

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

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

Plaintiff,

v.

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

and

ALEX’S RESTAURANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

CASE No. 2016-CP-10-06265

RECEIVED

Jan 27 2022

SC Court of Appeals

**DEFENDANTS’ OPPOSITION TO
MOTION TO RECONSIDER AND
DEFENDANTS’ MOTION FOR RELIEF**

I. Purchase of Interest

Mr. Billips has objected to the Court ordering his shares to be transferred back to the corporation upon tender of the Court’s valuation of his shares, contending he is being denied his election of remedies. But, under oath, Mr. Billips testified that he was requesting that the Court determine the value of his interest and “cash him out” on his interest:

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

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

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

A. Correct.

Q. – the operations?

A. Yes, sir.

Exh. A, Trial Tr. (Aug. 25, 2021) at 37:1–10. Mr. Billips is bound.

Further, Mr. Billips’ pleadings request an Accounting of his interest in Alex’s Restaurants, Inc. and “other such other and further relief as the Court may deem just and proper.”

Am. Compl. at 4, 15. Mr. Billips' complaint incorporates all of his factual allegations into the Accounting cause of action, *id.* at § 32, and he sought to prove them at trial before this Court, contending they were necessary to establishing the valuation of Mr. Billips' interest. Unsatisfied with this Court's assessment of his proof, he seeks a "redo;" and only now that Plaintiff has failed to establish his claimed valuation does he recant what he testified to under oath and seek the opportunity to pursue different remedy.

But even had Plaintiff not requested this relief, the Court acted well within its broad authority to fashion an appropriate remedy, doubly so as the Plaintiff expressly requested an accounting. *See, e.g., Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 428, 673 S.E.2d 448, 454 (2009) (explaining that an "accounting" is an equitable remedy that "refers to 'an adjustment of the accounts of the parties and a rendering of a judgment for the balance ascertained to be due.'" (citing 1 Am. Jur. 2d Accounts and Accounting § 52 (2005)); *see also Regions Bank v. Wingard Props., Inc.*, 394 S.C.241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011) ("Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.").

The Court should deny Plaintiff's motion to reconsider regarding the purchase of his shares.

II. Minority Discount

Plaintiff asks that this Court ignore a long-settled principle in the valuation of minority interests because he contends that principle fails to take into account two allegations: one that Plaintiff attempted and failed to prove at trial regarding Ms. Billips' operation of Alex's, and a new allegation that Ms. Billips has committed a crime. **Motion** at 3.

As to the first, this Court properly rejected Plaintiff's arguments that Ms. Billips reduced

the value of Alex's by her actions, noting that it was her actions that kept the business afloat. Nevertheless, Plaintiff apparently hopes that repeating an allegation enough times will lend it credibility. As to the second, it goes too far and is addressed *infra*, Part III.

In the context though of this motion to reconsider, suffice it to say: the Court granted Plaintiff limited latitude to introduce certain evidence of the relationship between Plaintiff and Defendant on the issue of witness credibility. This Court already having judged the credibility means there is no basis for reconsideration of the well-settled principles applied by the Court. The motion to reconsider should be denied on this basis as well.

III. Motion to Seal and for Sanctions

Plaintiff's "tactics" were first brought to the Court's attention during a September 10, 2018 hearing, resulting in the Court sealing portions of a deposition transcript removing certain allegations from the public record. At trial, and over Defendants' objections, the Court concluded that the allegations may be pertinent to the witnesses' credibility and allowed testimony on the subject.

At this time, Defendants renew their objections and request, pursuant to Rule 41.1, S.C.R.C.P., that select portions of the trial transcript, Plaintiff's proposed order, and the Motion for Reconsideration be sealed and redacted versions filed in their place.¹ This Court has recognized that the allegations in question (which are not part of Plaintiff's complaint) do not bear on Plaintiff's claims; Defendants ask that they be sealed.

Persuasion and lawyering are artforms, and lawyers are given certain latitude in

¹ Pursuant to Rule 41.1, S.C.R.C.P., the portions subject to this request have been highlighted and being filed separately under seal in an attachment entitled "Confidential Information Submitted to Court in Connection with the Motion to Seal" for *in camera* review.

advocating for their clients' interests. This is as it should be. Disrespect of the process, of the law, and of this Court's appointment is not countenanced. The continued reference to scandalous accusations ought not to be permitted, as evidence of such was allowed only to assist the Court in making determinations of credibility. The Court has made its determinations. The allegation of a crime in Plaintiff's Motion is out of bounds.

Further, it is neither true nor believable that Plaintiff's counsel does not understand the purpose for which this Court allowed the testimony it did; they defy the Court's intention,² and a sanction must be entered. An appropriate sanction would be to bar Plaintiff from any recovery in order to make an example of this conduct.³

This Court has an incredibly lawyer-centric orientation; that is to be applauded, and we are grateful for it. It is highly probable that this Court will not be inclined to impose any sanction for Plaintiff's conduct. But Defendants feel the conduct constitutes a harm to the Court, and one within our power to pursue.

Respectfully Submitted:

This 17th day of December, 2021
Charleston, South Carolina

/s/Jaan Rannik
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² And not for the first time. As set forth in Defendants' October 3, 2018 Motion to Dismiss and on the record during hearings dated December 19, 2018, October 29, 2020, and others, Plaintiff has repeatedly failed to comply with this Court's orders. This further supports the ruling now requested.

³ We do not mean to suggest that other sanction or reprimand would not be appropriate with regard to Plaintiff's counsel, but we do not undertake to suggest to the Court what an appropriate sanction or reprimand would be.