It sounds familiar.

15 Q Pardon?

16 A It sound familiar, yes, sir.

17 Q Okay. And interrogatory number 17 is Allison Parker
18 the secretary treasurer of Florence Carpet and Tile, Inc.
19 and do you recall answering that no?

20 A If I did then, I would say no.

21 Q Okay. You want to look at it?

22 A I don't think that's necessary.

23 Q Okay. Interrogatory number 18 was are you an officer
24 of Florence Carpet and Tile, Inc., if so what? And you
25 answered that by saying vice president, secretary and

1 treasurer?

2 A Okay.

3 Q Okay. And the date is March 1, 2019, you need to
4 look at that to make sure?

5 A I do not.

6 Q Okay. All right, moving on. Yesterday, you talked
7 about in all your experience you never seen such and so.
8 I don't recall what it was right now, but let me -- when
9 you say you are in fact an experienced shareholder
10 business owner LLC member, you been involved in various
11 and sundry different types of small business enterprises,
12 right?

13 A I have.

14 Q Okay. And you know what the corporate formalities
15 are, do you not?

16 A To a certain degree I do.

17 Q Have you -- are you the secretary of other
18 corporations?

19 A I am.

20 Q Do you prepare the minutes or cause them to be
21 prepared?

22 A Perhaps I cause them to be prepared. I don't
23 actually prepare any minutes.

24 Q And once they're adopted by your board meetings and
25 these other corporations, what do you do with them?

1 A Put them in the corporate book. Matter of fact,
2 after yesterday I went back and looked and at least a half
3 a dozen other corporate books and all of the minutes, all
4 of the stock certificates every one even from my original
5 shares when I got additional shares or I sold shares, all
6 of those certificates are in every one of those books and
7 they are all filled out and then put back. Best of my
8 knowledge, they were all done at an attorney's office.
9 They take the shares and go fill in the blanks and the
10 secretary and treasurer sign them.

11 Q When you reviewed them -- did you say last night?

12 A I did.

13 Q Did you go to your attorneys offices and everything?

14 A No, those are kept in those books that are related to
15 my real estate and construction businesses are kept in the
16 business office of my real estate and construction
17 businesses.

18 Q So you maintain those in your office, correct?

19 A That is correct because that is the home of those
20 businesses.

21 Q And because as an officer of the company specifically
22 the secretary treasurer is your fiduciary duty to which
23 maintain those books and records, isn't it?

24 A Well, I believe that the best place for corporate
25 books to be kept are in the business office of the

1 corporation, that was why my direction was to keep them in
2 the business office at Florence Carpet and Tile.

3 Q And what steps did you take to go there and see to it
4 that that's where they were and that your minutes were in
5 there?

6 A I did see that the book was there on more than one
7 occasion when I was in the business office. I'm not sure
8 when the book was lost or misplaced. I don't know what
9 happened to it or why.

10 Q Where did you keep it there, precisely where?

11 A Where would I keep it?

12 Q Yeah.

13 A There's the actual office that Mike is currently in
14 it was the business office and that's where Scott
15 Carnell's office use to be. And there is a bookshelf that
16 is under a half glass window in between that and the front
17 office where the receptionist would sit on that bookshelf
18 or there's a number of books related to the business and
19 that's where the corporate book was for a long time. I
20 saw it there on more than one occasion.

21 Q Did you ever put the minutes of those meetings you
22 described in the books?

23 A The day of the meeting they were placed in the book,
24 yes, sir.

25 Q Did you ever undertake any steps to see to it that

1 that's where they stayed you didn't, did you?

2 A I would hope and believe that they would be in the
3 good hands of the person that's left in control of running
4 the day-to-day business.

5 Q All right. Yesterday you talked about Mr. Carnell
6 staying for the rest of the year. He actually was an
7 independent consultant only through October, correct?

8 A He remained beyond October. Mr. Carnell stayed on
9 and he worked pretty much full time when we bought the
10 business through October. And then after October he
11 continued to work on a consulting basis and his primary
12 function was working with his large customer at the time
13 which was Carolina Hospital System.

14 Q You didn't go to the business on a regular basis in
15 anyway shape or form, did you? You don't know what was
16 happening at that business?

17 A I have a fairly good idea. I've done business with
18 Florence Carpet and Tile since 1984. I go out there and
19 do business with that business and have for many years.

20 Q From April 1, 2007 until the end of that year, you
21 didn't go there more than two or three times, did you?

22 A I can't tell you exactly how many times I went out
23 there, but I think it was more than two or three times.

24 Q Four or five?

25 A I would imagine more than that. I don't have a log

1 telling me how many times I went out there.

2 Q Do you have a memory telling you how many times you
3 went out there?

4 A I can't tell you exactly how many times I went out
5 there.

6 Q And you asserted that he was paid over \$90,000 --
7 over \$90,000 at the rate of \$90,000 a year by Florence
8 Carpet and Tile, correct?

9 A Based on a daily rate, I believe it was. It would
10 have been equated to that amount of money per year.

11 Q He actually wasn't paid anything by way of payroll.
12 That was an obligation he had under this stock sale
13 agreement, isn't that correct?

14 A That is correct.

15 Q Okay. So he wasn't paid any more money?

16 A Well, that was part of the purchase price he was
17 paid.

18 Q Okay. And that's all set forth on page two section
19 1.43 of the Plaintiff's Exhibit 3, correct?

20 A That is correct.

21 Q You also asserted that the cash in the bank should
22 have been growing you said that yesterday. Why do you
23 think the cash in the bank should have been growing?

24 A I think that the cash would grow if the inventory is
25 decreasing the cash should be increasing. You

1 shouldn't -- it's a bad indicator when your inventory
2 shrinking, your cash is shrinking and you're losing
3 money. Those are all -- that's a bad indicator when it's
4 all the way across the board.

5 Q Why the cash being generated by sells at Florence
6 Carpet and Tile being depleted because Florence Carpet and
7 Tile was paying the personal debts of John Curl and Walt
8 Parker at the tune over the -- through 2015 or amounts
9 ranging from \$58,000 a year to \$170,000 a year sort of
10 averaging over \$100,000 a year, correct?

11 A That is correct that that was part of the obligation,
12 but that's not reflective of the business losing business
13 and not doing well.

14 Q Well, if you're expecting cash to grow, it's hard for
15 cash to grow when between 58 and \$170,000 a year for cash
16 is coming out of the business, isn't it?

17 A Based on Walt's evaluation before we ever purchased
18 the business, the business could sustain that amount of
19 indebtedness.

20 Q And it did, did it not?

21 A It did the very first year. The year that
22 Mr. Carnell was there still running it, it did fine.

23 Q And it still is? It's paying it's bank loans?

24 A No, sir.

25 Q And the loans of the Carnells is not?

1 A No, sir, only at the expense of not paying the rent
2 and paying its other obligations. It's not sustaining.
3 The internal P and L statement for the end of last year
4 showed that it barely broke even, but it only barely broke
5 even because the P and L statement did not reflect that it
6 has over \$120,000 of past due rent, which is money that's
7 owed to me. So basically I supported its \$120,000 last
8 year.

9 Q So your assertion that the cash was not growing is --
10 should be evaluated in the light of 58,000 to \$170,000 a
11 year coming out and being paid to the owners of the
12 business, right? Not his salary, but just paying their
13 debts for them you and Walt?

14 A It is the indebtedness. There is money being paid
15 for the indebtedness that is correct, but if you look at
16 the gross volume, the total sells when we bought this
17 business, it was doing almost 3.8 million dollars a year.
18 Last year the gross sales were right at two million
19 dollars. He's managed to cut the volume in half.

20 Q All right. What does that have to do with who owns
21 what shares of stock in this company?

22 A I don't know you brought it up.

23 Q What I brought up is your assertion that the cash was
24 not growing and your complaint that the cash ---

25 A And I'm answering your question, Mr. Williams.

1 Q Well, you also ---

2 A You shrink a business and the cash ain't gone be
3 there.

4 Q And if the owners are sucking the cash out to pay
5 their personal debts the cash isn't going to be there
6 either, is it?

7 A Well, if the indebtedness had grown, you can easily
8 make that argument, but the indebtedness is actually less
9 than it was when we purchase the business. The problem is
10 the business isn't doing the volume it was doing.

11 Q And the tale of woe you just brought up is mitigated
12 somewhat by the fact you're leasing part of the land
13 that's already leased to Florence Carpet and Tile. You're
14 leasing it to a third party, are you not?

15 A That has absolutely nothing to do with the lease of
16 what Florence Carpet and Tile's leasing, that has no
17 effect.

18 Q Well, why aren't you giving that money to Florence
19 Carpet and Tile, you're leasing of property of theirs?

20 A I lease the bank Hunting Plaza to a bank. Would I
21 give their money to Rita's that I also lease to out there,
22 that would make no sense. I have multiple ---

23 Q Curl Properties, LLC owns 1706 Pamplico Highway,
24 correct?

25 A That is correct.

- 1 Q Curl Properties, LLC leases 1706 Pamplico Highway to
2 Florence Carpet and Tile, correct?
- 3 A Correct.
- 4 Q From April 30th 2007 to date, correct?
- 5 A Correct, yes.
- 6 Q In 2009, Curl Properties, LLC leased a portion of
7 that exact same property?
- 8 A No, sir.
- 9 Q It's not at 1706 Pamplico Highway?
- 10 A No, sir, it is not. No, sir.
- 11 Q You leased it to American Tower Company?
- 12 A That is correct.
- 13 Q Which is a portion of the land depicted in plat book
14 91 at page 327, correct?
- 15 A Correct.
- 16 Q And how much rent do you get for that? Curl
17 Properties get from that?
- 18 A That's not apart of this.
- 19 Q How much rent does it get?
- 20 A \$800 a month, Mr. Williams, but that has nothing to
21 do with this. That's a separate lease on a separate piece
22 of property.
- 23 Q All right. From 2009 to now, you got \$800 every
24 month, correct?
- 25 A That is correct.

1 Q And Curl Properties kept it and not given it to
2 Florence Carpet and Tile?

3 A Doesn't belong to Florence Carpet and Tile.

4 Q Curl Properties has kept that money and that's
5 mitigated its obligations to pay ---

6 A Florence Carpet and Tile does not own that property
7 curl Properties does.

8 Q But it is a tenant on that property and it was a
9 tenant on that property before you leased it out from
10 under them, wasn't it?

11 A No, sir, that property there's a vacant lot adjacent
12 to Florence Carpet and Tile that I put on the market for
13 sale and or lease the very week that I purchase that real
14 estate. It's been for sale or lease ever since I bought
15 the property. Mr. Parker knows that. You know that.
16 There's a sign out front. There's a huge sign that says
17 it's for sale or lease, that is not 1706 Pamplico Highway.
18 I leased to him just like we lease the land -- the real
19 estate to the Food Lion. They lease their address which
20 has so many square feet in it. He is leasing commercial
21 real estate with the square foot in that building. He's
22 not leasing all the land out there. I own that land.

23 Q If you sold that land, it would be subject to the
24 American Tower lease and the Florence Carpet and Tile
25 lease, would it not?

1 A No, it would be subject to the American Tower lease.

2 Q Whoever bought that land would buy it subject to the
3 existing recorded leases, would it not?

4 A Only if I were selling the building that Florence
5 Carpet and Tile is in would it be subject. If I were to
6 sell the land, no, it would not be subject to it. It's a
7 separate piece of land.

8 Q All right, let's move on. Are you familiar with --
9 do you have Defendant's Exhibit Number 9 up there your
10 exhibit? This would be it. It's right on the top there
11 Defendant's Exhibit 9. When did you prepare that and why?

12 A I prepared this document for the meeting that we had
13 in 2015 in my office, the one that's been referenced that
14 had Steve Mikell and Tam McBratney.

15 Q Okay. So you prepared it?

16 A That is correct.

17 Q And did you use it at that meeting or give -- let me
18 take that back not did you use it. Did you give it to
19 Walt Parker at that meeting?

20 A I don't remember.

21 Q Okay. What is -- why did you prepare that? You
22 testified -- I withdraw that question. I'm not asking why
23 you prepared it. I'm asking why yesterday did you think
24 it was important to talk about the inventory. Does that
25 have anything to do with profitability?

1 A Sure it does.

2 Q On the accountant statement is it -- whatever affect
3 inventory has is it not already taken into into account in
4 the tax return?

5 A No, it's -- it is reflected in the tax return, but as
6 far as what we purchased by buying the stock of Florence
7 Carpet and Tile and what it owned, what Florence Carpet
8 and Tile owned, it had over a half a million dollars in
9 inventory when we purchased it and it had cash in the
10 bank. And so not only did we lose money by operations, we
11 were decreasing the inventory and the cash. So, yes, it
12 does have an affect on the book value of the stock.

13 Q You will admit it has no affect whatsoever on the
14 profit that the company had in the five calender years?

15 A I will only agree that it has noting to do with
16 operational profit. I am not going to agree that it
17 doesn't have anything to do with property. If you look at
18 corporate annual statements, it often takes into account
19 their assets and liabilities not their operating and
20 profits. You can increase your assets and not necessarily
21 increase your profitability simultaneously, but the book
22 value of the company would go up because you've increased
23 the assets.

24 Q Okay. So what affect would a decrease in inventory
25 have on profit apart from what's reflected on the

1 accountants profit and loss statement?

2 A A decrease of the value of the asset is what it has.

3 Q In the value of the asset?

4 A Exactly the value of the asset is diminishing.

5 Q All right. So let's talk about -- so you think that
6 is something the Court should take into account, is that
7 what you're saying?

8 A Absolutely, yes. If we bought something and it owned
9 a half a million dollars in inventory and you sell off the
10 inventory and there's no accounting for where that money
11 went, yes, absolutely.

12 Q When you drew up the shareholders agreement for
13 April 30th, why didn't you say that in there instead of
14 saying as determined by the CPA?

15 A We said as determine by the CPA. I'm not sure why, I
16 guess, none of us has ask the CPA to be here to make that
17 determination, but I got all of these numbers from the CPA
18 to prepare the document. I'm not saying that she
19 determine this, but I did get these numbers from her. So
20 I would say that that would be reasonable to assume that
21 these are all good numbers to be used in a determination.

22 Q When you bought the business, did you cause a
23 physical inventory to be conducted?

24 A I thought I did. Up until yesterday when Mr. Parker
25 said that, he went and did a casual look around. That was

1 one of the things he was suppose to do before we closed on
2 the business was a physical inventory.

3 Q In fact, when you closed, you relied on the records
4 of the corporation reflecting what its inventory was at
5 the time you bought it, right?

6 A No, I largely relied on what Walt said in his going
7 out there and doing an inventory with the Carnells.

8 Q Was Walt qualified to do an inventory?

9 A He indicated to me that he was qualified. He said he
10 had a degree in business and a MBA and had worked in
11 multiple businesses and thought that he was qualified,
12 that's why he was hired to do the job.

13 Q He never showed you an inventory that he had
14 conducted, did he?

15 A No, he didn't.

16 Q And you didn't engage an outside company to do
17 inventory, did you?

18 A No, we didn't unfortunately.

19 Q And from the beginning inventory you took Mister --
20 you took the corporate records reflecting what the
21 inventory was which had been maintained by Ann Marie Hanna
22 and Mr. Carnell over the years, correct?

23 A No, I took Mr. Parker at his word that he knew what
24 he was doing when he said he went out there doing
25 inventory.

1 Q Did Mr. Parker say \$507,000 is the beginning
2 inventory?

3 A He said that he went through the inventory with the
4 Carnells and verified that the inventory was correct.

5 Q Well, you gone out there you could see that there was
6 some inventory there, right?

7 A Sure.

8 Q Okay. Did you have any reason to doubt Ann Marie
9 Hanna and Mr. Carnell's inventory assertion the dollar
10 value of it?

11 A No, sure did not.

12 Q And from that point forward the way you do -- the way
13 you account for inventory is you take what you paid for
14 stuff and then when you sell it, you subtract from the
15 inventory what you had earlier paid for it, correct?

16 A That is correct.

17 Q Okay. So it's all just numbers until you conduct a
18 physical item by item inventory by a qualified inventory
19 people, isn't that correct?

20 A Well, I would think that the people on site should be
21 qualified to count an account for everything that's there.
22 And there were inventories that were supposedly being done
23 on an annualized basis.

24 Q Well, if the inventory gets damaged because a
25 landlord is not keeping the roofing in good repair and

1 it's wet and has to be sold, it's not going to bring as
2 much as it would if it's high quality, in good shape
3 inventory, correct?

4 A That's an interesting assertion.

5 Q Is it true or not true?

6 A I don't know. If the inventory it is not there, it's
7 not there.

8 Q Okay. What if it is there, but it's wet and mildewy
9 and in bad condition, is it worth as much as it was when
10 you bought it and paid for it?

11 A That was -- there was no issue with any roof issues
12 in 2008. That there was the very first year that
13 Mr. Parker was responsible and being held accountable for
14 the operations on his own. And in that very first year he
15 lost \$100,000 in inventory and \$85,000 in operations a
16 total of \$200,000.

17 Q What if you bought inventory that was fashionable at
18 one time like shag carpet or linoleum?

19 THE COURT: That's coming back in by the way.

20 MR. WILLIAMS: Pardon?

21 THE COURT: Say shag carpet is coming back in.

22 MR. WILLIAMS: I didn't know that. I'm not up
23 with the current trends.

24 BY MR. WILLIAMS:

25 Q Let's say you had in 2007 or 2008 a bunch of shag

1 carpet and linoleum and whatever items that were no longer
2 fashionable or stylish or no longer command the prices
3 that they commanded when you bought the inventory, the
4 value of the inventory goes down, doesn't it?

5 A Those things normally businesses that have inventory
6 work to clean out old inventory on a regular basis, that's
7 part ---

8 Q For example ---

9 A When you go to a store and they got stuff on sale or
10 marked down, they're clearing out old inventory and making
11 room for new inventory?

12 Q Exactly.

13 A But that's a normal course of business, that should
14 be reflected in numbers on a very normalized basis. You
15 don't have a tremendous shift of loss of inventory
16 simultaneous with losses from operations without that
17 being a concern. You're not going to convince me that's
18 not a concern.

19 Q And according to your own chart that you prepared
20 your exhibit 9, 2008 was a year where there was a dramatic
21 drop in inventory, correct?

22 A Well, it did drop a 100,000 in 2008. It also dropped
23 by \$73,000 in 2009 and it dropped by 119,000 in 2011. So,
24 I mean, there's inventory decreases throughout the
25 ownership from the time we purchased it.

1 THE COURT: Is that to be inferred that the
2 inventory is either being stolen or sold for cash? Is
3 that -- how does that happen?

4 MR. CURL: If it's not being sold -- because
5 inventory booked as wholesale value, so normally you buy
6 it at a lesser price than you would sell it for. And even
7 if you discounted it and sold it for what you paid for it,
8 on the operation side it wouldn't generate a loss. It
9 would give you back the money you paid for it. So when
10 you're selling the goods and you're having a decrease
11 simultaneous with losses and operations, yes, sir, that
12 does imply that there's either inventory sold for cash or
13 that stuffs getting missing and unaccounted for.

14 BY MR. WILLIAMS:

15 Q Well, if you sell the inventory in the ordinary
16 course of business and don't buy new inventory, the
17 inventory figure goes down without anybody haven stolen a
18 penny?

19 A Yes, that is true, but if you sell inventory and you
20 don't replace, it should reflect in an operation increase.

21 Q So your assertion that somebody's stealing is just
22 rank speculation, is it not?

23 A I answered the judge's question on what it would be
24 an indication of. I never said that somebody was
25 stealing. I simply said what it could be an indication

1 of.

2 Q Could be?

3 A Exactly.

4 Q Okay. It could be an indication of a lot of things
5 such as selling damage goods or unfashionable goods at a
6 price lower than you paid for it, correct?

7 A It could be. It's unlikely. I mean, even if you
8 discount stuff, you normally don't discount it for less
9 than what you paid for it. When you see stuff on sale at
10 the store, they marked it down, but they probably only
11 marked it down to close to what they paid for it. So at
12 least you get your money back so you can buy some new
13 inventory.

14 Q Well, you aren't required to mark it down by -- to
15 change your inventory by either exactly what you paid for
16 it if you sell it for more than the cost of being sold or
17 by what you received for it if you sell it for less than
18 it cost you. You don't get to just write down figures,
19 isn't that correct?

20 A Yeah, you got to use real numbers.

21 Q Okay. But you know nothing about the actual
22 inventory or what happened or why or when other than the
23 inventory records as reflected by the accountant
24 fluctuated?

25 A Yes, it did fluctuate, but pretty consistently

1 decreased to there's not a whole lot left. The inventory
2 at this point in time is around \$100,000 or less, which is
3 pretty minimal.

4 Q Speaking of the accountant, yesterday you complained
5 that Walt was not doing -- paying the sales tax to the
6 state in a timely manner?

7 A That is correct.

8 Q Isn't it in fact Ann Marie Hanna and Charles your
9 accounting firm that wasn't making the payment and filing
10 those returns?

11 A No, they don't pay sales tax.

12 Q Filing the returns?

13 A Well, it's my understanding they can't prepare
14 documentation that they don't have information to prepare
15 with. So there was a problem with Florence Carpet and
16 Tile not paying sales tax for several months and it became
17 an issue with the South Carolina Department of Revenue
18 and I had to get involve and get it worked out to have a
19 payment plan with South Carolina Department of Revenue.

20 Q Isn't it the fact that they were not filing the
21 returns not that they were not paying the tax with the
22 returns, isn't that right? And where you got involved was
23 get Ann Marie Hanna to get the returns straight?

24 A That there was money that was not paid to the South
25 Carolina Department of Revenue. It had to work out a

1 payment plan because we didn't have enough money on hand
2 to pay it all at one time.

3 Q Because the returns had been late getting filed and
4 they got filed in a clump all at one time, correct?

5 A Well, that may be correct, but they weren't filed on
6 time because they did not have the information to file
7 them with.

8 Q Okay. You brought up yesterday that one of the
9 things you insisted had to be done at the May 2015 was to
10 have the minutes approve. I believe from your testimony
11 the minutes that you're referring to was April 30th 2007
12 minutes, correct?

13 A That is correct.

14 Q Why did you need those minutes approved? Weren't
15 they signed by you and Walt on April 30th 2007?

16 A I think it's normal practice to show the minutes from
17 the previous board meeting every time you have a board
18 meeting to acknowledge the previous board meeting.

19 Q Even when those minutes are already signed and in the
20 records by all the shareholders?

21 A As you mention, I'm not an attorney, Mr. Williams. I
22 was just trying to make sure we follow the proper
23 procedures. And all my dealings every time you have a
24 board meeting you approve the previous board meetings
25 minutes.

1 Q What about the minutes from the previous board
2 meeting that reflected who the directors and officers of
3 the corporation were? You didn't present those for
4 approval in March of 2015 when you being so tidy about the
5 minutes, did you?

6 A I'm not familiar what you're talking about.

7 Q You just testified this morning that you prepared
8 minutes of an April 30th 2007 meeting in which you contend
9 you and Walt and only you and Walt became the directors of
10 the corporation. And you and Walt and only you and Walt
11 became the officers of the corporation. You said that you
12 prepared those minutes. You put them in the corporate
13 book. And that you entrusted that book for some reason to
14 Walt. You said all those things under oath this morning.

15 A Yes.

16 Q And my question to you is if your reason for wanting
17 the minutes approved is you just wanted to make sure all
18 the corporate stuff was done just right, why didn't you
19 present those minutes for approval?

20 A We did not have any additional information. It was
21 in the corporate book.

22 Q I mean, it's an April 30th 2007 in the corporate book
23 too, were they not?

24 A I got a copy of those.

25 Q If what you say is true.

1 A They were in the corporate book that is correct.

2 Q Well, if you couldn't find the minutes of April 30th
3 2007 electing the directors and officers, why didn't you
4 prepare some minutes as secretary of the corporation for
5 presentation at the shareholders meeting in May of 2015 so
6 that you can get that loose end taken care of, why didn't
7 you?

8 A It didn't seem to be an issue that was necessary to
9 be addressed. We all knew who the directors and officers
10 were.

11 Q So side minutes that you had possession of needed
12 addressing, but these mythical minutes that you didn't
13 have and that no one had signed you didn't need to address
14 that. Is that what you're saying and you expect the Court
15 to believe it?

16 A How am I going to present something that I don't
17 have. It was in a corporate book, Mr. Williams.

18 Q You were the corporate secretary. You could recreate
19 it and ask that they be approved as the minutes. A
20 corporate secretary often prepares the minutes, the
21 written record of the minutes of the previous meeting,
22 months after the meeting, years. In this case, it would
23 have been eight years after the meeting. You didn't do
24 that because you -- those things didn't exist and they
25 never existed and the events you described never happened,

1 isn't that correct?

2 A No, sir.

3 Q Your exhibit ten Defendant's Exhibit 10 do you have
4 that in front of you? I got another copy if you -- it's
5 the e-mail from the exchange between you and Walt Parker.

6 A I do.

7 Q Okay. Like all the e-mail exchanges when you have
8 more than one conversive the oldest is at the bottom,
9 correct?

10 A I suppose that's correct.

11 Q Well, look on here looking at the bottom half on
12 February 5, 2015 at 11:15 a.m. Walt Parker wrote you an
13 e-mail, correct?

14 A He did.

15 Q And it says, John, Mike ask me if I had a book for
16 articles of incorporation of FC&T and that the bank needed
17 it. What is that for -- what is it for, is it critical.
18 And then if so we'll have to initiate a pretty
19 comprehensive search. My point is Walt Parker initiated
20 the search for the corporate books, did he not?

21 A No, I called out there asking for them. If you read
22 his e-mails says Mike ask me if I had the books for the
23 articles and wanted to know why. Obviously, I had called
24 on multiple occasions, so this was an e-mail in response
25 to my request on multiple occasions by phone.

1 Q Okay. So you had requested Mike for the book?

2 A Yes, I had asked them to -- that I needed the book to
3 get the articles and the bylaws for the bank.

4 Q And in response on that same date February 5th 2015
5 at 11:53, you wrote back and you said the original
6 articles of incorporation and bylaws are normally kept in
7 that book. You didn't say are kept in our book or I know
8 they were in our book. You said where they normally kept,
9 right, correct?

10 A That's correct.

11 Q And then you said I will check with the attorney's
12 office to make sure they don't have it at their office.
13 So you thought it was at the attorney's office, correct?

14 A No.

15 Q You thought it might be at the attorney's office,
16 correct?

17 A I was checking at the attorney's office to see if
18 they had the articles and the bylaws at their office.

19 Q Well, it doesn't refer to the corporate books, it
20 refers just to the articles and the bylaws?

21 A That's what the bank needed and that's why I needed
22 the book.

23 Q All right. But as a matter of fact on -- at some
24 point prior to January 1, 2015 is when you began your
25 search for the corporate book, correct?

1 A That is correct.

2 Q Because it was on January 1, 2015 about a month --
3 well, half a month -- well, three weeks before these
4 e-mails when Kendall Hiller in his letter that is part of
5 my exhibit. Let's see what exhibit it is. My exhibit
6 three. That's when he responded to a request from you. I
7 think you testified that was your request that he get
8 those records. So you had made that request of the lawyer
9 weeks before January 15, 2015, correct?

10 A Very well possible, yes, sir.

11 Q Because he said they done an exhausted search and had
12 to retrieve a file from storage and all of that?

13 A Okay.

14 Q My point is you initiated your search for the
15 corporate books and records by looking in your office on
16 Rainbow Road and you couldn't find them, right?

17 A I knew I didn't have them.

18 Q And the first thing you did when you didn't have them
19 was to call Kendall Hiller and ask his office for it,
20 correct?

21 A I ask him for the -- I was looking for the articles
22 of incorporation and the bylaws to give to the bank, yes,
23 sir.

24 Q And you knew those would be in the corporate book
25 that should have been under your care, custody and

1 control, correct, as secretary of the company?

2 A That's interesting that you phrase it that way, but
3 if that's your belief, it was sent to the business office
4 of Florence Carpet and Tile to be taken care of by the
5 person that was left in charge of running the day-to-day
6 operation.

7 Q But you initiated your search by calling Kendall
8 Hiller. And it was only after Kendall Hiller was unable
9 to find it that you started calling Mike, isn't that
10 correct?

11 A No, sir. No, sir. The bank was asking for this
12 stuff because we were rolling into a new year and these
13 were requirements from the federal regulators and they
14 were doing that for all of their corporate files that were
15 C corporations. They were required to have bylaws and
16 articles of incorporation. I had already called out to
17 Florence Carpet and Tile and talk to Mike on several
18 occasions. Then I asked Kendall -- it was only after I
19 got what I got from Kendall and Kendall did not have what
20 I needed that I call back out there and said y'all need to
21 find the book. You got the book with this information in
22 it particularly the bylaws that we do not have any copies
23 of. I was able to get the articles of incorporation from
24 the secretary of state, but I needed the bylaws to satisfy
25 the bank. So that's why I was calling out there telling

1 them we need the book because Mike already told me that he
2 didn't know where the book was. And I had ask him again
3 and so I when called back and said with a great deal of
4 urgency and importance that we need to get this for the
5 bank find the book. And that's when I got the response
6 from Walt that it would take an extensive search. And I
7 was like even if it takes an extensive search, search
8 extensively.

9 Q You're saying there's some federal regulation that
10 requires the bank to have the original of the articles of
11 incorporation?

12 A No, but they wanted the copies of the articles of
13 incorporation as well as the bylaws and they do have to
14 have the bylaws. Yes, they have to have originals. They
15 needed copies.

16 Q Well, your assertion in your e-mail was you had to
17 have the original articles of incorporation?

18 A I don't think it is.

19 Q Well, it says it. The second word is original.

20 A It says the original articles of incorporation and
21 bylaws are normally kept in that book. I was just saying
22 that's where the originals would be. There may be copies
23 all over the world. I don't know, but normally the
24 originals are kept in the corporate book.

25 Q Well, there's a bank on earth and there's no federal

1 regulation requiring that the bank have access to the
2 original. They're a public record at the secretary of
3 state's office, correct?

4 A I didn't say the bank had to have the original. I
5 was simply saying that's where the originals would be if
6 we had the originals we can make copies.

7 Q All right. You got a response to the search you
8 initiated with your lawyer on January 15, 2015. And it
9 was three weeks later on or about February 5th that you
10 must have discussed with Mike in some way your desire to
11 have the record books, right?

12 A That's correct.

13 Q Okay.

14 A If you look, I believe you'll see that somewhere in
15 between that time I paid a fee and sent a request to the
16 secretary of state's office and got copies of everything
17 that they had on record as well, that's part of the time
18 line. I'm still eagerly attempting to supply the bank
19 what it is they're requesting.

20 Q You got your lawyers to look for them?

21 A Yes, sir.

22 Q You knew they weren't in your office?

23 A That's right.

24 Q Did you ask Mr. Carnell for them? Did you call him
25 and ask him for them?

1 A I didn't have them. He gave them to us at the
2 closing.

3 Q Did you call Mr. Carnell and ask him for them?

4 A No.

5 Q Okay. You ask for lawyers. You ask for the
6 secretary of state. And the last place you looked for
7 these things was at the office of Florence Carpet and
8 Tile, isn't that right?

9 A No, no. The first place I checked was at -- with
10 Mike and he said I don't know where they are, that was the
11 very first place I checked.

12 MR. WILLIAMS: That's all the questions I have.

13 THE COURT: Anything further?

14 MR. PAYNE: No redirect.

15 THE COURT: Very good. All right. You maybe
16 seated.

17 (WHEREUPON, the witness leaves the witness
18 stand.)

19 MR. WILLIAMS: May he be excused, Your Honor?

20 THE COURT: Yes, you free to leave. Any further
21 witnesses from anybody any reply, anything?

22 MR. PAYNE: Nothing further from the defense,
23 Your Honor.

24 MR. WILLIAMS: I got one really brief reply
25 witness, Your Honor.

1 MR. PAYNE: Your Honor, can I make one motion
2 then at the end of my case?

3 THE COURT: Yes.

4 MR. PAYNE: Right now I just wanted to speak on
5 some of your comments yesterday. Well, I think the claim
6 here is a legal claim. It's a breach of contract under
7 the declaration judgment action. I like to amend the cert
8 the defendant of laches just out of an abundance of
9 precaution.

10 THE COURT: What you have to say about that?

11 MR. WILLIAMS: I have no objection, Your Honor.

12 THE COURT: Pardon. What do you have to say
13 about his motion?

14 MR. WILLIAMS: Oh, I have no objection to his
15 assertion of laches. His motion I restated the same
16 arguments I made before Your Honor. I think the evidence
17 is overwhelming and the plain language of the minutes of
18 April 30th 2007 are that these shares should have been
19 issued to Mr. Parker in his first actual request that the
20 shares be issued came in my pleading before this court.
21 They just been going back and forth for years, that he
22 didn't learn that that was going to make a difference
23 until he got a notice of the shareholders meeting from
24 November and learned that Mr. Curl planned to fire him and
25 remove Allison from the board and place Mr. Curl's nephew

1 on the board. My pleading was the first time that there
2 was ever any request that the shares be issued to anybody.

3 MR. PAYNE: Well, I was going to wait for the
4 next motion, but I renew my 41 motion, Your Honor, for the
5 nonsuit under the same grounds previously and now with the
6 amended pleading with laches as well. I think all of this
7 is barred by the statute of limitations or laches.

8 THE COURT: All right. Your motion's denied.
9 Any further witnesses?

10 MR. WILLIAMS: Just briefly, Your Honor, Allison
11 Parker.

12 THE COURT: Yes. Mrs. Parker, please come
13 forward and I remind you that you're still under oath.

14 Yes, sir.

15 WHEREUPON,

16 Allison Parker,
17 after previously having been duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION

20 MR. WILLIAMS:

21 Q Allison, let me go back to April 30th 2007 which is
22 the date you were at the McGowan Law Firm's office on Coit
23 Street for the purchase of the shares. Did you -- were
24 you present in the meeting with Walt and John the whole
25 time?

1 A Yes, as far as I remember.

2 Q Okay. What statements, if any, did John Curl make
3 about the composition of the board of directors or who the
4 officers were of the corporation?

5 A What I remember is he said it'll be Walt as
6 president, me as vice president and him as secretary
7 treasurer.

8 Q Okay. And how about the board of directors?

9 A At that time I wasn't that familiar with corporate
10 lingo, so I thought that was including that.

11 Q When you say including that, what do you mean?

12 A The board of directors.

13 Q Okay. Did he take any minutes that day? Did you see
14 him write anything down by hand?

15 A He could have, but I don't remember.

16 Q Okay. Did you sign any -- did you as an officer sign
17 any minutes that day?

18 A Not that I remember.

19 Q Okay. Did you see Walt sign any minutes that day
20 other than the exhibit six that's in evidence that we've
21 already talked about 100 times?

22 A That's what I remember ---

23 Q Okay.

24 A --- one form.

25 Q All right. Have you ever been asked questions before

1 by the accountants about stock ownership?

2 A Yes.

3 Q Tell the Court about that?

4 A Every year when it came around time for taxes and he
5 had to do dividend -- the 1099 for the dividends he would
6 always say what's the break down of the ownership.

7 Q When you say he, you talking about?

8 A He as in Charles.

9 Q And who is Charles?

10 A Charles Hanna at Ann Marie Hanna's office. I mean,
11 Charles. I don't know his last name.

12 Q Don't know his last name, okay. And what would you
13 tell him?

14 A I told him I did not have that information. He would
15 probably need to talk to John because Walt's usually not
16 available.

17 Q Okay. John meaning John Curl?

18 A Yes.

19 Q Okay.

20 MR. WILLIAMS: That's all I have, Your Honor.

21 THE COURT: Any cross-examination?

22 MR. PAYNE: No, nothing.

23 THE COURT: Very good. You may step down.

24 Thank you.

25 (WHEREUPON, the witness leaves the witness

1 stand.)

2 THE COURT: Any further witnesses?

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: All right, very good. All right.
5 Having completed all the testimony, you know, we been
6 dealing with this case and had right extensive initial
7 hearing and we've had the full hearing on the merits. I'm
8 kind of familiar with all of the issues, but if you all
9 would like present some closing comments, I'll be happy to
10 hear those if you all feel it's necessary to do that. I
11 think we all know what the issues are and however the
12 spirit moves you. I'll be happy to hear comments from
13 either side or both. Since, you are the plaintiff you can
14 go first if you would like to.

15 MR. WILLIAMS: Your Honor, I had given some
16 thought to a closing argument. I suspected that Your
17 Honor did not need one. What I would offer myself up to
18 do Your Honor is if you have some issues on which you
19 think I can be helpful to the Court, I'll be glad to
20 answer questions and give our perspective on it, but I
21 think otherwise I think you know our position. I think
22 we've presented the available evidence.

23 THE COURT: All right. Mr. Payne.

24 MR. PAYNE: Your Honor, just a couple of notes
25 out of the trial here that I would like to point to and

1 that is the tax returns that were prepared, the 2011
2 return which is dated September the 12th that according to
3 Mr. Parker would have been the third year he had profits.
4 And at that point that's the day he would have had the
5 right to assert the claim for additional shares and
6 that's, you know, more than six years ago.

7 Another real important fact was the May 12th
8 2015 meeting Mr. Michael was there. He said that he asked
9 Mr. Curl about the minutes of that meeting and whether any
10 additional shares should be issued. Mr. Curl had told
11 him, no, because it wasn't profitable. Well, Mr.
12 Michael Confirmed that yesterday and that's real important
13 because some of these statute of limitations questions.
14 There's a case called Mayor vs. Titex Corporation 500 S.C.
15 2nd 204. And the clock started running there when the guy
16 knew he wasn't going to get a bonus and he was told he
17 wasn't going to get a bonus and that clock started ticking
18 there. And that's the same case that says, you know, it
19 doesn't take much to start the clock on the statute of
20 limitations.

21 So I think it's real important the fact that
22 there was the testimony he was told that day. There were
23 no shares. You're not getting any shares. They didn't
24 have a profit. And that's more than three years before --
25 way before he filed this lawsuit. And I think the reason

1 there was never any request for shares, it never was an
2 issue until we notice this board meeting or the request
3 for the shareholder meeting because he knew for all these
4 years he didn't qualify for these shares. He never
5 claimed it. He never done one thing. So I -- if you
6 didn't know, you never expected it, didn't want it, didn't
7 think it was there. It's because he knew he didn't
8 qualify. 2007 doesn't count and that's the last thing
9 when we had Mr. Stewart here yesterday, you know, the
10 question was what term would you had used if you wanted to
11 consider the time period of April through December of a
12 particular year. He said, well, I used the word
13 partially. You know, and this agreement says complete
14 physical year and therefore 2007 doesn't count, that's a
15 partial year for this operation. So I think those --
16 those are just some things to remember to focus on, Your
17 Honor. Thank you.

18 THE COURT: Very good. All right. I assume
19 that you all have coordinated with the court reporter and
20 ensured that all of the documents are in evidence that you
21 all would like.

22 MR. WILLIAMS: We have, Your Honor.

23 THE COURT: Okay, very good. All right. You
24 know, I've been given a good bit of thought to this thing
25 and I've studied it and pondered on it. Essentially, I

1 been thinking about it and reviewed my notes last night
2 and paid very close attention to the testimony here. And
3 given all of the facts and the law that we've discuss, the
4 pleading -- I took a look at the pleadings, the pleadings
5 allege a breach of contract and an injunction, but really
6 this is an action for specific performance in my view.
7 Since the plaintiff is seeking the defendant to convey the
8 shares. The statute of limitations in my view -- and I
9 might be wrong and I might be corrected in that regard,
10 does not apply because this is a matter of equity.

11 The defendant did not plead laches, but he has
12 moved to amend his pleadings in that regard. And I think
13 that under these very unique circumstances that laches
14 does not apply because both parties like so many people
15 that have corporations don't really follow the formalities
16 of corporations for whatever reason. And I'm -- to be
17 quite honest with you, I'm not sure why anybody nowadays
18 has a C corporation unless you got a lawyer there to keep
19 it all straight, just doesn't happen. I think that
20 probably from a practical standpoint you probably ought to
21 have a subchapter S or an LLC or some -- there's so many
22 other forms of business organizations that would allow you
23 to operate with the protections of the corporation without
24 the formality. But nonetheless both parties have done
25 like so many people do, they really just don't pay

1 attention a whole lot to the formalities. And up until
2 the testimony of Mr. Curl, it appears as if nobody had any
3 shares. And, of course, there's been testimony that the
4 shares were indeed assign to the parties at the closing.
5 But, of course, we don't -- you know, there's been a lot
6 of discussion about the fact that those documents can't be
7 found. But under these circumstances as it stands now,
8 it's kind of hard to say without absolute certitude that
9 anybody has any shares of stock, but there is -- was an
10 agreement. And I think that under these circumstances no
11 one is slept on their rights and laches does not indeed
12 apply.

13 As far as -- the most pivotal thing in this
14 litigation is the contract. And the contract says that --
15 is indeed ambiguous because it doesn't say what years are
16 to be included specifically and whether or not 2007 should
17 be included. It's also ambiguous as to whether or not you
18 would get one share for one profitable year or whether or
19 not it was -- I mean, you can look at it and I think
20 perhaps maybe the intent was that if there were three
21 years of profitability, then they would get the three of
22 the five. And they would get three shares to bring it up
23 to 50/50, but it's really -- if you read it in its
24 entirety, it doesn't really say that. It's ambiguous.
25 And there's no question but that Mr. Curl -- it was his

1 idea to do this and Porter Stewart indicated that he
2 merely was a scrivener and he wrote down what the
3 agreement was, but clearly that agreement is ambiguous and
4 should be construed against Mr. Curl. And there is indeed
5 a valid contract.

6 But this action is in essence an action for
7 specific performance and that requires four different
8 elements in my estimation. Number one a valid contract
9 between the parties. In this case, we have that. We have
10 a valid contract. And then the next element is that
11 there's no adequate remedy of law. And, you know, I've
12 looked at the law and given this some thought and normally
13 you would think that just about anything you can put a
14 value on. And South Carolina does not specifically
15 address this issue as to whether or not there's an
16 adequate remedy at law when it comes to stock of this
17 nature, but there are cases and this has come up
18 throughout the nation and South Carolina has not ruled on
19 that as far as I can tell. But says generally where stock
20 is traded and is purchasable in the market like the New
21 York Stock Exchange obviously or is value is otherwise
22 ascertainable, then specific performance will not lie
23 because you can put a dollar value on it. However, where
24 the stock is in such an amount as to give majority
25 control, then they are considered so unique as to support

1 specific performance. Also where the stock is an
2 investment stock equitable relief is appropriate.
3 Investment stock is a stock which for one reason or
4 another is incapable of being transferred for a period of
5 time.

6 Likewise, there's a case in Texas that addresses
7 this issue. And essentially when there's no ready way to
8 ascertain the value and if the stock is of the nature that
9 would determine the control of the corporation, it's an
10 investment stock and therefore subject to specific
11 performance. So I feel as though that the rules of equity
12 govern this transaction and there is indeed under these
13 circumstances no adequate remedy of law on the cases that
14 address these very issues as Lineberger vs. Welch. It's
15 290 Atlantic Second 847. It's a 1972 case. And U.S.
16 Dimensions Product vs. Tacit 290 Atlantic Second 634.
17 It's a 1972 case. There's also Stafford vs. Southern
18 Vanity Magazine 231 Southwest 3rd 520. And in order for
19 there to be specific performance of the contract, it has
20 to be equitable in general.

21 And, of course, the next element is no fraud
22 accident or mistake that affects the particular contract.
23 And as far as the contract between the parties, certainly
24 there's no fraud, accident or mistake in its inception.
25 But the third element is the most important element is is

1 specific performance equitable under these circumstances.
2 And I specifically find after having listen to the
3 evidence, observe the demeanor of the parties and their
4 testimony, I find that it would be inequitable to decree
5 specific performance.

6 First of all, taking all of the facts and
7 circumstances, I find that the plaintiff has breached his
8 fiduciary duty to the corporation. In order -- in these
9 circumstances, he has a duty of loyalty and he is in this
10 instance I specifically find he has competed against the
11 principal company by operating the granite business. He
12 acted as a wholesaler to Florence Carpet and Tile which
13 amounts to self-dealing. He has competed against his
14 business by operating an installer business. He has
15 allowed company -- and this is particularly important is
16 that he's allowed company personnel who works for the
17 company to also simultaneously work for competing
18 businesses while paying them and specifically I'm talking
19 speaking about Lisa Shelton. I think that's a breach of
20 fiduciary duty and a breach of loyalty. And essentially I
21 find that the plaintiff has usurp corporate opportunities
22 engaged in self-dealing. None of this is protected by the
23 business judgment rule.

24 I also find that the plaintiff has breached his
25 duty of care. He's failed to file corporate taxes. And

1 there obviously some people could maintain that both of
2 them have an obligation to do that, but given the nature
3 of this arrangement, he was the one who was managing the
4 business and he is the one who had the ability to provide
5 the supporting documentation to file the corporate taxes.
6 He did not do that. He's failed to provide the required
7 documentation to corporate creditors and he's failed. And
8 it's uncontroverted that he failed to pay vendors on a
9 timely basis.

10 Essentially, the plaintiff has unclean hands.
11 Specific performance is a discretionary remedy to be
12 exercised in accordance with special rules of equity and
13 with regard to the facts and circumstances of each case.
14 Here I specifically find after having viewed all of the
15 evidence, heard all of the testimony, and observed the
16 demeanor of the witnesses, I find that the facts show that
17 it would be inequitable to order specific performance.
18 And, Mr. Payne, I'm going to ask that you to prepare an
19 order to that effect.

20 MR. PAYNE: Thank you, Your Honor.

21 THE COURT: Very good. Thank you all. Good
22 luck to you all.

23 END OF REQUESTED TRANSCRIPT
24
25