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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2021-000375

Greg Marcus Simmons and Jermaine Robinson, both individually and derivatively on behalf of Simmons Family Holdings, LLC, a South Carolina Limited Liability Company, Respondents,

v.

Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, and Charlesetta S. Aiken, Appellants,

and

Simmons Family Holdings, LLC, as a nominal Defendant.

RESPONDENTS' RETURN TO APPELLANTS' MOTION TO STRIKE

COME NOW the above-named Respondents in Return to Appellants' Motion to Strike the Circuit Court's March 12, 2021 Order (the "March 12 Order") from the Record on Appeal—*i.e.*, Item No. 3 in Respondents' Designation of Matter.

This is an appeal from the Circuit Court's Order Granting, in Part, Respondents' Motion for Summary Judgment which was entered on March 19, 2021 (the "March 19 Order"). *See **Appendix 1*** (Order); *see also* (Appellants' DOM, Item #4 designating the March 19 Order). Appellants' instant motion, which cites no legal support whatsoever, is premised on the unusual and incorrect contention that the March 12 Order was issued *after* the Circuit Court's Summary Judgment Order—*i.e.*, that March 12, 2021, occurred after March 19, 2021. Not only is this

position inconsistent with a calendar, but Appellants’ claim that the Circuit Court’s own orders are not part of the record is unsupported by law, unavailing, and entirely without merit. As set forth below, Appellants’ Motion to Strike should be summarily denied.

BACKGROUND

In the underlying lawsuit, Respondents sought summary judgment on several of their causes of action, including their claim for money had and received against Appellant Palmer Simmons for his unauthorized expenditures of money that belonged to Simmons Family Holdings, LLC (the “Company”). The Circuit Court (Judge Lawton McIntosh) heard arguments on March 1, 2021, and the following day, March 2, 2021, Judge McIntosh issued an interim Form 4 Order stating that Respondents’ Motion for Summary Judgment would be granted in part by a formal written order that would follow.¹ That written order was entered on March 19, 2021.² The March 12 Order, which is the subject of this motion, was entered in the meantime.

The origin of the March 12 Order begins on September 22, 2020—long before the Motions for Summary Judgment were filed—when the Circuit Court (by Judge Marvin H. Dukes, III) issued an Order finding that Appellant Palmer Simmons had violated an injunction previously

¹ The Form 4 Order states in relevant part:

[Respondents’] motion for summary judgment is granted as follows: [Respondents] are members of the [Company]—the amount of shares to be determined. Also, [Appellant] Palmer Simmons made unauthorized distributions from the [Company] to himself or to his business—the amount of which is to be determined. [Respondents’ attorney] to prepare a formal order. The formal order shall specifically discuss the Court’s authority to issue the above Order. [Appellants’] Motion for Summary Judgment is denied in its entirety.

(Appendix 2)

² Without waiting on the written Order the Circuit Court instructed was forthcoming, Appellants prematurely filed a Motion to Reconsider on March 11, 2021, which was denied on March 12, 2021.

issued in this case by, *inter alia*, making unauthorized expenditures of Company money. This September 22, 2020 Order also appointed a receiver to perform an accounting of the financial records of the Company and directed that a hearing would be held at a later date to determine the amount of the unauthorized expenditures.³ That hearing was held on March 2, 2021, and the March 12 Order followed, directing Palmer Simmons to repay the Company \$164,781.48 in unauthorized expenditures. (**Appendix 3**). This is the Order Appellants seek to strike.⁴

ARGUMENT IN RETURN

Appellants seek to strike the March 12 Order claiming this Order was not before the Circuit Court as contemplated by Rule 210, SCACR. Other than Rule 210, Appellants cite no legal authority for their position. Instead, Appellants' Motion is premised on their conclusory assumption that the March 12 Order "was issued after [the Circuit Court] rendered its decision" on summary judgment. (Mot. to Strike, p. 2). Tellingly however, Appellants fail to specify when they claim the Circuit Court "rendered its decision"—a conspicuous omission. Presumably Appellants are suggesting that the Circuit Court issued its final ruling by way of the Form 4 Order on March 2, 2021. *See* (App. Mot. to Strike p. 2 at n. 2) (making the incorrect conclusion that "the Form 4 Order [] triggered Appellants' 10-day window to file a motion to reconsider). However, Appellants' suggestion that the Form 4 Order is the Circuit Court's final order (rather than the March 19, 2021 written Order) is wrong.

This court has explained a "Form 4 order is **NOT** efficacious as a final order [when] the circuit court [] specifically and with certitude signif[ies]: (1) a more formal order will be filed; **OR**

³ Respondents pointed this out in their memoranda regarding summary judgment.

⁴ Respondents designated this unappealed March 12 Order because it contains certain factual findings that provide an additional sustaining ground for the trial court's grant of partial summary judgment.

(2) the final order will be prepared by Attorney _____; **OR** (3) through the use of words and phrases what action will follow.” *Cheap-O’s Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) (bold, italics, capitalization, and blank space all supplied by court); *see also S.C. Dep’t of Transp. v. Faulkenberry*, 337 S.C. 140, 146, 522 S.E.2d 822, 825 (Ct. App. 1999) (“If a judgment leaves some further act to be done by the court before the rights of the parties are determined, the judgment is not final.”); *Spalt v. S.C. DMV*, 423 S.C. 576, 583-85, 816 S.E.2d 579, 583 (2018) (“If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is not final.”) *citing Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health & Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010) (internal quotations omitted).

Because the Circuit Court’s March 19 written Order—not the interim Form 4 Order—is the final order in this matter, Appellants’ suggestion that the March 12 Order should be struck because it “post-dates” the Circuit Court’s summary judgment ruling fails.

Moreover, to the extent Appellants suggest that the March 12 Order is not part of the record because Respondents did not “present it” to the Circuit Court, this argument also fails. Again, Appellants cite no legal authority for their implication that a litigant is required to physically present to the Circuit Court with its own order for it to be part of the record. In the absence of handing something to the judge, all that the law has ever required for a document to be part of the record is that it be filed with the Clerk of Court. *See generally, Loyd’s Inc. by Richardson Constr. Co. v. Good*, 306 S.C. 450, 452-53, 412 S.E.2d 441, 443 (Ct. App. 1991) (finding in order to put documents on file, “we hold they ordinarily must [only] have been filed . . . with the clerk of court”). Further still, this Court can affirm for any reason appearing in the record, regardless of whether that reason was presented to the trial court by the Respondent. *Repko v. Cty. of*

Georgetown, 424 S.C. 494, 503-04, 818 S.E.2d 743, 748 (2018) (“an appellate court may affirm a lower court judgment for any reason appearing in the record.”); *quoting I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000) (confirming “that different preservation rules apply to an appellant—the losing party in the lower court” than to a respondent) (underline original)).

Finally, even if Appellants are correct, which they are not, to strike the March 12 Order from the record would have no practical consequence because this Court can take judicial notice of the March 12 Order. *See Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (stating “an appellate court can take judicial notice of something that was not before the trial court if it is indisputable”); *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (“A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records[, and it] is not error for a judge to take judicial notice of what was stated in [a] former opinion in [a] prior action of the same case.”). Therefore, because this Court can take judicial notice of the facts as stated in the unappealed March 12 Order, to strike this Order from the record would have no effect other than to elevate form over function.

CONCLUSION

For the reasons stated above this motion should be denied.

Respectfully submitted,

[signature page to follow]

s/TJ Rode

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APPENDIX I

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2019-CP-07-01246
)	
GREG MARCUS SIMMONS and)	
JERMAINE ROBINSON, both)	
individually and derivatively on behalf)	
of Simmons Family Holdings, LLC,)	
a South Carolina Limited Liability)	ORDER DENYING DEFENDANTS' MOTION FOR
Company,)	SUMMARY JUDGMENT AND GRANTING
)	IN PART, PLAINTIFFS' MOTION FOR
Plaintiffs,)	SUMMARY JUDGMENT
)	
v.)	
)	
)	
PALMER E. SIMMONS, individually)	
and as Trustee of the Charles E.)	
Simmons, Jr. and Rosa G. Simmons)	
Revocable Trust dated May 5, 2016,)	
and CHARLESETTA S. AIKEN,)	
)	
Defendants.)	
)	
and)	
)	
SIMMONS FAMILY HOLDINGS, LLC,)	
)	
as a nominal Defendant.)	
_____)	

THIS MATTER came before the Court on cross motions for summary judgment pursuant to Rule 56, S.C.R.C.P. The record reflects that all discovery, with the exception of Plaintiffs' Motion to Compel¹, has been completed. The Verified Second Amended Complaint, the Answer thereto, the various affidavits and memoranda filed with this Court, and the deposition excerpts filed of record therewith, constitute the factual record of this case and that the Court may dispose of this case as a matter of law. Both motions were heard via WebEx by the Court on March 1, 2021.

¹ Plaintiffs' Motion to Compel was heard after the motions for summary judgment and is addressed by a separate Order.

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Ehrick K. Haight, Jr., Esq. and Stacey S. Collins, Esq. appeared on behalf of Jermaine Robinson and Greg Marcus Simmons (“Plaintiffs”) and Mark S. Berglind, Esq., Steven Meyer, Esq. and Antonia T. Lucia, Esq., appeared on behalf of Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 (the “Trust”), and Charlesetta Aiken (“Defendants”). Michael Hawanczek, the receiver appointed in this case did not appear, nor did Thomas A. Pendarvis, Esq. counsel for Simmons Family Holdings, LLC (“SFH”), the nominal Defendant in this action. Plaintiffs are seeking summary judgment as to all ten (10) enumerated causes of action set forth in their Second Amended Complaint. Defendants are seeking summary judgment on the claim that Plaintiffs are not members in SFH.

Upon reviewing the verified pleadings, the record, the affidavits and memoranda submitted, including the deposition excerpts, the evidence and the applicable law, and hearing statements and representations of counsel, the Court finds that Plaintiffs are entitled to partial summary judgment on their first cause of action in so far as it seeks a declaratory judgment establishing that they are members of SFH. Their percentage of interest is a fact to be determined at trial.

The Court further finds that Defendant Palmer E. Simmons made an unauthorized distribution to himself or to his company and that the Plaintiffs are entitled to partial summary judgment on their ninth cause of action for money had and received. The amount of unauthorized contributions is a fact to be determined at trial.

Plaintiffs’ Motion for Summary Judgment as to their claims for breach of contract, breach of fiduciary duty, conversion, breach of contract accompanied by fraud, interference with a contractual relationship and disassociation, are denied. Defendants’ motion for summary judgment is denied in its entirety.

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FACTS

Simmons Family Holdings, LLC (“SFH”) is a real estate holding company. It was owned wholly by the late Charles E. Simmons, Jr. up until November 3, 2015, when he executed Amended Articles of Organization for SFH, adding Plaintiffs, as Members and Defendants, Palmer E. Simmons and Charlesetta S. Aiken, as co-managers.

The record reflects that Defendants consistently acknowledged that their nephews², the Plaintiffs, were members of SFH throughout the four years preceding this litigation. Plaintiffs membership in SFH, is further supported by the following documents and testimony in the record:

- a. the Amended Articles of Incorporation, prepared by Palmer E. Simmons, signed by Charles E. Simmons, Jr. (as the sole member and manager of SFH) and subsequently filed with the Secretary of State, adding Plaintiffs as members and appointing Defendants as Co-Managers, which document was duly authenticated by Palmer E. Simmons;
- b. additional documents signed by Jermaine Robinson as owner of SFH during Charles E. Simmons, Jr.’s lifetime;
- c. the Inventory and Appraisal, filed by Ms. Lucia in the Estate of Charles E. Simmons, Jr., indicated decedent died possessed of a one-third interest;
- d. the Assignment prepared by Ms. Lucia, indicating Plaintiffs were the only remaining members of SFH;
- e. the Resolution prepared by Ms. Lucia indicating Charles E. Simmons, Jr. owned a one-third interest in SFH and Plaintiffs were the “remaining members”;
- f. deposition testimony of Palmer E. Simmons indicating that he did not own any interest in SFH prior to his father’s death;

² Plaintiff G. Marcus Simmons is also the brother, by adoption, of Defendants.

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- g. tax returns filed by SFH showing Plaintiffs as Members of SFH, signed by Palmer E. Simmons under penalties of perjury;
- h. Palmer E. Simmons sworn testimony, given before the filing of this action, in which he stated that they were members; and
- i. Plaintiffs' receipt of regular distributions from SFH.

The Defendants argued in the hearing and in their memoranda that the addition of new members requires strict adherence with the provisions of SFH's Operating Agreement. Specifically, the Defendants argued the individual Plaintiffs have no membership interest in SFH because the Amended Articles of Organization relied on by the Plaintiffs as their basis for membership do not comply with Section 3.1 of SFH's Operating Agreement. That section states in relevant part the following: "Additional Persons may be admitted to the Company as a Member and Memberships may be created and issued to those Persons and to the Member at the direction of the Member, on such terms and conditions as the Member may determine and the time of admission. The terms of admission or issuance must specify the percentage of Net Profit, Net Loss, allocable to such Person and the Capital Contribution applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Member shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Company, as appropriate, a document including the new Member's notice address, its agreement to be bound by the terms of an Operating Agreement which reflects the existence of at least two Members, and its representation and warranty that the representation and warranties required of the new Members are true and correct with respect to the Member."

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The Defendants argued the 2015 Amended Articles of Organization state only that Greg M. Simmons and Jermaine Robinson are added as Members of SFH. There is no other direction given in the Amended Articles of Organization or percentage of interest in SFH. There is no statement of net profit and net loss allocable to Greg Simmons and Jermaine Robinson. In addition, there is no capital contribution set forth pertaining to their addition as members, nor is there any evidence that either Plaintiff contributed financially. There is no documentation indicating that Plaintiffs Simmons or Robinson ever provided written indication of a notice address or an agreement to be bound by the terms of the operating agreement.

Further, the Defendants argued absent strict compliance with the Operating Agreement, any subsequent conduct allegedly consistent with a membership interest has no relevance.

Finally, the Defendants argued there is at least a scintilla of evidence to support a denial of Plaintiffs' motion for summary judgment. The Defendants presented at the hearing and in their memoranda the 2016 deposition testimony of Charles E. Simmons, Jr. in an unrelated case. In the course of the deposition, Charles E. Simmons, Jr. testified that the members of SFH are himself, his wife, Rosa Simmons, his daughter, Charlesetta Simmons, and Palmer Simmons.

The Plaintiffs objected to the admissibility of this deposition testimony based on South Carolina Code of Laws Section 19-11-20, which is commonly known as the "Dead man's Statute."

The Court finds that strict compliance with the Operating Agreement is not a prerequisite of membership. Considering all the facts in the light most favorable to the Defendants, the Court further finds that there is no issue of material fact as to Plaintiffs' status as member of SFH, but that there is an issue of material fact as to their percentage of ownership

Having found that Plaintiffs are, and have been since the date of the Articles of Amendment of SFH, members of SFH, Defendant Palmer E. Simmons made unauthorized payments and/or distributions to himself, his business, his family members, and others, for his

personal benefit. The full extent of the amount of those distributions and payments is yet to be determined by a full accounting.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56 (c), SCRCP. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). “It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine.” *Priest v. Brown*, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). “A complete failure of proof concerning an essential element of the [nonmoving] party’s case necessarily renders all other facts immaterial.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted).

LAW/ANALYSIS

By applying the summary judgment standard to the instance case, I find that there is no genuine issue of material fact that must be submitted to the fact finder, and that the undisputed evidence establishes as a matter of law, that Plaintiffs are member of SFH, but the extent of their membership is to be determined at the trial of this case. Plaintiffs sought a declaratory judgment as against the Defendants, asking that this Court declare their rights, status and legal relationship vis-à-vis membership in and to SFH.³ The Plaintiffs have presented a real and substantial controversy in regard to their rights as members and have standing to bring their action. Pursuant to the Uniform Declaratory Judgments Act (“Declaratory Judgment Act”), this Court has the power

³ 2nd Am.Compl., P.10.

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to declare Plaintiffs are members of SFH, “whether or not further relief is or could be claimed.” S.C. Code Ann. §15-53-20 (2005). Such declaration has the same force and effect as a final judgment or decree. *Id.*

Partial Declaratory Judgment as to Membership

The granting of a declaratory judgment rests in the sound discretion of the Court, to be reasonably exercised in furtherance of the purposes of the Declaratory Judgment Act. *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 567, 155 S.E.2d 618, 621 (1967). The Declaratory Judgments Act should be liberally construed to accomplish its purposes, one of which is to remove uncertainty and insecurity from legal relationships. *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 6, 56 S.E.2d 576, 578 (1949). As the Declaratory Judgment Act authorizes this Court to make determinations of questions regarding writings that constitute a contract, this Court may evaluate the terms of the Operating Agreement, the Articles of Amendment, and the related assignments and resolutions, and the other documentation presented in this case to determine the intent of the parties. S.C. Code Ann. §15-53-30, See: *Southern Atlantic Financial Services, Inc. v. Middleton*, 349 S.C. 77, 562 S.E.2d 482 (Ct. App. 2002), *aff'd as modified*, 356 S.C. 444, 590 S.E.2d 27 (2003). (*In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties*).

In the instant case, the documentation provided, the testimony of the parties, and undisputed facts, conclusively establish that Plaintiffs are entitled to the declaratory relief they request as to the issue of their membership in SFH. However, giving due regard for all of the circumstances of this case, the Court declines to go further and determine the percentage of Plaintiffs’ ownership interest and leaves that determination for the trier of fact. This Court denies Defendants’ Motion for Summary Judgment for the same reasons that support the grant of partial declaratory judgment to the Plaintiffs.

Monies Had and Received

APPENDIX I

As early as 1839, South Carolina recognized a case of monies had and received: See *Marvin v. M'Rae*, 1 Rice 171 (S.C. 1839) (“if a party has money in his or her hand that belongs to another, that other party may sue the first in an action for monies had and received”). More recently, equitable relief based on this premise was granted in *Okatie River v. Southeastern Site Prep*, 577 S.E. (S.C. App. 2003). In *Okatie*, as in this case, the Court sought to determine whether the money held by one person was really a loan, advance, deposit, or sum to be repaid upon specific terms to another person. Having determined that Defendant, Palmer E. Simmons wrongfully expended monies belonging to SFH for the benefit of the Trust, in the form of mortgage payments, insurance payments, and real property taxes on property owned by it, and further determined that it would be inequitable for the Trust to retain such funds, SFH is entitled to summary judgment as to the issue of his liability for such payments under this cause of action. The full extent of the monies to be repaid is to be determined by the trier of fact.

CONCLUSION

The purpose of the Declaratory Judgment Act is to afford a speedy and inexpensive method of deciding legal disputes. *Thompson v. State*, 415 S.C. 560, 565, 785 S.E.2d 189, 191 (2016). By declaring Plaintiffs members, this Court preserves Plaintiffs’ rights with respect to SFH, and clarifies their status and legal relationship to Defendants, Palmer E. Simmons and Charlesetta S. Aiken, as co-managers. The result of this declaratory relief is that those monies wrongfully appropriated by Defendant, Palmer E. Simmons, must be repaid to SFH for further redistribution upon a final determination as to Plaintiffs’ percentage interests, as described herein. The issue of damages accruing as the result of Defendant, Palmer Simmons’ actions is reserved for further determination, as are Plaintiffs’ remaining causes of action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that (a) Defendants’ Motion for Summary Judgment is denied; (b) Plaintiffs are granted declaratory judgment as to their membership in Simmons Family Holdings, LLC; (c) Plaintiffs percentage of ownership is to

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be determined by the trier of fact; (d) judgment is entered for Simmons Family Holdings, LLC for monies had and paid, brought derivatively on its behalf, with the amount of damages flowing therefrom to be determined by the trier of fact. Plaintiffs' remaining causes of action are unaffected by this Order.

AND IT IS SO ORDERED

R. Lawton McIntosh
Circuit Court Judge

Anderson, South Carolina

APPENDIX I



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-07-01246

GREG MARCUS SIMMONS, ET AL
PLAINTIFF(S)

PALMER E. SIMMONS, ET AL
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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. See Page 2 for additional information.
- 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:

ORDER INFORMATION

PLAINTIFF'S MOTION TO COMPEL IS GRANTED. DEFENDANTS MAY PREPARE A CONFIDENTIALITY ORDER. IF DEFENDANTS CONTEND THAT ANY DOCUMENT(S) SHOULD NOT BE PROVIDED, THEY SHALL SUBMIT IT TO THE COURT FOR IN CAMERA REVIEW. MR. HAIGHT TO PREAPRE A FORMAL ORDER. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED AS FOLLOWS: PLAINTIFFS ARE MEMBERS OF THE SIMMONS FAMILY LLC-- THE AMOUNT OF SHARES TO BE DETERMINED. ALSO, PALMER SIMMONS MADE UNAUTHORIZED DISTRIBUTIONS FROM THE SIMMONS FAMILY LLC TO HIMSELF OR TO HIS BUSINESS-- THE AMOUNT OF WHICH IS TO BE DETERMINED. MR. HAIGHT TO PREPARE A FORMAL ORDER. THE FORMAL ORDER SHALL SPECIFICALLY DISCUSS THE COURT'S AUTHORITY TO ISSUE THE ABOVE ORDER. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED IN ITS ENTIRETY.

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

APPENDIX II

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2021 Mar 02 9:29 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701246



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al

Case Number: 2019CP0701246

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

APPENDIX III

ELECTRONICALLY FILED - 2021 Mar 12 11:24 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701246

INTSTATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
)
 Plaintiffs,)
)
 v.)
)
 PALMER E. SIMMONS, individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and CHARLESETTA S. AIKEN,)
)
 Defendants.)
)
 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER FOR PAYMENT OF
 UNAUTHORIZED EXPENSES

THIS MATTER came before me on Tuesday, March 2, 2021 for a hearing to determine the amount of Unauthorized Expenses under this Court’s Order on Rule to Show Cause Granting Plaintiffs’ Motions for the Appointment of a Receiver, Accounting and other Injunctive Relief, dated September 22, 2020 (“Order of September 22, 2020”). Appearing before me via WebEx were counsel for Plaintiffs, Ehrick K. Haight, Jr., Esquire, Robert J. Arundell, Esquire and Stacey S. Collins, Esquire. Counsel for Defendants, Mark S. Berglind, Esquire, also appeared with Defendant Palmer E. Simmons. Thomas Pendarvis, Esquire, attorney for the Receiver, Michael Hawanczak, was also present.

APPENDIX III

In this Court's Order of September 22, 2020, the Receiver was directed to obtain a full accounting of the financial records of Simmons Family Holdings, LLC ("SFH") from the date of the Order Granting Temporary Injunction Relief ("Interim Order"), through the date on which the Receiver assumed control of the financial records. The Receiver was further directed to file a report of such accounting, identifying the Unauthorized Expenses, as defined in the Order of September 22, 2020. On January 28, 2021, counsel for the Receiver submitted the required report along with the accounting. The Unauthorized Expenses or Disbursements total \$188,386.48. There are also unexplained receivables of \$23,605.00. Defendant Palmer Simmons does not dispute the findings of the Receiver's report or its accompanying accounting. The parties agreed that the net amount of Unauthorized Expenses is \$164,781.48.

The Court heard testimony from Defendant Palmer Simmons regarding his alleged inability to reimburse Simmons Family Holdings, LLC for the Unauthorized Expenses made in violation of the Interim Order. Counsel for Plaintiffs cross examined Defendant Palmer Simmons regarding his various assets and sources of income. Defendant Palmer Simmons offered no evidence that the Unauthorized Expenses were, in fact, the legitimate business expenses of Simmons Family Holdings, LLC.

Under Paragraph 6 of the Order of September 22, 2020, the purpose of the hearing on March 2, 2021 is "to determine the total amount of Unauthorized Expenses, whereupon the sum so determined shall be paid to the Receiver for deposit in the SFH account(s)". (*Emphasis added*). The previous Order requires reimbursement and the Unauthorized Expenses are admitted. Having given due consideration to the testimony and the arguments of counsel,

IT IS HEREBY ORDERED AS FOLLOWS:

Defendant Palmer Simmons shall reimburse SFH for the Unauthorized Expenses totalling \$164,781.48 by making payment in that amount to the Receiver within thirty (30) days from the

APPENDIX III

date of this Order. The issue of attorney's fees to the Plaintiffs arising from Plaintiffs' motions is reserved.

AND IT IS SO ORDERED.

MARVIN H. DUKES, III
MASTER IN EQUITY
FOR BEAUFORT COUNTY

Beaufort, South Carolina

APPENDIX III



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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Feb 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2021-000375

Greg Marcus Simmons and Jermaine Robinson, both individually and derivatively on behalf of Simmons Family Holdings, LLC, a South Carolina Limited Liability Company, Respondents,

v.

Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, and Charlesetta S. Aiken, Appellants,

and

Simmons Family Holdings, LLC, as a nominal Defendant.

PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Respondents' Return to Appellants' Motion to Strike** to all counsel of record on February 28, 2022, by mailing a copy of same, electronically or with proper postage affixed thereto, as follows:

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