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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

Carmen Mullen, Circuit Court Judge

Appellate Case No. 2021-000862

Zachary Z. Zoul and Zoul Hospitality, LLC d/b/a Hospitality Advisors Group, Respondents,

v.

Lawrence Leary and Old Town Bluffton Inn, LLC, Appellants

RECORD ON APPEAL

Respectfully submitted,

/s/ Gregory Michael Galvin
Gregory Michael Galvin, Esq.
Galvin Law Group, LLC
PO Box 887
Bluffton, SC 29910
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ATTORNEYS FOR APPELLANT

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700117

Zachary Z Zoul , et al

PLAINTIFF(S)

Lawrence Leary , et al

DEFENDANT(S)

Submitted by: COURT	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 Motion to Reconsider Order Denying the Motion to Dismiss the Counterclaims filed on 6/7/2021, and Motion to Alter or Amend Judgment/Motion for New Trial/Motion to Reconsider filed on 6/10/2021 are respectfully denied without a hearing.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

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:

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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.

	2142	7/13/2021
Circuit Court Judge- Carmen T. Mullen	**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:

Ward Borden	Gregory Galvin
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter: N/A

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), SCRCP.

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.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Beaufort Common Pleas

Case Caption: Zachary Z Zoul , plaintiff, et al VS Lawrence Leary , defendant, et al

Case Number: 2019CP0700117

Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	Civil Action No. 2019-CP-07-117
Zachary Z. Zoul, et al.	)	
	)	
Plaintiff,	)	**AMENDED MOTION TO ALTER/AMEND JUDGMENT, MOTION FOR A NEW TRIAL AND MOTION TO RECONSIDER**
v.	)	
	)	
Lawrence Leary, et al.	)	
Defendants.	)	
	)	

Wherefore, the Defendants filed the Rule 52 and Ruel 59 Motion to Reconsider and Motion for a New trial, but failed to change the caption. As a result, the Defendants have refiled this Motion with the corrected heading. This Motion is identical in all respects except this paragraph and the caption listed above.

This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778–79 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). Defendants received an email on May 25, 2021, but on this date a notice of the entry of the Court's ruling has never been filed (See Exhibit "A"). Out of an abundance of caution, the Defendants are filing this Motion.

Defendants respectfully submit the Court may have overlooked or misapprehended the following points in reaching its decision:

I. Failure to Rule on the Motion in Limine and Failure to Exclude the Expert's Testimony

The Court improperly allowed the testimony of the Plaintiff's expert and failed to rule on the Defendants' Motion in Limine. Just five (5) days before the trial in the aforementioned case

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the Plaintiffs notified the Defendant that they had hired a new replacement expert. In response to the expert, the Defendants were shocked by the naming of the new expert, did not have time to hire an expert to assist in the opposition to the newly named expert, and did not have the ability to combat the testimony of the expert. Nor did the Defendants even have time to send a subpoena to the expert, or even investigate the expert. Further, no expert reports were produced, or any information was produced providing information on the expert, or what the expert would testify to, or provide an opinion. The Defendants filed a Motion on May 13, 2021 and the Court did not rule on this Motion.

Further, the Court made an error on relying on the expert's testimony because the Defendants did not have the ability within five (5) days to rebut the testimony of the expert. In addition, the expert testified that he worked all weekend before the trial reviewing the documents. Therefore, the expert was only ready to testify just before trial. The Defendants incorporate all arguments included in their Motion in Limine filed before trial in this matter as if fully rewritten herein.

As discussed below, the Court's failure to exclude the expert testimony resulted in an excessive verdict as explained below.

II. The Maximum Recovery Amount for Damages Under Quantum Merit is the Contract Amount

The Plaintiffs only successful cause of action was on the cause of action for Quantum Merit. The Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they had issued a statement for their work claiming that they were owed Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15). Pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986) the South Carolina Court of Appeals explained:

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> Even if we assume, as Johnston argues, that Brown breached an agreement to make him a partner, the result is the same. Although Johnston alleges a contract in his pleadings, he elected to sue, not on the contract for his expectancy damages, but in quantum meruit for the fair value of the services already rendered. Cf., Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936) (complaint alleged matters as to a contract between parties, but cause of action was in quantum meruit, not on contract); Coens v. Marousis, supra. **While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services**. United States Potash Co. v. McNutt, 70 F. (2d) 126 (10th Cir. 1984); Atkins v. County of Barnstable, 97 Mass. 428 (1867); Higgins v. Desert Braemer, Inc., 219 Cal. App. (2d) 744, 33 Cal. Rptr. 527 (1963) **(plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price**) [Emphasis Added]
>
> Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986)

Under the Johnson v. Brown analysis, the judgment amount is limited to Eleven Thousand Seven Hundred Fifty-Three and 15/100ths ($11,753.15), or the amount charged in the statement issued on October 29, 2021. Quantum Merit does not allow a recovery and is limited to the amount the parties agree should be paid for the services and thus the statement sent is the limiting amount of damages available to the Plaintiffs.

III. The Court Errored When Finding that Lawrence Leary Personally Benefitted

In order to succeed on a claim for Quantum Merit the Plaintiff must prove the following:

> 1. Benefit conferred by the plaintiff upon the defendant;
> 2. Realization of that benefit by the defendant; and
> 3. Retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value."
>
> Myrtle Beach Hosp. vs. City of Myrtle Beach, 341 SC 1, 8-9, 532 SE 2d 868, 872 (2000).

At trial the Plaintiffs never contended that Mr. Leary received any benefits personally for the alleged work which the Plaintiffs claimed they performed. Instead, at trial all of the Plaintiffs testified that all of the benefits were received by the Old Town Bluffton Inn, LLC and not Mr. Leary personally. Due to the fact that Mr. Leary did not receive any personal

benefit from the alleged services the Court should not apportion the judgment to him personally and any judgment should only be against the inn itself.

IV. The Court Failed to Apportion the Damages

At trial the Defendants proved that Mr. Leary owned the inn One Percent (1%) personally and Fifty Percent (50%) through his trust. The other owner of the inn is Mr. Leary's daughter, Dannille Harrison. Ms. Harrison is as a 49% owner of the inn and would have received Forty Nine Percent (49%) of any benefits like Mr. Leary. However, Ms. Harrison was not named as a party and as a result, the Court errored in apportioning the damages One Hundred Percent (100%) to Mr. Leary. Instead, at best, Mr. Leary should have received One Percent (1%) of the judgment to him personally. Mr. Leary's trust was not a named party and he was only named individually. As a result, if any of the damages are apportioned against Mr. Leary personally, they should only amount to One Percent (1%) of the award since Mr. Leary only owned One Percent (1%) of the inn.

V. The Award of Damages was Excessive

At trial, the Plaintiff agreed that the Plaintiff only sought Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15) in the statement sent to the inn. Further, at trial the Plaintiffs testified that they only sought approximately Twenty Thousand ($20,000.00) in damages. However, the Court found that the Plaintiffs were entitled to Thirty Thousand Dollars ($30,000.00). At trial the expert, which was named Five (5) days before trial, testified that the majority of the benefit conferred upon the Defendants was the pro forma which was prepared. However, the verdict failed to recognize that the Plaintiffs testified that the pro forma was performed pursuant to the signed contract for the sale of the business. It was not disputed by the Plaintiffs that the Plaintiffs would only recover on the signed contract if they procured a buyer.

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The Plaintiffs never procured a buyer and as a result were not owed any monies for preparing the pro forma.

The Court sat in the position as the jury and as a result would be subject to the same review as a jury sitting trial. Under this analysis, the Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they only sought approximately Twenty Thousand Dollars ($20,000.00) in damages. However, the Court provided the Plaintiffs with an additional Ten Thousand Dollars ($10,000.00) in damages, which were not even sought, or believed to be owed to the Plaintiffs.

When a verdict is so grossly excessive and the amount awarded so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other consideration not found on the evidence that it becomes the duty of this court, as well as of the trial court, to set aside the **verdict** absolutely. *Ray v. Simon*, 245 S.C. 346, 140 S.E. (2d) 575. Young v. Warr, 252 S.C. 179, 187, 165 S.E.2d 797, 800-01 (1969)

The verdict in this matter does not bear any rational view of the evidence since Quantum Merit only allows recovery in the contract amount. The Plaintiffs testified that they only sought Twenty Thousand ($20,000.00) in damages, but the Court awarded Thirty Thousand Dollars ($30,000.00), or Ten Thousand Dollars ($10,000.00) in excess of the damages sought by the Plaintiffs.

The Court also errored when it examined the testimony of the expert. The expert testimony should not have been allowed due to the late notice. However, an analysis of the testimony of the expert revealed that the work which he believed was valuable was the preparation of the pro forma (a few pages document). The Court errored when it failed to recognize that the Plaintiff testified that no monies were owed for the pro forma preparation since it was performed under business

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sale agreement which the Plaintiffs would only be owed a commission if the property sold. The Plaintiffs testified that they were not owed money for this work.

VI. It is Inequitable to Award Damages to the Defendants

Quantum Merit only allows the recovery of services expended which inequitably benefited the Defendant. However, the case reveals that the Plaintiffs knew that they did not have a signed contract, demanded a signed contract and decided to perform work even without a signed contract. The Plaintiffs took the risk that the Defendant would not enter into a contract when they chose to begin work. The evidence presented at trial revealed that the Defendants were reviewing the contract and had not chosen to hire the Plaintiffs.

Further, the Court recognized that there was not a meeting of the minds when the Defendants realized that the Plaintiff was going to charge for both its services, plus the cost of the innkeeper. With this misunderstanding and until the in person meeting, it is unjust to punish the Defendants for reviewing the contract and determining whether the Defendants wanted to hire the Plaintiffs.

The Court also failed to analyze which work was performed under the contract for the sale of the business. This work was done with the hope of a large commission payment and pursuant to the sales contract, the Plaintiffs were not entitled to recover any monies for the work which was performed pursuant to the sales contract.

Conclusion

Plaintiff respectfully requests the Court to reconsider its ruling and requests an Order from this Court for the following relief:

(1) Ruling on the Motion in Limine and Excluding the Expert's Testimony;

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(2) Reducing the Award of Damages to $11,753.15 to the Old Town Bluffton Inn, LLC since Quantum Merit cannot exceed the amount of the contract;

(3) Removing the Judgment from Lawrence Leary Personally since he did not receive any benefit;

(4) If the award against Lawrence Leary is not entirely removed from the judgment rolls, reducing the judgment amount to One Percent (1%) of the total award since he only owned One Percent (1%) of the inn personally;

(5) Granting the Defendants, a new trial due to the excessive award; and

(6) Overturning the verdict because it is inequitable for the Plaintiffs to prevail when the Plaintiffs knew that they did not have a signed agreement, knew that they did not have a contract for their services, but chose to take the risk and move forward with their alleged work .

RESPECTFULLY SUBMITTED,

__s/ Gregory Michael Galvin, Esq.
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PO Box 887
Bluffton, SC 29910
843-227-2231
888-362-0714 fax

Attorney for Defendants

June 4, 2021
Bluffton, SC

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF BEAUFORT)**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2019-CP-07-00117**
ZACHARY Z. ZOUL, AND ZOUL) **HOSPITALITY, LLC d/b/a)** **HOSPITALITY ADVISORS)** **GROUP,)** **)** **Plaintiff,)** **)** **v.)** **)** **LAWRENCE LEARY, AND OLD)** **TOWN BLUFFTON INN, LLC,)** **)** **Defendants.)** **)**	**JUDGMENT ORDER**

Date/Time of Trial:	**Tuesday, May 18, 2021; 9:30 a.m.**
Presiding Judge:	**Honorable Carmen Mullen**
Plaintiffs' Counsel:	**F. Ward Borden, Esq.**
Defendants' Counsel:	**Gregory M. Galvin, Esq.**

CAME the parties, by their respective counsel, on the 18th day of May 2021 at 9:30 a.m. for a bench trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.[1] Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving against the two remaining Defendants.

Findings of Fact

1. Plaintiff Zachary Z. Zoul (individually "Mr. Zoul") is a natural person, over 21 years of age,

[1] The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

DEFENDANT'S EXHIBIT A

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and a citizen and resident of Grand Island, Nebraska. Plaintiff Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") is a Nebraska-organized limited liability company that has been licensed to transact business in the State of South Carolina. Mr. Zoul is the LLC's chief operating officer. Plaintiffs are assisted in their trade work by Mr. Eric Brooks of Savannah, Georgia (hereinafter "Mr. Brooks"), and Mr. Mike Alsko (hereinafter Mr. Alsko) of Hilton Head Island, South Carolina. Mr. Zoul and Mr. Brooks attended the bench trial and gave testimony and identified written exhibits.

2. Defendant Lawrence Leary (hereinafter "Mr. Leary") owns property in Beaufort County, South Carolina at 63 Honesty Lane, Bluffton, Beaufort County, South Carolina. Mr. Leary did not attend the trial; however, a deposition transcript taken while Mr. Leary was physically in New Jersey was filed with the court.

3. Mr. Leary and Old Town Bluffton Inn, LLC (hereinafter "LLC") were represented by counsel at trial. The court was informed that Mr. Leary owns a majority member interest in the LLC and his daughter Danielle Harrison holds a minority member interest in the LLC, but that daughter Danielle Harrison now manages the Old Town Bluffton Inn. Without more, the court regards the referenced circumstances to be facts of the case.

4. This court has received and reviewed the complete deposition transcript of Lawrence Leary, who was questioned by his own attorney and was able to state his views. Mr. Leary was not at trial. The fact recollections of the Plaintiffs and the Defendants differ on some issues. The court took full opportunity to review Defendants' positions as to the facts and to draw conclusions on the facts as stated by all parties.

5. Plaintiffs opened their case with testimony and records provided or testified to by Mr. Brooks. Mr. Brooks is semi-retired, a resident of Savannah, Georgia, and per his testimony, an associate of HAG who has over twenty (45) years of experience in the hospitality and tourism trades. Mr. Brooks acknowledged his relationship with Mr. Zoul and HAG, and testified specifically about the work he performed from September 2018 through at least October 2018 for Mr. Leary and LLC. Specifically, he prepared multiple *pro formas*, prepared notes to accompany the *pro formas* and an action list of logistical items remaining to be addressed. Mr. Brooks also travelled to Mt. Pleasant with Mr. Leary, and met with company representatives of a company called Q4 Launch, which is an internet booking company. Mr. Brooks testified to also interacting with multiple vendors, with the objective of having the Old Town Bluffton Inn up and running by Thanksgiving 2018. More than once the Thanksgiving timing was described as ambitious and labor

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intensive. Mr. Brooks estimated that he had worked 80 to 100 hours on the Old Town Bluffton Inn project. Importantly, Mr. Brooks delivered his work product to Mr. Leary and the LLC. They physically received the products being produced by Mr. Brooks as HAG's associate.

6. Plaintiffs' next witness was John Sulka (hereinafter "Mr. Sulka"), a commercial banker employed now at Palmetto State Bank in Bluffton, South Carolina. Mr. Sulka testified that in the September 2018 through October 2018 time frame he was with Coastal States Bank located in Bluffton, South Carolina. Mr. Sulka verified an account told by Mr. Brooks that during the relevant time, Mr. Sulka encountered Mr. Leary in public. Mr. Sulka asked about the progress of the Old Town Bluffton Inn. Mr. Leary referred Mr. Sulka to Mr. Brooks, who was in the lobby of the Inn, and Mr. Sulka met Mr. Brooks and they conversed briefly. Mr. Sulka was Defendants' lender for the Old Town Bluffton Inn project, and Mr. Leary essentially relied upon Mr. Brooks and HAG to lend credibility to the project with their banker.

7. Mr. Zoul was Plaintiffs' witness who followed Mr. Sulka. Mr. Zoul testified to having had numerous communications with Mr. Leary concerning the LLC and Old Town Bluffton Inn. Mr. Zoul, as well, identified and described multiple documents including Plaintiffs' exhibits 10 through 23. Mr. Zoul testified to travelling to Bluffton to work on the Old Town Bluffton Inn project. Through a set of Plaintiffs' exhibits that included public records, a Deed of property to Old Town Bluffton Inn, LLC, and additional records, Mr. Zoul described three transactions between HAG on one hand, and Mr. Leary and LLC on the other. The tasks being undertaken merged.

In May 2018 Mr. Leary's son-in-law Vincent Harrison asked HAG to assist with getting the Town of Bluffton to approve a loading zone at the Inn for dropping off and picking up guests. HAG charged its hourly rate and invoiced Mr. Harrison $1,350.00. HAG received an unsigned check from Mr. Leary dated September 8, 2018 – about the time Mr. Leary needed more assistance from HAG. Payment of the $1,350.00 occurred. According to Mr. Zoul and Mr. Brooks, Mr. Leary and LLC wanted HAG to find a buyer for the Old Town Bluffton Inn. A Consulting Services Agreement (Plaintiff's Exhibit 17) was prepared by Mr. Zoul for the referenced purpose and was signed by Mr. Zoul on behalf of HAG, and Mr. Leary as "Owner" of the Inn. Testimony of Mr. Zoul and Mr. Brooks indicates that Mr. Leary shortly after signing the Consulting Services Agreement thought that the marketing of the Inn might go better if it was in operation. Mr. Leary communicated that he wanted a dual approach such that the Inn could be rendered operational by Thanksgiving 2018, and operated, and maybe sold in the future. Mr. Zoul prepared a Management

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Agreement that described a new set of responsibilities to accomplish Mr. Leary and LLC's stated changing needs.

The alteration by Mr. Leary and the LLC of their objectives, particularly setting a Thanksgiving 2018 opening date for the Inn, outpaced the ability of Mr. Zoul and HAG to create and execute with Mr. Leary and the LLC a discrete, distinct writing. Mr. Brooks and Mr. Zoul, at the urging of Mr. Leary, plunged into taking measures to enable the Old Town Bluffton Inn to open at or near the scheduled time. Mr. Leary and the LLC wanted it, and the court finds as a fact that Mr. Leary and the LLC sought just what it was being given by Mr. Brooks, Mr. Zoul and HAG. The Management Agreement was not signed, and Defendants took the position there was no written contract involving a meeting of the minds. Objectives appear to have been occurring too rapidly for an adequately discussed written contract for opening and managing the Old Town Bluffton Inn to be prepared and executed. However, while Mr. Leary's deposition essentially denies that he understood the Management Agreement and was receiving nothing for which he should pay, the fact evidence undermines the denials of Mr. Leary and the LLC. Mr. Leary sought for Mr. Brooks, Mr. Zoul and HAG to provide professional services while waiting for their down payment and signed Management Agreement to be returned. In late-October 2018, Mr. Leary had decided the Management Agreement and down payment, were not going to be delivered. Mr. Leary and LLC, by Mr. Leary's advisor, informed Mr. Zoul and HAG that their services were being terminated. Mr. Zoul prepared and delivered to Mr. Leary a discounted invoice dated October 29, 2018 (Plaintiff's Exhibit 23) that provided a discount in order that the separation be quick and clean. Notwithstanding statements to the contrary, no payment to Mr. Zoul, HAG and Mr. Brooks was forthcoming.

This court finds as fact that Plaintiffs Zoul and HAG conferred valuable benefits upon Defendants Mr. Leary and LLC; and that Defendants were not ignorant of the benefits conferred upon them but were seeking them and realized those benefits conferred. The Defendants Mr. Leary and LLC retained the benefits conferred upon them by Plaintiffs Zoul and HAG under conditions that make it unjust for Defendants to take those benefits without paying their value.

Following a break, the Plaintiffs introduced as a witness Dr. John Salazar. Dr. Salazar identified his curriculum vitae, which identified an extensive background in education, hospitality, tourism and related undertakings. Dr. Salazar was moved in, and accepted by the court, as an expert in the fields of hospitality and tourism. Dr. Salazar reviewed pleadings and discovery documents from the case, as well as having lived in Bluffton, South Carolina for years. Dr. Salazar stated that

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after reviewing the work of Plaintiffs Mr. Zoul, HAG and Mr. Brooks, that their work was competent, and appropriate for that which they had been requested to do. Dr. Salazar stated that to a reasonable degree of expert certainty, the work of Mr. Brooks and Mr. Zoul was competent and had significant value. He testified that if the work product of Mr. Zoul, Mr. Brooks and HAG was given to Defendants Mr. Leary and LLC, that they [Defendants] had received a significant and valuable benefit. Dr. Salazar, in discussing the value of Plaintiffs' work, stated that he had been paid far more for similar work. Dr. Salazar testified that, to a reasonable degree of expert certainty, the value of what Plaintiffs have conferred on Defendants is worth $30,000.00 to $50,000.00. He stated to a reasonable degree of expert certainty that of that range, the higher amount was more appropriate. It is noted that Dr. Salazar's estimate does not reflect the out-of-pocket expenses Mr. Zoul has identified.

Conclusions of Law

Following summary judgment arguments earlier in the case, the Plaintiffs had three remaining theories of recovery going into trial. Plaintiffs had pleaded (1) Breach of Express or Implied in Fact Contract; (2) Promissory Estoppel; and (3) *Quantum Meruit*.

In a Breach of Contract action, the burden was on the Plaintiffs to prove the existence and terms of the contract, to prove its breach, and to prove damages caused by the breach. Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As noted above, *supra.* P. 4, Defendants Mr. Leary and LLC were altering what they wanted, and there was no agreed upon signed contact. Breach of Contact does not fit these circumstances.

Like a Breach of Contract action, an action in Promissory Estoppel starts with a promise unambiguous in its terms. Satcher v. Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, __ (Ct.App. 2002). Defendants' objectives were too much a moving target to constitute an unambiguous promise, and made it untenable for Plaintiffs to assert an unambiguous promise. Plaintiffs initially charged hourly. Defendants decided they wanted Plaintiffs to find a buyer for the Inn, in which case the payment was to be a percentage. Before the September 17, 2018 Consulting Services Agreement had even begun to cause performance, the objective was changed by Defendants to Plaintiffs enabling a Thanksgiving opening of the Inn. Therefore, Promissory Estoppel also appears to not fit the circumstances.

Quantum Meruit is an equitable doctrine allowing recovery for unjust enrichment. The elements, as set forth by the Supreme Court of South Carolina, are "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868 (2000). Plaintiffs proved by the requisite

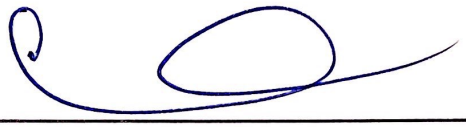
evidence that all the elements for a recovery in *quantum meruit* exist in this case. The value conferred by the Plaintiffs and retained by the Defendants was established by expert testimony and is considerable. Accordingly, it is

ORDERED, ADJUDGED AND DECREED as follows:

a. Plaintiffs are hereby granted judgment against the Defendants Lawrence Leary and Old Town Bluffton Inn, LLC, jointly and severally in the amount of $30,000 (thirty thousand dollars)

b. Plaintiff shall be entitled to post-judgment interest at the rate provided by law on any unpaid amount of the judgment until the judgment has been paid

IT IS SO ORDERED. THIS ORDER IS FINAL.



Honorable Carmen Mullen
Judge, Beaufort County Circuit Court

5/24, **2021**
Beaufort, SC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	Civil Action No. 2019-CP-07-117
Zachary Z. Zoul, et al.	)	
	)	
Plaintiff,	)	**AMENDED MOTION TO ALTER/AMEND JUDGMENT, MOTION FOR A NEW TRIAL AND MOTION TO RECONSIDER**
v.	)	
	)	
Lawrence Leary, et al.	)	
Defendants.	)	
	)	

Wherefore, the Defendants filed the Rule 52 and Ruel 59 Motion to Reconsider and Motion for a New trial, but failed to change the caption. As a result, the Defendants have refiled this Motion with the corrected heading. This Motion is identical in all respects except this paragraph and the caption listed above.

This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778–79 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). Defendants received an email on May 25, 2021, but on this date a notice of the entry of the Court's ruling has never been filed (See Exhibit "A"). Out of an abundance of caution, the Defendants are filing this Motion.

Defendants respectfully submit the Court may have overlooked or misapprehended the following points in reaching its decision:

I. Failure to Rule on the Motion in Limine and Failure to Exclude the Expert's Testimony

The Court improperly allowed the testimony of the Plaintiff's expert and failed to rule on the Defendants' Motion in Limine. Just five (5) days before the trial in the aforementioned case

the Plaintiffs notified the Defendant that they had hired a new replacement expert. In response to the expert, the Defendants were shocked by the naming of the new expert, did not have time to hire an expert to assist in the opposition to the newly named expert, and did not have the ability to combat the testimony of the expert. Nor did the Defendants even have time to send a subpoena to the expert, or even investigate the expert. Further, no expert reports were produced, or any information was produced providing information on the expert, or what the expert would testify to, or provide an opinion. The Defendants filed a Motion on May 13, 2021 and the Court did not rule on this Motion.

Further, the Court made an error on relying on the expert's testimony because the Defendants did not have the ability within five (5) days to rebut the testimony of the expert. In addition, the expert testified that he worked all weekend before the trial reviewing the documents. Therefore, the expert was only ready to testify just before trial. The Defendants incorporate all arguments included in their Motion in Limine filed before trial in this matter as if fully rewritten herein.

As discussed below, the Court's failure to exclude the expert testimony resulted in an excessive verdict as explained below.

II. The Maximum Recovery Amount for Damages Under Quantum Merit is the Contract Amount

The Plaintiffs only successful cause of action was on the cause of action for Quantum Merit. The Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they had issued a statement for their work claiming that they were owed Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15). Pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986) the South Carolina Court of Appeals explained:

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> Even if we assume, as Johnston argues, that Brown breached an agreement to make him a partner, the result is the same. Although Johnston alleges a contract in his pleadings, he elected to sue, not on the contract for his expectancy damages, but in quantum meruit for the fair value of the services already rendered. Cf., Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936) (complaint alleged matters as to a contract between parties, but cause of action was in quantum meruit, not on contract); Coens v. Marousis, supra. **While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services**. United States Potash Co. v. McNutt, 70 F. (2d) 126 (10th Cir. 1984); Atkins v. County of Barnstable, 97 Mass. 428 (1867); Higgins v. Desert Braemer, Inc., 219 Cal. App. (2d) 744, 33 Cal. Rptr. 527 (1963) **(plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price**) [Emphasis Added]
>
> Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986)

Under the Johnson v. Brown analysis, the judgment amount is limited to Eleven Thousand Seven Hundred Fifty-Three and 15/100ths ($11,753.15), or the amount charged in the statement issued on October 29, 2021. Quantum Merit does not allow a recovery and is limited to the amount the parties agree should be paid for the services and thus the statement sent is the limiting amount of damages available to the Plaintiffs.

III. The Court Errored When Finding that Lawrence Leary Personally Benefitted

In order to succeed on a claim for Quantum Merit the Plaintiff must prove the following:

> 1. Benefit conferred by the plaintiff upon the defendant;
> 2. Realization of that benefit by the defendant; and
> 3. Retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value."
>
> Myrtle Beach Hosp. vs. City of Myrtle Beach, 341 SC 1, 8-9, 532 SE 2d 868, 872 (2000).

At trial the Plaintiffs never contended that Mr. Leary received any benefits personally for the alleged work which the Plaintiffs claimed they performed. Instead, at trial all of the Plaintiffs testified that all of the benefits were received by the Old Town Bluffton Inn, LLC and not Mr. Leary personally. Due to the fact that Mr. Leary did not receive any personal

benefit from the alleged services the Court should not apportion the judgment to him personally and any judgment should only be against the inn itself.

IV. The Court Failed to Apportion the Damages

At trial the Defendants proved that Mr. Leary owned the inn One Percent (1%) personally and Fifty Percent (50%) through his trust. The other owner of the inn is Mr. Leary's daughter, Dannille Harrison. Ms. Harrison is as a 49% owner of the inn and would have received Forty Nine Percent (49%) of any benefits like Mr. Leary. However, Ms. Harrison was not named as a party and as a result, the Court errored in apportioning the damages One Hundred Percent (100%) to Mr. Leary. Instead, at best, Mr. Leary should have received One Percent (1%) of the judgment to him personally. Mr. Leary's trust was not a named party and he was only named individually. As a result, if any of the damages are apportioned against Mr. Leary personally, they should only amount to One Percent (1%) of the award since Mr. Leary only owned One Percent (1%) of the inn.

V. The Award of Damages was Excessive

At trial, the Plaintiff agreed that the Plaintiff only sought Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15) in the statement sent to the inn. Further, at trial the Plaintiffs testified that they only sought approximately Twenty Thousand ($20,000.00) in damages. However, the Court found that the Plaintiffs were entitled to Thirty Thousand Dollars ($30,000.00). At trial the expert, which was named Five (5) days before trial, testified that the majority of the benefit conferred upon the Defendants was the pro forma which was prepared. However, the verdict failed to recognize that the Plaintiffs testified that the pro forma was performed pursuant to the signed contract for the sale of the business. It was not disputed by the Plaintiffs that the Plaintiffs would only recover on the signed contract if they procured a buyer.

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The Plaintiffs never procured a buyer and as a result were not owed any monies for preparing the pro forma.

The Court sat in the position as the jury and as a result would be subject to the same review as a jury sitting trial. Under this analysis, the Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they only sought approximately Twenty Thousand Dollars ($20,000.00) in damages. However, the Court provided the Plaintiffs with an additional Ten Thousand Dollars ($10,000.00) in damages, which were not even sought, or believed to be owed to the Plaintiffs.

When a verdict is so grossly excessive and the amount awarded so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other consideration not found on the evidence that it becomes the duty of this court, as well as of the trial court, to set aside the **verdict** absolutely. *Ray v. Simon*, 245 S.C. 346, 140 S.E. (2d) 575. Young v. Warr, 252 S.C. 179, 187, 165 S.E.2d 797, 800-01 (1969)

The verdict in this matter does not bear any rational view of the evidence since Quantum Merit only allows recovery in the contract amount. The Plaintiffs testified that they only sought Twenty Thousand ($20,000.00) in damages, but the Court awarded Thirty Thousand Dollars ($30,000.00), or Ten Thousand Dollars ($10,000.00) in excess of the damages sought by the Plaintiffs.

The Court also errored when it examined the testimony of the expert. The expert testimony should not have been allowed due to the late notice. However, an analysis of the testimony of the expert revealed that the work which he believed was valuable was the preparation of the pro forma (a few pages document). The Court errored when it failed to recognize that the Plaintiff testified that no monies were owed for the pro forma preparation since it was performed under business

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sale agreement which the Plaintiffs would only be owed a commission if the property sold. The Plaintiffs testified that they were not owed money for this work.

VI. It is Inequitable to Award Damages to the Defendants

Quantum Merit only allows the recovery of services expended which inequitably benefited the Defendant. However, the case reveals that the Plaintiffs knew that they did not have a signed contract, demanded a signed contract and decided to perform work even without a signed contract. The Plaintiffs took the risk that the Defendant would not enter into a contract when they chose to begin work. The evidence presented at trial revealed that the Defendants were reviewing the contract and had not chosen to hire the Plaintiffs.

Further, the Court recognized that there was not a meeting of the minds when the Defendants realized that the Plaintiff was going to charge for both its services, plus the cost of the innkeeper. With this misunderstanding and until the in person meeting, it is unjust to punish the Defendants for reviewing the contract and determining whether the Defendants wanted to hire the Plaintiffs.

The Court also failed to analyze which work was performed under the contract for the sale of the business. This work was done with the hope of a large commission payment and pursuant to the sales contract, the Plaintiffs were not entitled to recover any monies for the work which was performed pursuant to the sales contract.

Conclusion

Plaintiff respectfully requests the Court to reconsider its ruling and requests an Order from this Court for the following relief:

(1) Ruling on the Motion in Limine and Excluding the Expert's Testimony;

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(2) Reducing the Award of Damages to $11,753.15 to the Old Town Bluffton Inn, LLC since Quantum Merit cannot exceed the amount of the contract;

(3) Removing the Judgment from Lawrence Leary Personally since he did not receive any benefit;

(4) If the award against Lawrence Leary is not entirely removed from the judgment rolls, reducing the judgment amount to One Percent (1%) of the total award since he only owned One Percent (1%) of the inn personally;

(5) Granting the Defendants, a new trial due to the excessive award; and

(6) Overturning the verdict because it is inequitable for the Plaintiffs to prevail when the Plaintiffs knew that they did not have a signed agreement, knew that they did not have a contract for their services, but chose to take the risk and move forward with their alleged work .

RESPECTFULLY SUBMITTED,

__s/ Gregory Michael Galvin, Esq.
Galvin Law Group, LLC
PO Box 887
Bluffton, SC 29910
843-227-2231
888-362-0714 fax

Attorney for Defendants

June 4, 2021
Bluffton, SC

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF BEAUFORT)**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2019-CP-07-00117**
ZACHARY Z. ZOUL, AND ZOUL) **HOSPITALITY, LLC d/b/a)** **HOSPITALITY ADVISORS)** **GROUP,)** **)** **Plaintiff,)** **)** **v.)** **)** **LAWRENCE LEARY, AND OLD)** **TOWN BLUFFTON INN, LLC,)** **)** **Defendants.)** **)**	**JUDGMENT ORDER**

Date/Time of Trial: Tuesday, May 18, 2021; 9:30 a.m.
Presiding Judge: Honorable Carmen Mullen
Plaintiffs' Counsel: F. Ward Borden, Esq.
Defendants' Counsel: Gregory M. Galvin, Esq.

CAME the parties, by their respective counsel, on the 18th day of May 2021 at 9:30 a.m. for a bench trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.[1] Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving against the two remaining Defendants.

Findings of Fact

1. Plaintiff Zachary Z. Zoul (individually "Mr. Zoul") is a natural person, over 21 years of age,

[1] The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

DEFENDANT'S EXHIBIT A

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and a citizen and resident of Grand Island, Nebraska. Plaintiff Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") is a Nebraska-organized limited liability company that has been licensed to transact business in the State of South Carolina. Mr. Zoul is the LLC's chief operating officer. Plaintiffs are assisted in their trade work by Mr. Eric Brooks of Savannah, Georgia (hereinafter "Mr. Brooks"), and Mr. Mike Alsko (hereinafter Mr. Alsko) of Hilton Head Island, South Carolina. Mr. Zoul and Mr. Brooks attended the bench trial and gave testimony and identified written exhibits.

2. Defendant Lawrence Leary (hereinafter "Mr. Leary") owns property in Beaufort County, South Carolina at 63 Honesty Lane, Bluffton, Beaufort County, South Carolina. Mr. Leary did not attend the trial; however, a deposition transcript taken while Mr. Leary was physically in New Jersey was filed with the court.

3. Mr. Leary and Old Town Bluffton Inn, LLC (hereinafter "LLC") were represented by counsel at trial. The court was informed that Mr. Leary owns a majority member interest in the LLC and his daughter Danielle Harrison holds a minority member interest in the LLC, but that daughter Danielle Harrison now manages the Old Town Bluffton Inn. Without more, the court regards the referenced circumstances to be facts of the case.

4. This court has received and reviewed the complete deposition transcript of Lawrence Leary, who was questioned by his own attorney and was able to state his views. Mr. Leary was not at trial. The fact recollections of the Plaintiffs and the Defendants differ on some issues. The court took full opportunity to review Defendants' positions as to the facts and to draw conclusions on the facts as stated by all parties.

5. Plaintiffs opened their case with testimony and records provided or testified to by Mr. Brooks. Mr. Brooks is semi-retired, a resident of Savannah, Georgia, and per his testimony, an associate of HAG who has over twenty (45) years of experience in the hospitality and tourism trades. Mr. Brooks acknowledged his relationship with Mr. Zoul and HAG, and testified specifically about the work he performed from September 2018 through at least October 2018 for Mr. Leary and LLC. Specifically, he prepared multiple *pro formas*, prepared notes to accompany the *pro formas* and an action list of logistical items remaining to be addressed. Mr. Brooks also travelled to Mt. Pleasant with Mr. Leary, and met with company representatives of a company called Q4 Launch, which is an internet booking company. Mr. Brooks testified to also interacting with multiple vendors, with the objective of having the Old Town Bluffton Inn up and running by Thanksgiving 2018. More than once the Thanksgiving timing was described as ambitious and labor

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intensive. Mr. Brooks estimated that he had worked 80 to 100 hours on the Old Town Bluffton Inn project. Importantly, Mr. Brooks delivered his work product to Mr. Leary and the LLC. They physically received the products being produced by Mr. Brooks as HAG's associate.

6. Plaintiffs' next witness was John Sulka (hereinafter "Mr. Sulka"), a commercial banker employed now at Palmetto State Bank in Bluffton, South Carolina. Mr. Sulka testified that in the September 2018 through October 2018 time frame he was with Coastal States Bank located in Bluffton, South Carolina. Mr. Sulka verified an account told by Mr. Brooks that during the relevant time, Mr. Sulka encountered Mr. Leary in public. Mr. Sulka asked about the progress of the Old Town Bluffton Inn. Mr. Leary referred Mr. Sulka to Mr. Brooks, who was in the lobby of the Inn, and Mr. Sulka met Mr. Brooks and they conversed briefly. Mr. Sulka was Defendants' lender for the Old Town Bluffton Inn project, and Mr. Leary essentially relied upon Mr. Brooks and HAG to lend credibility to the project with their banker.

7. Mr. Zoul was Plaintiffs' witness who followed Mr. Sulka. Mr. Zoul testified to having had numerous communications with Mr. Leary concerning the LLC and Old Town Bluffton Inn. Mr. Zoul, as well, identified and described multiple documents including Plaintiffs' exhibits 10 through 23. Mr. Zoul testified to travelling to Bluffton to work on the Old Town Bluffton Inn project. Through a set of Plaintiffs' exhibits that included public records, a Deed of property to Old Town Bluffton Inn, LLC, and additional records, Mr. Zoul described three transactions between HAG on one hand, and Mr. Leary and LLC on the other. The tasks being undertaken merged.

In May 2018 Mr. Leary's son-in-law Vincent Harrison asked HAG to assist with getting the Town of Bluffton to approve a loading zone at the Inn for dropping off and picking up guests. HAG charged its hourly rate and invoiced Mr. Harrison $1,350.00. HAG received an unsigned check from Mr. Leary dated September 8, 2018 – about the time Mr. Leary needed more assistance from HAG. Payment of the $1,350.00 occurred. According to Mr. Zoul and Mr. Brooks, Mr. Leary and LLC wanted HAG to find a buyer for the Old Town Bluffton Inn. A Consulting Services Agreement (Plaintiff's Exhibit 17) was prepared by Mr. Zoul for the referenced purpose and was signed by Mr. Zoul on behalf of HAG, and Mr. Leary as "Owner" of the Inn. Testimony of Mr. Zoul and Mr. Brooks indicates that Mr. Leary shortly after signing the Consulting Services Agreement thought that the marketing of the Inn might go better if it was in operation. Mr. Leary communicated that he wanted a dual approach such that the Inn could be rendered operational by Thanksgiving 2018, and operated, and maybe sold in the future. Mr. Zoul prepared a Management

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Agreement that described a new set of responsibilities to accomplish Mr. Leary and LLC's stated changing needs.

The alteration by Mr. Leary and the LLC of their objectives, particularly setting a Thanksgiving 2018 opening date for the Inn, outpaced the ability of Mr. Zoul and HAG to create and execute with Mr. Leary and the LLC a discrete, distinct writing. Mr. Brooks and Mr. Zoul, at the urging of Mr. Leary, plunged into taking measures to enable the Old Town Bluffton Inn to open at or near the scheduled time. Mr. Leary and the LLC wanted it, and the court finds as a fact that Mr. Leary and the LLC sought just what it was being given by Mr. Brooks, Mr. Zoul and HAG. The Management Agreement was not signed, and Defendants took the position there was no written contract involving a meeting of the minds. Objectives appear to have been occurring too rapidly for an adequately discussed written contract for opening and managing the Old Town Bluffton Inn to be prepared and executed. However, while Mr. Leary's deposition essentially denies that he understood the Management Agreement and was receiving nothing for which he should pay, the fact evidence undermines the denials of Mr. Leary and the LLC. Mr. Leary sought for Mr. Brooks, Mr. Zoul and HAG to provide professional services while waiting for their down payment and signed Management Agreement to be returned. In late-October 2018, Mr. Leary had decided the Management Agreement and down payment, were not going to be delivered. Mr. Leary and LLC, by Mr. Leary's advisor, informed Mr. Zoul and HAG that their services were being terminated. Mr. Zoul prepared and delivered to Mr. Leary a discounted invoice dated October 29, 2018 (Plaintiff's Exhibit 23) that provided a discount in order that the separation be quick and clean. Notwithstanding statements to the contrary, no payment to Mr. Zoul, HAG and Mr. Brooks was forthcoming.

This court finds as fact that Plaintiffs Zoul and HAG conferred valuable benefits upon Defendants Mr. Leary and LLC; and that Defendants were not ignorant of the benefits conferred upon them but were seeking them and realized those benefits conferred. The Defendants Mr. Leary and LLC retained the benefits conferred upon them by Plaintiffs Zoul and HAG under conditions that make it unjust for Defendants to take those benefits without paying their value.

Following a break, the Plaintiffs introduced as a witness Dr. John Salazar. Dr. Salazar identified his curriculum vitae, which identified an extensive background in education, hospitality, tourism and related undertakings. Dr. Salazar was moved in, and accepted by the court, as an expert in the fields of hospitality and tourism. Dr. Salazar reviewed pleadings and discovery documents from the case, as well as having lived in Bluffton, South Carolina for years. Dr. Salazar stated that

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Like a Breach of Contract action, an action in Promissory Estoppel starts with a promise unambiguous in its terms. Satcher v. Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, __ (Ct.App. 2002). Defendants' objectives were too much a moving target to constitute an unambiguous promise, and made it untenable for Plaintiffs to assert an unambiguous promise. Plaintiffs initially charged hourly. Defendants decided they wanted Plaintiffs to find a buyer for the Inn, in which case the payment was to be a percentage. Before the September 17, 2018 Consulting Services Agreement had even begun to cause performance, the objective was changed by Defendants to Plaintiffs enabling a Thanksgiving opening of the Inn. Therefore, Promissory Estoppel also appears to not fit the circumstances.

Quantum Meruit is an equitable doctrine allowing recovery for unjust enrichment. The elements, as set forth by the Supreme Court of South Carolina, are "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868 (2000). Plaintiffs proved by the requisite

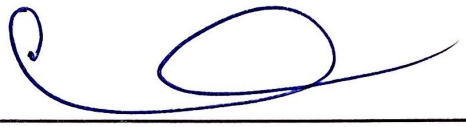
evidence that all the elements for a recovery in *quantum meruit* exist in this case. The value conferred by the Plaintiffs and retained by the Defendants was established by expert testimony and is considerable. Accordingly, it is

ORDERED, ADJUDGED AND DECREED as follows:

a. Plaintiffs are hereby granted judgment against the Defendants Lawrence Leary and Old Town Bluffton Inn, LLC, jointly and severally in the amount of $30,000 (thirty thousand dollars)

b. Plaintiff shall be entitled to post-judgment interest at the rate provided by law on any unpaid amount of the judgment until the judgment has been paid

IT IS SO ORDERED. THIS ORDER IS FINAL.



Honorable Carmen Mullen
Judge, Beaufort County Circuit Court

5/24, **2021**
Beaufort, SC

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ELECTRONICALLY FILED - 2021 Jun 07 10:35 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	Civil Action No. 2019-CP-07-117
Zachary Z. Zoul, et al.	)	
	)	
Plaintiff,	)	**MOTION TO RECONSIDER THE ORDER DENYING THE MOTION TO DISMISS THE COUNTERCLAIMS**
v.	)	
	)	
Lawrence Leary, et al.	)	
Defendants.	)	
	)	

This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778–79 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). Defendants received an email on May 25, 2021, but on this date a notice of the entry of the Court's ruling has never been filed (See Exhibit "A"). Out of an abundance of caution, the Defendants are filing this Motion.

Defendants respectfully submit the Court may have overlooked or misapprehended the following points in reaching its decision:

I. Failure to Rule on the Motion in Limine and Failure to Exclude the Expert's Testimony

The Court improperly allowed the testimony of the Plaintiff's expert and failed to rule on the Defendants' Motion in Limine. Just five (5) days before the trial in the aforementioned case the Plaintiffs notified the Defendant that they had hired a new replacement expert. In response to the expert, the Defendants were shocked by the naming of the new expert, did not have time to hire an expert to assist in the opposition to the newly named expert, and did not have the ability to combat the testimony of the expert. Nor did the Defendants even have time to send a subpoena to

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the expert, or even investigate the expert. Further, no expert reports were produced, or any information was produced providing information on the expert, or what the expert would testify to, or provide an opinion. The Defendants filed a Motion in Limine on May 13, 2021 and the Court did not rule on this Motion.

Further, the Court made an error on relying on the expert's testimony because the Defendants did not have the ability within five (5) days to rebut the testimony of the expert. In addition, the expert testified that he worked all weekend before the trial reviewing the documents. Therefore, the expert was only ready to testify just before trial. The Defendants incorporate all arguments included in their Motion in Limine filed before trial in this matter as if fully rewritten herein.

As discussed below, the Court's failure to exclude the expert testimony resulted in an excessive verdict as explained below.

II. The Maximum Recovery Amount for Damages Under Quantum Merit is the Contract Amount

The Plaintiffs only successful cause of action was on the cause of action for Quantum Merit. The Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they had issued a statement for their work claiming that they were owed Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15). Pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986) the South Carolina Court of Appeals explained:

> Even if we assume, as Johnston argues, that Brown breached an agreement to make him a partner, the result is the same. Although Johnston alleges a contract in his pleadings, he elected to sue, not on the contract for his expectancy damages, but in quantum meruit for the fair value of the services already rendered. Cf., Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936) (complaint alleged matters as to a contract between parties, but cause of action was in quantum meruit, not on contract); Coens v. Marousis, supra. **While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid**

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> **for the services**. United States Potash Co. v. McNutt, 70 F. (2d) 126 (10th Cir. 1984); Atkins v. County of Barnstable, 97 Mass. 428 (1867); Higgins v. Desert Braemer, Inc., 219 Cal. App. (2d) 744, 33 Cal. Rptr. 527 (1963) **(plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price**) [Emphasis Added]
>
> Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986)

Under the Johnson v. Brown analysis, the judgment amount is limited to Eleven Thousand Seven Hundred Fifty-Three and 15/100ths ($11,753.15), or the amount charged in the statement issued on October 29, 2021. Quantum Merit does not allow a recovery and is limited to the amount the parties agree should be paid for the services and thus the statement sent is the limiting amount of damages available to the Plaintiffs.

III. The Court Errored When Finding that Lawrence Leary Personally Benefitted

In order to succeed on a claim for Quantum Merit the Plaintiff must prove the following:

> 1. Benefit conferred by the plaintiff upon the defendant;
> 2. Realization of that benefit by the defendant; and
> 3. Retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value."
>
> Myrtle Beach Hosp. vs. City of Myrtle Beach, 341 SC 1, 8-9, 532 SE 2d 868, 872 (2000).

At trial the Plaintiffs never contended that Mr. Leary received any benefits personally for the alleged work which the Plaintiffs claimed they performed. Instead, at trial all of the Plaintiffs testified that all of the benefits were received by the Old Town Bluffton Inn, LLC and not Mr. Leary personally. Due to the fact that Mr. Leary did not receive any personal benefit from the alleged services the Court should not apportion the judgment to him personally and any judgment should only be against the inn itself.

IV. The Court Failed to Apportion the Damages

At trial the Defendants proved that Mr. Leary owned the inn One Percent (1%) personally and Fifty Percent (50%) through his trust. The other owner of the inn is Mr. Leary's daughter,

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Dannille Harrison. Ms. Harrison is as a 49% owner of the inn and would have received Forty Nine Percent (49%) of any benefits like Mr. Leary. However, Ms. Harrison was not named as a party and as a result, the Court errored in apportioning the damages One Hundred Percent (100%) to Mr. Leary. Instead, at best, Mr. Leary should have received One Percent (1%) of the judgment to him personally. Mr. Leary's trust was not a named party and he was only named individually. As a result, if any of the damages are apportioned against Mr. Leary personally, they should only amount to One Percent (1%) of the award since Mr. Leary only owned One Percent (1%) of the inn.

V. The Award of Damages was Excessive

At trial, the Plaintiff agreed that the Plaintiff only sought Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15) in the statement sent to the inn. Further, at trial the Plaintiffs testified that they only sought approximately Twenty Thousand ($20,000.00) in damages. However, the Court found that the Plaintiffs were entitled to Thirty Thousand Dollars ($30,000.00). At trial the expert, which was named Five (5) days before trial, testified that the majority of the benefit conferred upon the Defendants was the pro forma which was prepared. However, the verdict failed to recognize that the Plaintiffs testified that the pro forma was performed pursuant to the signed contract for the sale of the business. It was not disputed by the Plaintiffs that the Plaintiffs would only recover on the signed contract if they procured a buyer. The Plaintiffs never procured a buyer and as a result were not owed any monies for preparing the pro forma.

The Court sat in the position as the jury and as a result would be subject to the same review as a jury sitting trial. Under this analysis, the Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they only sought approximately

Twenty Thousand Dollars ($20,000.00) in damages. However, the Court provided the Plaintiffs with an additional Ten Thousand Dollars ($10,000.00) in damages, which were not even sought, or believed to be owed to the Plaintiffs.

When a verdict is so grossly excessive and the amount awarded so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other consideration not found on the evidence that it becomes the duty of this court, as well as of the trial court, to set aside the **verdict** absolutely. *Ray v. Simon*, 245 S.C. 346, 140 S.E. (2d) 575. Young v. Warr, 252 S.C. 179, 187, 165 S.E.2d 797, 800-01 (1969)

The verdict in this matter does not bear any rational view of the evidence since Quantum Merit only allows recovery in the contract amount. The Plaintiffs testified that they only sought Twenty Thousand ($20,000.00) in damages, but the Court awarded Thirty Thousand Dollars ($30,000.00), or Ten Thousand Dollars ($10,000.00) in excess of the damages sought by the Plaintiffs.

The Court also errored when it examined the testimony of the expert. The expert testimony should not have been allowed due to the late notice. However, an analysis of the testimony of the expert revealed that the work which he believed was valuable was the preparation of the pro forma (a few pages document). The Court errored when it failed to recognize that the Plaintiff testified that no monies were owed for the pro forma preparation since it was performed under business sale agreement which the Plaintiffs would only be owed a commission if the property sold. The Plaintiffs testified that they were not owed money for this work.

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VI. It is Inequitable to Award Damages to the Defendants

Quantum Merit only allows the recovery of services expended which inequitably benefited the Defendant. However, the case reveals that the Plaintiffs knew that they did not have a signed contract, demanded a signed contract and decided to perform work even without a signed contract. The Plaintiffs took the risk that the Defendant would not enter into a contract when they chose to begin work. The evidence presented at trial revealed that the Defendants were reviewing the contract and had not chosen to hire the Plaintiffs.

Further, the Court recognized that there was not a meeting of the minds when the Defendants realized that the Plaintiff was going to charge for both its services, plus the cost of the innkeeper. With this misunderstanding and until the in-person meeting, it is unjust to punish the Defendants for reviewing the contract and determining whether the Defendants wanted to hire the Plaintiffs.

The Court also failed to analyze which work was performed under the contract for the sale of the business. This work was done with the hope of a large commission payment and pursuant to the sales contract, the Plaintiffs were not entitled to recover any monies for the work which was performed pursuant to the sales contract.

Conclusion

Plaintiff respectfully requests the Court to reconsider its ruling and requests an Order from this Court for the following relief:

(1) Ruling on the Motion in Limine and Excluding the Expert's Testimony;

(2) Reducing the Award of Damages to $11,753.15 to the Old Town Bluffton Inn, LLC since Quantum Merit cannot exceed the amount of the contract;

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(3) Removing the Judgment from Lawrence Leary Personally since he did not receive any benefit;

(4) If the award against Lawrence Leary is not entirely removed from the judgment rolls, reducing the judgment amount to One Percent (1%) of the total award since he only owned One Percent (1%) of the inn personally;

(5) Granting the Defendants, a new trial due to the excessive award; and

(6) Overturning the verdict because it is inequitable for the Plaintiffs to prevail when the Plaintiffs knew that they did not have a signed agreement, knew that they did not have a contract for their services, but chose to take the risk and move forward with their alleged work.

RESPECTFULLY SUBMITTED,

__s/ Gregory Michael Galvin, Esq.
Galvin Law Group, LLC
PO Box 887
Bluffton, SC 29910
843-227-2231
888-362-0714 fax

Attorney for Defendants

June 4, 2021
Bluffton, SC

Record___<<Bates Number#139

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF BEAUFORT)**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2019-CP-07-00117**
ZACHARY Z. ZOUL, AND ZOUL) **HOSPITALITY, LLC d/b/a)** **HOSPITALITY ADVISORS)** **GROUP,)** **)** **Plaintiff,)** **)** **v.)** **)** **LAWRENCE LEARY, AND OLD)** **TOWN BLUFFTON INN, LLC,)** **)** **Defendants.)** **)**	**JUDGMENT ORDER**

Date/Time of Trial:	**Tuesday, May 18, 2021; 9:30 a.m.**
Presiding Judge:	**Honorable Carmen Mullen**
Plaintiffs' Counsel:	**F. Ward Borden, Esq.**
Defendants' Counsel:	**Gregory M. Galvin, Esq.**

CAME the parties, by their respective counsel, on the 18th day of May 2021 at 9:30 a.m. for a bench trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.[1] Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving against the two remaining Defendants.

Findings of Fact

1. Plaintiff Zachary Z. Zoul (individually "Mr. Zoul") is a natural person, over 21 years of age,

[1] The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

DEFENDANT'S EXHIBIT A

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and a citizen and resident of Grand Island, Nebraska. Plaintiff Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") is a Nebraska-organized limited liability company that has been licensed to transact business in the State of South Carolina. Mr. Zoul is the LLC's chief operating officer. Plaintiffs are assisted in their trade work by Mr. Eric Brooks of Savannah, Georgia (hereinafter "Mr. Brooks"), and Mr. Mike Alsko (hereinafter Mr. Alsko) of Hilton Head Island, South Carolina. Mr. Zoul and Mr. Brooks attended the bench trial and gave testimony and identified written exhibits.

2. Defendant Lawrence Leary (hereinafter "Mr. Leary") owns property in Beaufort County, South Carolina at 63 Honesty Lane, Bluffton, Beaufort County, South Carolina. Mr. Leary did not attend the trial; however, a deposition transcript taken while Mr. Leary was physically in New Jersey was filed with the court.

3. Mr. Leary and Old Town Bluffton Inn, LLC (hereinafter "LLC") were represented by counsel at trial. The court was informed that Mr. Leary owns a majority member interest in the LLC and his daughter Danielle Harrison holds a minority member interest in the LLC, but that daughter Danielle Harrison now manages the Old Town Bluffton Inn. Without more, the court regards the referenced circumstances to be facts of the case.

4. This court has received and reviewed the complete deposition transcript of Lawrence Leary, who was questioned by his own attorney and was able to state his views. Mr. Leary was not at trial. The fact recollections of the Plaintiffs and the Defendants differ on some issues. The court took full opportunity to review Defendants' positions as to the facts and to draw conclusions on the facts as stated by all parties.

5. Plaintiffs opened their case with testimony and records provided or testified to by Mr. Brooks. Mr. Brooks is semi-retired, a resident of Savannah, Georgia, and per his testimony, an associate of HAG who has over twenty (45) years of experience in the hospitality and tourism trades. Mr. Brooks acknowledged his relationship with Mr. Zoul and HAG, and testified specifically about the work he performed from September 2018 through at least October 2018 for Mr. Leary and LLC. Specifically, he prepared multiple *pro formas*, prepared notes to accompany the *pro formas* and an action list of logistical items remaining to be addressed. Mr. Brooks also travelled to Mt. Pleasant with Mr. Leary, and met with company representatives of a company called Q4 Launch, which is an internet booking company. Mr. Brooks testified to also interacting with multiple vendors, with the objective of having the Old Town Bluffton Inn up and running by Thanksgiving 2018. More than once the Thanksgiving timing was described as ambitious and labor

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intensive. Mr. Brooks estimated that he had worked 80 to 100 hours on the Old Town Bluffton Inn project. Importantly, Mr. Brooks delivered his work product to Mr. Leary and the LLC. They physically received the products being produced by Mr. Brooks as HAG's associate.

6. Plaintiffs' next witness was John Sulka (hereinafter "Mr. Sulka"), a commercial banker employed now at Palmetto State Bank in Bluffton, South Carolina. Mr. Sulka testified that in the September 2018 through October 2018 time frame he was with Coastal States Bank located in Bluffton, South Carolina. Mr. Sulka verified an account told by Mr. Brooks that during the relevant time, Mr. Sulka encountered Mr. Leary in public. Mr. Sulka asked about the progress of the Old Town Bluffton Inn. Mr. Leary referred Mr. Sulka to Mr. Brooks, who was in the lobby of the Inn, and Mr. Sulka met Mr. Brooks and they conversed briefly. Mr. Sulka was Defendants' lender for the Old Town Bluffton Inn project, and Mr. Leary essentially relied upon Mr. Brooks and HAG to lend credibility to the project with their banker.

7. Mr. Zoul was Plaintiffs' witness who followed Mr. Sulka. Mr. Zoul testified to having had numerous communications with Mr. Leary concerning the LLC and Old Town Bluffton Inn. Mr. Zoul, as well, identified and described multiple documents including Plaintiffs' exhibits 10 through 23. Mr. Zoul testified to travelling to Bluffton to work on the Old Town Bluffton Inn project. Through a set of Plaintiffs' exhibits that included public records, a Deed of property to Old Town Bluffton Inn, LLC, and additional records, Mr. Zoul described three transactions between HAG on one hand, and Mr. Leary and LLC on the other. The tasks being undertaken merged.

In May 2018 Mr. Leary's son-in-law Vincent Harrison asked HAG to assist with getting the Town of Bluffton to approve a loading zone at the Inn for dropping off and picking up guests. HAG charged its hourly rate and invoiced Mr. Harrison $1,350.00. HAG received an unsigned check from Mr. Leary dated September 8, 2018 – about the time Mr. Leary needed more assistance from HAG. Payment of the $1,350.00 occurred. According to Mr. Zoul and Mr. Brooks, Mr. Leary and LLC wanted HAG to find a buyer for the Old Town Bluffton Inn. A Consulting Services Agreement (Plaintiff's Exhibit 17) was prepared by Mr. Zoul for the referenced purpose and was signed by Mr. Zoul on behalf of HAG, and Mr. Leary as "Owner" of the Inn. Testimony of Mr. Zoul and Mr. Brooks indicates that Mr. Leary shortly after signing the Consulting Services Agreement thought that the marketing of the Inn might go better if it was in operation. Mr. Leary communicated that he wanted a dual approach such that the Inn could be rendered operational by Thanksgiving 2018, and operated, and maybe sold in the future. Mr. Zoul prepared a Management

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Agreement that described a new set of responsibilities to accomplish Mr. Leary and LLC's stated changing needs.

The alteration by Mr. Leary and the LLC of their objectives, particularly setting a Thanksgiving 2018 opening date for the Inn, outpaced the ability of Mr. Zoul and HAG to create and execute with Mr. Leary and the LLC a discrete, distinct writing. Mr. Brooks and Mr. Zoul, at the urging of Mr. Leary, plunged into taking measures to enable the Old Town Bluffton Inn to open at or near the scheduled time. Mr. Leary and the LLC wanted it, and the court finds as a fact that Mr. Leary and the LLC sought just what it was being given by Mr. Brooks, Mr. Zoul and HAG. The Management Agreement was not signed, and Defendants took the position there was no written contract involving a meeting of the minds. Objectives appear to have been occurring too rapidly for an adequately discussed written contract for opening and managing the Old Town Bluffton Inn to be prepared and executed. However, while Mr. Leary's deposition essentially denies that he understood the Management Agreement and was receiving nothing for which he should pay, the fact evidence undermines the denials of Mr. Leary and the LLC. Mr. Leary sought for Mr. Brooks, Mr. Zoul and HAG to provide professional services while waiting for their down payment and signed Management Agreement to be returned. In late-October 2018, Mr. Leary had decided the Management Agreement and down payment, were not going to be delivered. Mr. Leary and LLC, by Mr. Leary's advisor, informed Mr. Zoul and HAG that their services were being terminated. Mr. Zoul prepared and delivered to Mr. Leary a discounted invoice dated October 29, 2018 (Plaintiff's Exhibit 23) that provided a discount in order that the separation be quick and clean. Notwithstanding statements to the contrary, no payment to Mr. Zoul, HAG and Mr. Brooks was forthcoming.

This court finds as fact that Plaintiffs Zoul and HAG conferred valuable benefits upon Defendants Mr. Leary and LLC; and that Defendants were not ignorant of the benefits conferred upon them but were seeking them and realized those benefits conferred. The Defendants Mr. Leary and LLC retained the benefits conferred upon them by Plaintiffs Zoul and HAG under conditions that make it unjust for Defendants to take those benefits without paying their value.

Following a break, the Plaintiffs introduced as a witness Dr. John Salazar. Dr. Salazar identified his curriculum vitae, which identified an extensive background in education, hospitality, tourism and related undertakings. Dr. Salazar was moved in, and accepted by the court, as an expert in the fields of hospitality and tourism. Dr. Salazar reviewed pleadings and discovery documents from the case, as well as having lived in Bluffton, South Carolina for years. Dr. Salazar stated that

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after reviewing the work of Plaintiffs Mr. Zoul, HAG and Mr. Brooks, that their work was competent, and appropriate for that which they had been requested to do. Dr. Salazar stated that to a reasonable degree of expert certainty, the work of Mr. Brooks and Mr. Zoul was competent and had significant value. He testified that if the work product of Mr. Zoul, Mr. Brooks and HAG was given to Defendants Mr. Leary and LLC, that they [Defendants] had received a significant and valuable benefit. Dr. Salazar, in discussing the value of Plaintiffs' work, stated that he had been paid far more for similar work. Dr. Salazar testified that, to a reasonable degree of expert certainty, the value of what Plaintiffs have conferred on Defendants is worth $30,000.00 to $50,000.00. He stated to a reasonable degree of expert certainty that of that range, the higher amount was more appropriate. It is noted that Dr. Salazar's estimate does not reflect the out-of-pocket expenses Mr. Zoul has identified.

Conclusions of Law

Following summary judgment arguments earlier in the case, the Plaintiffs had three remaining theories of recovery going into trial. Plaintiffs had pleaded (1) Breach of Express or Implied in Fact Contract; (2) Promissory Estoppel; and (3) *Quantum Meruit*.

In a Breach of Contract action, the burden was on the Plaintiffs to prove the existence and terms of the contract, to prove its breach, and to prove damages caused by the breach. Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As noted above, *supra.* P. 4, Defendants Mr. Leary and LLC were altering what they wanted, and there was no agreed upon signed contact. Breach of Contact does not fit these circumstances.

Like a Breach of Contract action, an action in Promissory Estoppel starts with a promise unambiguous in its terms. Satcher v. Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, __ (Ct.App. 2002). Defendants' objectives were too much a moving target to constitute an unambiguous promise, and made it untenable for Plaintiffs to assert an unambiguous promise. Plaintiffs initially charged hourly. Defendants decided they wanted Plaintiffs to find a buyer for the Inn, in which case the payment was to be a percentage. Before the September 17, 2018 Consulting Services Agreement had even begun to cause performance, the objective was changed by Defendants to Plaintiffs enabling a Thanksgiving opening of the Inn. Therefore, Promissory Estoppel also appears to not fit the circumstances.

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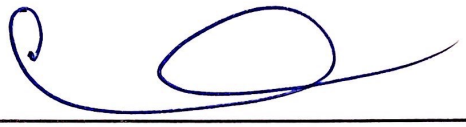
evidence that all the elements for a recovery in *quantum meruit* exist in this case. The value conferred by the Plaintiffs and retained by the Defendants was established by expert testimony and is considerable. Accordingly, it is

ORDERED, ADJUDGED AND DECREED as follows:

a. Plaintiffs are hereby granted judgment against the Defendants Lawrence Leary and Old Town Bluffton Inn, LLC, jointly and severally in the amount of $30,000 (thirty thousand dollars)

b. Plaintiff shall be entitled to post-judgment interest at the rate provided by law on any unpaid amount of the judgment until the judgment has been paid

IT IS SO ORDERED. THIS ORDER IS FINAL.



Honorable Carmen Mullen
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5/24, **2021**
Beaufort, SC

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Lawrence Leary, et al.	)	
Defendants.	)	
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This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778–79 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). Defendants received an email on May 25, 2021, but on this date a notice of the entry of the Court's ruling has never been filed (See Exhibit "A"). Out of an abundance of caution, the Defendants are filing this Motion.

Defendants respectfully submit the Court may have overlooked or misapprehended the following points in reaching its decision:

I. Failure to Rule on the Motion in Limine and Failure to Exclude the Expert's Testimony

The Court improperly allowed the testimony of the Plaintiff's expert and failed to rule on the Defendants' Motion in Limine. Just five (5) days before the trial in the aforementioned case the Plaintiffs notified the Defendant that they had hired a new replacement expert. In response to the expert, the Defendants were shocked by the naming of the new expert, did not have time to hire an expert to assist in the opposition to the newly named expert, and did not have the ability to combat the testimony of the expert. Nor did the Defendants even have time to send a subpoena to

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the expert, or even investigate the expert. Further, no expert reports were produced, or any information was produced providing information on the expert, or what the expert would testify to, or provide an opinion. The Defendants filed a Motion in Limine on May 13, 2021 and the Court did not rule on this Motion.

Further, the Court made an error on relying on the expert's testimony because the Defendants did not have the ability within five (5) days to rebut the testimony of the expert. In addition, the expert testified that he worked all weekend before the trial reviewing the documents. Therefore, the expert was only ready to testify just before trial. The Defendants incorporate all arguments included in their Motion in Limine filed before trial in this matter as if fully rewritten herein.

As discussed below, the Court's failure to exclude the expert testimony resulted in an excessive verdict as explained below.

II. The Maximum Recovery Amount for Damages Under Quantum Merit is the Contract Amount

The Plaintiffs only successful cause of action was on the cause of action for Quantum Merit. The Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they had issued a statement for their work claiming that they were owed Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15). Pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986) the South Carolina Court of Appeals explained:

> Even if we assume, as Johnston argues, that Brown breached an agreement to make him a partner, the result is the same. Although Johnston alleges a contract in his pleadings, he elected to sue, not on the contract for his expectancy damages, but in quantum meruit for the fair value of the services already rendered. Cf., Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936) (complaint alleged matters as to a contract between parties, but cause of action was in quantum meruit, not on contract); Coens v. Marousis, supra. **While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid**

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> **for the services**. United States Potash Co. v. McNutt, 70 F. (2d) 126 (10th Cir. 1984); Atkins v. County of Barnstable, 97 Mass. 428 (1867); Higgins v. Desert Braemer, Inc., 219 Cal. App. (2d) 744, 33 Cal. Rptr. 527 (1963) **(plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price**) [Emphasis Added]
>
> Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986)

Under the Johnson v. Brown analysis, the judgment amount is limited to Eleven Thousand Seven Hundred Fifty-Three and 15/100ths ($11,753.15), or the amount charged in the statement issued on October 29, 2021. Quantum Merit does not allow a recovery and is limited to the amount the parties agree should be paid for the services and thus the statement sent is the limiting amount of damages available to the Plaintiffs.

III. The Court Errored When Finding that Lawrence Leary Personally Benefitted

In order to succeed on a claim for Quantum Merit the Plaintiff must prove the following:

> 1. Benefit conferred by the plaintiff upon the defendant;
> 2. Realization of that benefit by the defendant; and
> 3. Retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value."
>
> Myrtle Beach Hosp. vs. City of Myrtle Beach, 341 SC 1, 8-9, 532 SE 2d 868, 872 (2000).

At trial the Plaintiffs never contended that Mr. Leary received any benefits personally for the alleged work which the Plaintiffs claimed they performed. Instead, at trial all of the Plaintiffs testified that all of the benefits were received by the Old Town Bluffton Inn, LLC and not Mr. Leary personally. Due to the fact that Mr. Leary did not receive any personal benefit from the alleged services the Court should not apportion the judgment to him personally and any judgment should only be against the inn itself.

IV. The Court Failed to Apportion the Damages

At trial the Defendants proved that Mr. Leary owned the inn One Percent (1%) personally and Fifty Percent (50%) through his trust. The other owner of the inn is Mr. Leary's daughter,

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Dannille Harrison. Ms. Harrison is as a 49% owner of the inn and would have received Forty Nine Percent (49%) of any benefits like Mr. Leary. However, Ms. Harrison was not named as a party and as a result, the Court errored in apportioning the damages One Hundred Percent (100%) to Mr. Leary. Instead, at best, Mr. Leary should have received One Percent (1%) of the judgment to him personally. Mr. Leary's trust was not a named party and he was only named individually. As a result, if any of the damages are apportioned against Mr. Leary personally, they should only amount to One Percent (1%) of the award since Mr. Leary only owned One Percent (1%) of the inn.

V. The Award of Damages was Excessive

At trial, the Plaintiff agreed that the Plaintiff only sought Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15) in the statement sent to the inn. Further, at trial the Plaintiffs testified that they only sought approximately Twenty Thousand ($20,000.00) in damages. However, the Court found that the Plaintiffs were entitled to Thirty Thousand Dollars ($30,000.00). At trial the expert, which was named Five (5) days before trial, testified that the majority of the benefit conferred upon the Defendants was the pro forma which was prepared. However, the verdict failed to recognize that the Plaintiffs testified that the pro forma was performed pursuant to the signed contract for the sale of the business. It was not disputed by the Plaintiffs that the Plaintiffs would only recover on the signed contract if they procured a buyer. The Plaintiffs never procured a buyer and as a result were not owed any monies for preparing the pro forma.

The Court sat in the position as the jury and as a result would be subject to the same review as a jury sitting trial. Under this analysis, the Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they only sought approximately

Twenty Thousand Dollars ($20,000.00) in damages. However, the Court provided the Plaintiffs with an additional Ten Thousand Dollars ($10,000.00) in damages, which were not even sought, or believed to be owed to the Plaintiffs.

When a verdict is so grossly excessive and the amount awarded so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other consideration not found on the evidence that it becomes the duty of this court, as well as of the trial court, to set aside the **verdict** absolutely. *Ray v. Simon*, 245 S.C. 346, 140 S.E. (2d) 575. Young v. Warr, 252 S.C. 179, 187, 165 S.E.2d 797, 800-01 (1969)

The verdict in this matter does not bear any rational view of the evidence since Quantum Merit only allows recovery in the contract amount. The Plaintiffs testified that they only sought Twenty Thousand ($20,000.00) in damages, but the Court awarded Thirty Thousand Dollars ($30,000.00), or Ten Thousand Dollars ($10,000.00) in excess of the damages sought by the Plaintiffs.

The Court also errored when it examined the testimony of the expert. The expert testimony should not have been allowed due to the late notice. However, an analysis of the testimony of the expert revealed that the work which he believed was valuable was the preparation of the pro forma (a few pages document). The Court errored when it failed to recognize that the Plaintiff testified that no monies were owed for the pro forma preparation since it was performed under business sale agreement which the Plaintiffs would only be owed a commission if the property sold. The Plaintiffs testified that they were not owed money for this work.

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VI. It is Inequitable to Award Damages to the Defendants

Quantum Merit only allows the recovery of services expended which inequitably benefited the Defendant. However, the case reveals that the Plaintiffs knew that they did not have a signed contract, demanded a signed contract and decided to perform work even without a signed contract. The Plaintiffs took the risk that the Defendant would not enter into a contract when they chose to begin work. The evidence presented at trial revealed that the Defendants were reviewing the contract and had not chosen to hire the Plaintiffs.

Further, the Court recognized that there was not a meeting of the minds when the Defendants realized that the Plaintiff was going to charge for both its services, plus the cost of the innkeeper. With this misunderstanding and until the in-person meeting, it is unjust to punish the Defendants for reviewing the contract and determining whether the Defendants wanted to hire the Plaintiffs.

The Court also failed to analyze which work was performed under the contract for the sale of the business. This work was done with the hope of a large commission payment and pursuant to the sales contract, the Plaintiffs were not entitled to recover any monies for the work which was performed pursuant to the sales contract.

Conclusion

Plaintiff respectfully requests the Court to reconsider its ruling and requests an Order from this Court for the following relief:

(1) Ruling on the Motion in Limine and Excluding the Expert's Testimony;

(2) Reducing the Award of Damages to $11,753.15 to the Old Town Bluffton Inn, LLC since Quantum Merit cannot exceed the amount of the contract;

(3) Removing the Judgment from Lawrence Leary Personally since he did not receive any benefit;

(4) If the award against Lawrence Leary is not entirely removed from the judgment rolls, reducing the judgment amount to One Percent (1%) of the total award since he only owned One Percent (1%) of the inn personally;

(5) Granting the Defendants, a new trial due to the excessive award; and

(6) Overturning the verdict because it is inequitable for the Plaintiffs to prevail when the Plaintiffs knew that they did not have a signed agreement, knew that they did not have a contract for their services, but chose to take the risk and move forward with their alleged work.

RESPECTFULLY SUBMITTED,

__s/ Gregory Michael Galvin, Esq.
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PO Box 887
Bluffton, SC 29910
843-227-2231
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Attorney for Defendants

June 4, 2021
Bluffton, SC

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	**CIVIL ACTION NO. 2019-CP-07-00117**
ZACHARY Z. ZOUL, AND ZOUL) HOSPITALITY, LLC d/b/a) HOSPITALITY ADVISORS) GROUP,)
Plaintiff,)
v.)	**JUDGMENT ORDER**
LAWRENCE LEARY, AND OLD) TOWN BLUFFTON INN, LLC,)
Defendants.)

Date/Time of Trial:	**Tuesday, May 18, 2021; 9:30 a.m.**
Presiding Judge:	**Honorable Carmen Mullen**
Plaintiffs' Counsel:	**F. Ward Borden, Esq.**
Defendants' Counsel:	**Gregory M. Galvin, Esq.**

CAME the parties, by their respective counsel, on the 18th day of May 2021 at 9:30 a.m. for a bench trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.[1] Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving against the two remaining Defendants.

Findings of Fact

1. Plaintiff Zachary Z. Zoul (individually "Mr. Zoul") is a natural person, over 21 years of age,

[1] The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

DEFENDANT'S EXHIBIT A

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and a citizen and resident of Grand Island, Nebraska. Plaintiff Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") is a Nebraska-organized limited liability company that has been licensed to transact business in the State of South Carolina. Mr. Zoul is the LLC's chief operating officer. Plaintiffs are assisted in their trade work by Mr. Eric Brooks of Savannah, Georgia (hereinafter "Mr. Brooks"), and Mr. Mike Alsko (hereinafter Mr. Alsko) of Hilton Head Island, South Carolina. Mr. Zoul and Mr. Brooks attended the bench trial and gave testimony and identified written exhibits.

2. Defendant Lawrence Leary (hereinafter "Mr. Leary") owns property in Beaufort County, South Carolina at 63 Honesty Lane, Bluffton, Beaufort County, South Carolina. Mr. Leary did not attend the trial; however, a deposition transcript taken while Mr. Leary was physically in New Jersey was filed with the court.

3. Mr. Leary and Old Town Bluffton Inn, LLC (hereinafter "LLC") were represented by counsel at trial. The court was informed that Mr. Leary owns a majority member interest in the LLC and his daughter Danielle Harrison holds a minority member interest in the LLC, but that daughter Danielle Harrison now manages the Old Town Bluffton Inn. Without more, the court regards the referenced circumstances to be facts of the case.

4. This court has received and reviewed the complete deposition transcript of Lawrence Leary, who was questioned by his own attorney and was able to state his views. Mr. Leary was not at trial. The fact recollections of the Plaintiffs and the Defendants differ on some issues. The court took full opportunity to review Defendants' positions as to the facts and to draw conclusions on the facts as stated by all parties.

5. Plaintiffs opened their case with testimony and records provided or testified to by Mr. Brooks. Mr. Brooks is semi-retired, a resident of Savannah, Georgia, and per his testimony, an associate of HAG who has over twenty (45) years of experience in the hospitality and tourism trades. Mr. Brooks acknowledged his relationship with Mr. Zoul and HAG, and testified specifically about the work he performed from September 2018 through at least October 2018 for Mr. Leary and LLC. Specifically, he prepared multiple *pro formas*, prepared notes to accompany the *pro formas* and an action list of logistical items remaining to be addressed. Mr. Brooks also travelled to Mt. Pleasant with Mr. Leary, and met with company representatives of a company called Q4 Launch, which is an internet booking company. Mr. Brooks testified to also interacting with multiple vendors, with the objective of having the Old Town Bluffton Inn up and running by Thanksgiving 2018. More than once the Thanksgiving timing was described as ambitious and labor

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intensive. Mr. Brooks estimated that he had worked 80 to 100 hours on the Old Town Bluffton Inn project. Importantly, Mr. Brooks delivered his work product to Mr. Leary and the LLC. They physically received the products being produced by Mr. Brooks as HAG's associate.

6. Plaintiffs' next witness was John Sulka (hereinafter "Mr. Sulka"), a commercial banker employed now at Palmetto State Bank in Bluffton, South Carolina. Mr. Sulka testified that in the September 2018 through October 2018 time frame he was with Coastal States Bank located in Bluffton, South Carolina. Mr. Sulka verified an account told by Mr. Brooks that during the relevant time, Mr. Sulka encountered Mr. Leary in public. Mr. Sulka asked about the progress of the Old Town Bluffton Inn. Mr. Leary referred Mr. Sulka to Mr. Brooks, who was in the lobby of the Inn, and Mr. Sulka met Mr. Brooks and they conversed briefly. Mr. Sulka was Defendants' lender for the Old Town Bluffton Inn project, and Mr. Leary essentially relied upon Mr. Brooks and HAG to lend credibility to the project with their banker.

7. Mr. Zoul was Plaintiffs' witness who followed Mr. Sulka. Mr. Zoul testified to having had numerous communications with Mr. Leary concerning the LLC and Old Town Bluffton Inn. Mr. Zoul, as well, identified and described multiple documents including Plaintiffs' exhibits 10 through 23. Mr. Zoul testified to travelling to Bluffton to work on the Old Town Bluffton Inn project. Through a set of Plaintiffs' exhibits that included public records, a Deed of property to Old Town Bluffton Inn, LLC, and additional records, Mr. Zoul described three transactions between HAG on one hand, and Mr. Leary and LLC on the other. The tasks being undertaken merged.

In May 2018 Mr. Leary's son-in-law Vincent Harrison asked HAG to assist with getting the Town of Bluffton to approve a loading zone at the Inn for dropping off and picking up guests. HAG charged its hourly rate and invoiced Mr. Harrison $1,350.00. HAG received an unsigned check from Mr. Leary dated September 8, 2018 – about the time Mr. Leary needed more assistance from HAG. Payment of the $1,350.00 occurred. According to Mr. Zoul and Mr. Brooks, Mr. Leary and LLC wanted HAG to find a buyer for the Old Town Bluffton Inn. A Consulting Services Agreement (Plaintiff's Exhibit 17) was prepared by Mr. Zoul for the referenced purpose and was signed by Mr. Zoul on behalf of HAG, and Mr. Leary as "Owner" of the Inn. Testimony of Mr. Zoul and Mr. Brooks indicates that Mr. Leary shortly after signing the Consulting Services Agreement thought that the marketing of the Inn might go better if it was in operation. Mr. Leary communicated that he wanted a dual approach such that the Inn could be rendered operational by Thanksgiving 2018, and operated, and maybe sold in the future. Mr. Zoul prepared a Management

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Agreement that described a new set of responsibilities to accomplish Mr. Leary and LLC's stated changing needs.

The alteration by Mr. Leary and the LLC of their objectives, particularly setting a Thanksgiving 2018 opening date for the Inn, outpaced the ability of Mr. Zoul and HAG to create and execute with Mr. Leary and the LLC a discrete, distinct writing. Mr. Brooks and Mr. Zoul, at the urging of Mr. Leary, plunged into taking measures to enable the Old Town Bluffton Inn to open at or near the scheduled time. Mr. Leary and the LLC wanted it, and the court finds as a fact that Mr. Leary and the LLC sought just what it was being given by Mr. Brooks, Mr. Zoul and HAG. The Management Agreement was not signed, and Defendants took the position there was no written contract involving a meeting of the minds. Objectives appear to have been occurring too rapidly for an adequately discussed written contract for opening and managing the Old Town Bluffton Inn to be prepared and executed. However, while Mr. Leary's deposition essentially denies that he understood the Management Agreement and was receiving nothing for which he should pay, the fact evidence undermines the denials of Mr. Leary and the LLC. Mr. Leary sought for Mr. Brooks, Mr. Zoul and HAG to provide professional services while waiting for their down payment and signed Management Agreement to be returned. In late-October 2018, Mr. Leary had decided the Management Agreement and down payment, were not going to be delivered. Mr. Leary and LLC, by Mr. Leary's advisor, informed Mr. Zoul and HAG that their services were being terminated. Mr. Zoul prepared and delivered to Mr. Leary a discounted invoice dated October 29, 2018 (Plaintiff's Exhibit 23) that provided a discount in order that the separation be quick and clean. Notwithstanding statements to the contrary, no payment to Mr. Zoul, HAG and Mr. Brooks was forthcoming.

This court finds as fact that Plaintiffs Zoul and HAG conferred valuable benefits upon Defendants Mr. Leary and LLC; and that Defendants were not ignorant of the benefits conferred upon them but were seeking them and realized those benefits conferred. The Defendants Mr. Leary and LLC retained the benefits conferred upon them by Plaintiffs Zoul and HAG under conditions that make it unjust for Defendants to take those benefits without paying their value.

Following a break, the Plaintiffs introduced as a witness Dr. John Salazar. Dr. Salazar identified his curriculum vitae, which identified an extensive background in education, hospitality, tourism and related undertakings. Dr. Salazar was moved in, and accepted by the court, as an expert in the fields of hospitality and tourism. Dr. Salazar reviewed pleadings and discovery documents from the case, as well as having lived in Bluffton, South Carolina for years. Dr. Salazar stated that

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after reviewing the work of Plaintiffs Mr. Zoul, HAG and Mr. Brooks, that their work was competent, and appropriate for that which they had been requested to do. Dr. Salazar stated that to a reasonable degree of expert certainty, the work of Mr. Brooks and Mr. Zoul was competent and had significant value. He testified that if the work product of Mr. Zoul, Mr. Brooks and HAG was given to Defendants Mr. Leary and LLC, that they [Defendants] had received a significant and valuable benefit. Dr. Salazar, in discussing the value of Plaintiffs' work, stated that he had been paid far more for similar work. Dr. Salazar testified that, to a reasonable degree of expert certainty, the value of what Plaintiffs have conferred on Defendants is worth $30,000.00 to $50,000.00. He stated to a reasonable degree of expert certainty that of that range, the higher amount was more appropriate. It is noted that Dr. Salazar's estimate does not reflect the out-of-pocket expenses Mr. Zoul has identified.

Conclusions of Law

Following summary judgment arguments earlier in the case, the Plaintiffs had three remaining theories of recovery going into trial. Plaintiffs had pleaded (1) Breach of Express or Implied in Fact Contract; (2) Promissory Estoppel; and (3) *Quantum Meruit*.

In a Breach of Contract action, the burden was on the Plaintiffs to prove the existence and terms of the contract, to prove its breach, and to prove damages caused by the breach. Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As noted above, *supra.* P. 4, Defendants Mr. Leary and LLC were altering what they wanted, and there was no agreed upon signed contact. Breach of Contact does not fit these circumstances.

Like a Breach of Contract action, an action in Promissory Estoppel starts with a promise unambiguous in its terms. Satcher v. Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, __ (Ct.App. 2002). Defendants' objectives were too much a moving target to constitute an unambiguous promise, and made it untenable for Plaintiffs to assert an unambiguous promise. Plaintiffs initially charged hourly. Defendants decided they wanted Plaintiffs to find a buyer for the Inn, in which case the payment was to be a percentage. Before the September 17, 2018 Consulting Services Agreement had even begun to cause performance, the objective was changed by Defendants to Plaintiffs enabling a Thanksgiving opening of the Inn. Therefore, Promissory Estoppel also appears to not fit the circumstances.

Quantum Meruit is an equitable doctrine allowing recovery for unjust enrichment. The elements, as set forth by the Supreme Court of South Carolina, are "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868 (2000). Plaintiffs proved by the requisite

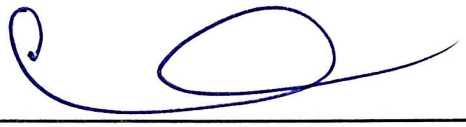
evidence that all the elements for a recovery in *quantum meruit* exist in this case. The value conferred by the Plaintiffs and retained by the Defendants was established by expert testimony and is considerable. Accordingly, it is

ORDERED, ADJUDGED AND DECREED as follows:

a. Plaintiffs are hereby granted judgment against the Defendants Lawrence Leary and Old Town Bluffton Inn, LLC, jointly and severally in the amount of $30,000 (thirty thousand dollars)

b. Plaintiff shall be entitled to post-judgment interest at the rate provided by law on any unpaid amount of the judgment until the judgment has been paid

IT IS SO ORDERED. THIS ORDER IS FINAL.



Honorable Carmen Mullen
Judge, Beaufort County Circuit Court

5/24, **2021**
Beaufort, SC

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ELECTRONICALLY FILED - 2021 May 28 8:46 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY Z. ZOUL, ET AL. Plaintiffs, v. LAWRENCE LEARY, et al. Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO. 2019-CP-07-117 **DEFENDANTS' SUPPLEMENTAL MEMO**

Now comes the Defendants, Lawrence Leary and Old Town Bluffton Inn, LLC who files its supplemental memorandum in the aforementioned action. The Defendants hereby notify the Court that South Carolina Law limits the recovery of Quantum Merit damages to the contracted amount charged. Pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986) the South Carolina Court of Appeals explained:

> Even if we assume, as Johnston argues, that Brown breached an agreement to make him a partner, the result is the same. Although Johnston alleges a contract in his pleadings, he elected to sue, not on the contract for his expectancy damages, but in quantum meruit for the fair value of the services already rendered. Cf., Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936) (complaint alleged matters as to a contract between parties, but cause of action was in quantum meruit, not on contract); Coens v. Marousis, supra. **While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services**. United States Potash Co. v. McNutt, 70 F. (2d) 126 (10th Cir. 1984); Atkins v. County of Barnstable, 97 Mass. 428 (1867); Higgins v. Desert Braemer, Inc., 219 Cal. App. (2d) 744, 33 Cal. Rptr. 527 (1963) **(plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price**) [Emphasis Added]
>
> Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986)

Under the Johnson v. Brown analysis, the judgment amount is limited the Eleven Thousand Seven Hundred Fifty-Three and 15/100ths ($11,753.15), or the amount charged in the statement issued on October 29, 2021

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GALVIN LAW GROUP, LLC

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ggalvin@galvinlawgroup.com

Bluffton, South Carolina
28th day of **May**, **2021**

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs, -vs- LAWRENCE LEARY, ET AL. Defendants.	IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **MOTION IN LIMINE AS TO EXPERT JOHN SALAZAR AND IN AN ABUNDANCE OF CAUTION, DR. BRUMBY MCLEOD**

The Defendants move the court for an order in limine barring the Plaintiffs from offering, referring, or alluding to, in the Court's presence, any evidence during the trial, opening, or at any time during trial, either directly or indirectly, with respect to any matter testified to by the expert, John Salazar, identified less than a week before trial in this matter.

In support of the motion, the Defendants, will show the following to the Court:

1. On November 15, 2019, (550 days before trial) the Plaintiffs answered the Defendants First Set of Interrogatories (See Exhibit "A"). In this answer, the Plaintiffs did not identify an expert.
2. On April 23, 2021, (25 days before trial) the Plaintiffs amended their interrogatories and identified Dr. Brumby McLeod from the College of Charleston as an expert (See Exhibit "B").
3. In response to the late disclosure of Professor McLeod the Defendants immediately sent a subpoena to Dr. McLeod to attempt to at least determine the basis for any of his opinions. (See Exhibit "C").

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4. On April 28, 2021, (20 days before the trial) Dr. McLeod sent an email to the Defendants' counsel informing his office that he was not retained yet and was refusing to answer the discovery without payment of $250.00 per hour (See Exhibit "D").
5. The response to the Defendants subpoena was due on May 12, 2021 (See Exhibit "D").
6. No responses were received on May 12, 2021 from Dr. McLeod as required by the subpoena.
7. On May 13, 2021 (5 days before trial) the Defendants' counsel began to wonder if Dr. McLeod was actually retained and before filing a Motion in Limine the Defendants counsel emailed the Plaintiffs' counsel to inquire into the status of Dr. McLeod. (Exhibit "E").
8. On May 13, 2021 (5 days before trial) the Plaintiffs' counsel informed the Defendants counsel that the Plaintiffs did not hire the previously identified expert, Professor McLeod, but had hired a substitute expert John Salazar. (See Exhibit "E").
9. For a guidepost, the Defendants counsel pulled a standard scheduling order used by Judge Gergel to determine how long the Federal Court's generally expect the disclosure of experts before the trial. I have attached a copy of one of these scheduling orders to my affidavit in support of this Motion (See Exhibit "F").
    a. The standard scheduling order proposed by Judge Gergel generally requires the disclosure of the Plaintiff's expert with an expert report, One Hundred and Fifty-One (151), days before trial. (See Exhibit "F").
    b. After the disclosure of the Plaintiffs' expert with the report, the Federal Court generally provides the Defendant with Thirty (30) days to prepare an expert report and file a Defendants' expert report (See Exhibit "F").

10. The disclosure of an expert witness Five (5) days before the date of trial is highly prejudicial to the Defendants.
11. The content of the evidence emanating from the proffered witness is wide ranging, detail oriented, and would take possibly a month to find an expert to digest the opinions and analyze the testimony of this witness.
12. The prejudice to the Defendants is significant.

WHEREFORE, the Defendants respectfully request that the court enter an order in limine prohibiting the admission of the evidence, testimony, any reliance on the opinions of either Expert John Salazar, or Dr. McLeod and excluding their ability to testify, or provide any opinion at trial.

GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
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P.O. Box 887
Bluffton, South Carolina 29910
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Bluffton, South Carolina
13th day of **May**, **2021**

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

LAW OFFICES
JONES, SIMPSON & NEWTON, P.A.

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MARK S. SIMPSON
WM. WESTON JONES NEWTON
SAMUEL L. KIRKLAND
F. WARD BORDEN (SC, VA & DC)
DEAN S. HASKELL (SC & CT)
NICHOLAS McEWEN

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P.O. BOX 1727
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Telephone (843) 524-2110
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THIS CORRESPONDENCE ORIGINATED AT THE BLUFFTON OFFICE

E-mail: wborden@jsplaw.net

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

November 15, 2019

Gregory Michael Galvin, Esquire
GALVIN LAW GROUP, LLC
23 Plantation Park, Suite 503
Bluffton, South Carolina 29910

Re: Zoul, et al. v. Leary, et al.; Beaufort County Court of Common Pleas, Civil Action No. 2019-CP-07-00117

Dear Greg:

In connection with the above-referenced case, please find enclosed a copy of Plaintiffs' Objections and Answers to Interrogatories, and of Plaintiffs' Objections and Responses to Requests to Produce (with a copy of initial document copies). If there are any questions, please contact me.

Sincerely,

JONES, SIMPSON & NEWTON, P.A.

F. Ward Borden

Enclosures
cc: Zoul Hospitality, LLC

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT	)	**CIVIL ACTION # 2019-CP-07-00117**
ZACHARY Z. ZOUL and ZOUL HOSPITALITY, LLC d/b/a HOSPITALITY ADVISORS GROUP,	)	
Plaintiffs,	)	**PLAINTIFFS' OBJECTIONS AND ANSWERS TO DEFENDANTS' INTERROGATORIES**
v.	)	
LAWRENCE LEARY, LANDMARK 2 DEVELOPERS, LLC, OLD TOWN BLUFFTON INN, LLC, BLUFFTON INN SC, LLC, and BLUFFTON INN MANAGEMENT, LLC,	)	
Defendants.	)	

TO: ALL DEFENDANTS AND/OR COUNSEL OF RECORD FOR SAID DEFENDANTS

Plaintiffs Zachary Z. Zoul and Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") herein below answers the following Interrogatories in accordance with Rule 33 of the Code of South Carolina Civil Procedure.

In setting forth these answers, the Plaintiffs do not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information called for herein, responsive to, the interrogatory. Plaintiffs do not concede the relevance or materiality of the interrogatory, or the subject matter for which the interrogatory refers. These answers are submitted by the Plaintiffs subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving;

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matter of the interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Plaintiffs object to these interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

E. Plaintiffs object to Defendants' Instructions and Definitions to the extent that those Instructions and Definitions purport to place a greater or different burden upon the Plaintiffs in answering interrogatories than is provided for in applicable South Carolina Rules of Civil Procedure and other applicable law.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Objection/Answer:

Lawrence Leary, 63 Honesty Lane, Bluffton, SC 29909. Upon best information a transcript was typed of a telephone call in which Mr. Leary was a participant in the call. Plaintiffs' counsel has a copy of the transcript. Plaintiffs are not aware of any other statements from Mr. Leary.

Danielle Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Plaintiffs have no knowledge of a statement given by Ms. Harrison and do not know who would have possession of such statement.

Vincent Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Plaintiffs have no knowledge of a statement given by Mr. Harrison and do not know who would have possession of such statement.

Zachary Z. Zoul, 404 South Webb Road, Grand Island, Nebraska 68803. Mr. Zoul has knowledge of facts and circumstances of the case, and has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Mr. Zoul's sworn affidavit.

Eric A. Brooks, Savannah, Georgia. Mr. Brooks has knowledge of facts and circumstances of the case, and has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Mr. Brooks' sworn affidavit.

Mike Alsko, 19 Margarita Court, Hilton Head Island, South Carolina. Mr. Alsko has some knowledge of facts and circumstances of the case. Plaintiffs are not aware of Mr. Alsko having given any written statement concerning this case.

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ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

John Sulka, Vice President and Commercial Loan Officer for Coastal States Bank, 7 Thurmond Way, Bluffton, SC 29910. Mr. Sulka has some knowledge of facts and circumstances of the case. Mr. Sulka has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Mr. Sulka's affidavit.

Margaret Johnson of Colleton County, South Carolina has some knowledge of facts and circumstances of the case. Ms. Johnson has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Ms. Johnson's affidavit.

Q4Launch principals and employees, of Mt. Pleasant, South Carolina, have some knowledge of facts and circumstances of the case. Plaintiffs are not aware of Q4Launch personnel having given any written statement concerning this case.

Upon best information, attorneys Gregory Galvin, Esquire and Jason Ward, Esquire may have knowledge of facts and circumstances of the case. Plaintiffs are not aware of those lawyers having given any written statement concerning the case.

Plaintiffs' counsel has some knowledge of facts of the case, most particularly of legal expenses and procedural undertakings in the case. Plaintiffs' counsel has presently prepared no written statement other than firm invoices.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

Objection/Answer:

Affidavit of Zachary Zoul
Supplemental Affidavit of Zachary Zoul
Affidavit of Eric A. Brooks
Affidavit of John Sulka
Affidavit of Margaret Johnson
E-mails and/or texts from Q4Launch
Quit-Claim Deed to Old Town Bluffton Inn, LLC
Consulting Services Agreement
Proposed Management Agreement
Statements
Written communications between parties

Plaintiffs reserve the right to supplement their answer to this interrogatory.

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3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

Objection/Answer: This case involves some tortious conduct, but not physical personal injuries and so the interrogatory is not applicable to this case.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Objection/Answer: Plaintiffs do not know what liability coverage is held that may be applied to claims in this case.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Objection/Answer: Plaintiffs object that the interrogatory seeks to elicit disclosure of the mental impressions, conclusions, opinions, or legal theories of Plaintiff's attorney concerning the litigation. Subject to that objection, and without waiving same, Plaintiffs respond as follows:

$18,753.15	Professional services and expenses
$2,000.00	Charges to transition ongoing work to others
Pending	Costs
Pending	Plaintiffs' attorney fees

Plaintiffs reserve the right to supplement their answer to this interrogatory.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Objection/Answer: Zachary Zoul, Eric Brooks and Mike Alsko each have qualifications in the hospitality trade for which they are consulted, and that would qualify them as experts. They are parties and/or fact witnesses in this matter, and they may offer opinions in their area(s) of expertise.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Objection/Answer:

Lawrence Leary. Mr. Leary knows that Zoul Hospitality, LLC provided Old Town Bluffton Inn, LLC services in May 2018 which were invoiced in June 2018, but not paid until September 2018. Mr. Leary knows that he signed a written consulting services agreement with Zoul Hospitality, LLC on September 17, 2018. Mr. Leary knows that he sought changing and broadening service from Zoul Hospitality, LLC in September and October 2018, and was sent a proposed draft agreement on October 8, 2018 for review. Mr. Leary knows that he sought out assistance from Zoul Hospitality, LLC in September and October 2018 to facilitate the opening of the Old Town Bluffton Inn. Mr. Leary knows that his banker met Eric Brooks of Zoul Hospitality, LLC at Old Town Bluffton Inn in October 2018 in connection with banker's inquiry of the progress on preparing to open the Old Town Bluffton Inn. Mr. Leary knows that he induced delivery of material and/or service from Zoul Hospitality, LLC in 2018, that services were provided to Mr. Leary and his company and accepted by them, but that neither Mr. Leary nor Old Town Bluffton Inn, LLC paid Zoul Hospitality, LLC for services provided in September and October 2018.

Danielle Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Ms. Harrison knows that personally or as trustee, Ms. Harrison was a member of Old Town Bluffton Inn, LLC. Ms. Harrison knows of a disagreement within that limited liability company, and that she was denied the ability to exercise power in Old Town Bluffton Inn, LLC by Mr. Leary personally or as trustee.

Vincent Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Plaintiffs do not know Mr. Harrison's fact knowledge except as to services provided by Zoul Hospitality, LLC concerning a loading zone for Old Town Bluffton Inn.

Zachary Z. Zoul, 404 South Webb Road, Grand Island, Nebraska 68803. A copy of Mr. Zoul's affidavit(s) are attached. Mr. Zoul is not limited in his knowledge to solely the contents of the affidavit(s).

Eric A. Brooks, Savannah, Georgia. A copy of Mr. Brooks' affidavit is attached. Mr. Brooks is not limited in his knowledge to solely the contents of the affidavit.

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Mike Alsko, 19 Margarita Court, Hilton Head Island, South Carolina. Mr. Alsko is able to testify about his own communications and activities in this matter, as well as his background in the hospitality trade.

John Sulka, Vice President and Commercial Loan Officer for Coastal States Bank, 7 Thurmond Way, Bluffton, SC 29910. A copy of Mr. Sulka's affidavit is attached.

Margaret Johnson of Colleton County, South Carolina has some knowledge of facts and circumstances of the case. A copy of Ms. Johnson's affidavit is attached.

Q4Launch principals and employees, of Mt. Pleasant, South Carolina. The referenced principals and employees can testify to meeting with personnel of Zoul Hospitality, LLC and Lawrence Leary. These principals and employees can testify concerning bookings that were directed to Eric Brooks.

Upon best information, attorneys Gregory Galvin, Esquire and Jason Ward, Esquire will not be providing any testimony in this case.

Plaintiffs' counsel is not expected to testify in this case except possibly by affidavit to attorney's fees.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

/s/ F. Ward Borden S.C. Bar # 10117
F. Ward Borden
JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-8868
Counsel for the Plaintiffs

November ~~October~~ 15, 2019
Bluffton, SC

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NICHOLAS McEWEN

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THIS CORRESPONDENCE ORIGINATED AT THE BLUFFTON OFFICE

E-mail: wborden@jsplaw.net

April 23, 2021

VIA E-MAIL AND U.S. MAIL

Gregory Michael Galvin, Esquire
GALVIN LAW GROUP, LLC
P.O. Box 887
Bluffton, South Carolina 29910

Re: Zoul, et al. v. Leary, et al.; Beaufort County Court of Common Pleas, Civil Action No. 2019-CP-07-00117

Dear Greg:

In connection with the above-referenced case, please find attached a copy of Plaintiffs' Supplement To Their Answers to Defendants' First Interrogatories. An original is being mailed.

Sincerely,

JONES, SIMPSON & NEWTON, P.A.

F. Ward Borden

F. Ward Borden

Enclosure

DEFENDANT'S EXHIBIT
B

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION # 2019-CP-07-00117
ZACHARY Z. ZOUL and ZOUL HOSPITALITY, LLC d/b/a HOSPITALITY ADVISORS GROUP,	)	
Plaintiffs,	)	PLAINTIFFS' SUPPLEMENT TO THEIR ANSWERS TO DEFENDANTS' FIRST INTERROGATORIES
v.	)	
LAWRENCE LEARY, LANDMARK 2 DEVELOPERS, LLC, OLD TOWN BLUFFTON INN, LLC, BLUFFTON INN SC, LLC, AND BLUFFTON INN MANAGEMENT, LLC,	)	
Defendants.	)	

COME NOW Plaintiffs Zachary Z. Zoul and Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") and herein below supplement their answer to interrogatory 6 of Defendants' First Interrogatories. Notwithstanding this supplementation, Plaintiffs restate and incorporate herein by reference their previous general objections and privileges identified in their initial answers.

Interrogatory 6 – List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Objection/Answer: Dr. Brumby McLeod, Department Chair and Associate Professor at the College of Charleston, School of Business in the Department of Hospitality & Tourism Management; College of Charleston, Beatty Center, Room 315, Charleston, South Carolina. Dr. McLeod is expected to describe the work undertaken by the Plaintiffs. He is expected to testify to a reasonable degree of expert certainty about the work Plaintiffs performed for Defendants, the length of time Plaintiffs spent on work for Defendants, the purposes and functions of work performed, the understanding that Plaintiffs were providing a non-gratuitous benefit and the reasonable market value of the benefits conferred upon the Defendants by the

Plaintiffs, said benefits being knowingly received and retained by the Defendants without paying the Plaintiffs.

Dr. McLeod's opinions will be based upon his visual inspection of photographs, literature, and notes maintained by Plaintiffs, discovery documents, pleadings, consultations, other applicable resources, his education, training and experience, and other facts or data of a type reasonably relied upon by experts in his particular field. All of Dr. McLeod's opinions described are maintained to a reasonable degree of expert certainty.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-8868

/s/ F. Ward Borden
F. Ward Borden
Counsel for the Plaintiffs

Bluffton, SC
April 23, 2021

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GalvinLawGroup
Probate ▪ Criminal Defense ▪ Civil Litigation ▪ Real Estate
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Encase Certified Computer Forensic Examiner
Licensed in District of Columbia, Ohio & South Carolina
Also licensed as a Patent Attorney before the United States Patent & Trademark Office
AV Rated by Martindale-Hubbell

April 28, 2021

Via Certified Mail and Electronic Mail
Dr. Brumby McLeod
College of Charleston - School of Business
66 George Street
Charleston, SC 29424

Re: Zoul, et al. vs. Leary, et al.
Case No. 2019-CP-07-117

Dear Sir or Madam:

You are in receipt of a subpoena duces Tecum compelling the production of the documents described in the subpoena, or any of its exhibits. Also enclosed is an Acceptance of Service. Please sign the Acceptance of Service verifying your receipt of the subpoena and return it to me as soon as possible.

It will not be necessary for you to appear on the day and time specified in the Subpoena if you have supplied me with the requested documentation and provided a letter certifying the records to be true, correct and complete copies of all records maintained by your office on or before May 12, 2021.

If you have any questions whatsoever concerning this subpoena, please do not hesitate to contact our office. If the cost to reproduce the requested documents exceeds $50.00, please contact me before incurring any expenses.

Sincerely,

Gregory Michael Galvin, Esq.

DEFENDANT'S EXHIBIT
C

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STATE OF SOUTH CAROLINA

ISSUED BY THE COURT OF COMMON PLEAS COURT IN THE COUNTY OF BEAUFORT

Zachary Zoul, et al Plaintiff(s)

v.

SUBPOENA IN A CIVIL CASE
Defendant Case Number: 2019-CP-07-117

Lawrence Leary, et al., Defendant(s)

Pending in Beaufort County

TO: Dr. Brumby McLeod, College of Charleston - School of Business , 66 George Street
Charleston, SC 29424

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

All documents described in Exhibit "A

PLACE	DATE AND TIME
Galvin Law Group, LLC. P.O. Box 887 (mailing) 23 Plantation Park, Suite 503 (physical) Bluffton, SC 29910	May 12, 2021, 9:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE April 28, 2021

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

4/28/2021 Gregory Michael Galvin, Esq.

CLERK OF COURT/ISSUING OFFICER SIGNATURE DATE PRINT NAME

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert=s opinion or information not describing specific events or occurrences in dispute and resulting from the expert=s study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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Exhibit "A"

DEFINITIONS

As used herein, the following words shall have the meanings indicated:

1. "Document" shall mean any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts thereof, and including but not limited to: papers, book, letters, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, work papers, intra-corporate communications, calendar or diary entries, appointment books, minutes, transcripts, agendas, reports, and recordings of telephone or other conversations, or of interviews, or of conferences or other meetings, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, lists, tabulations, all other records kept by electronic, photographic or mechanical means, things similar to the foregoing, however denominated by **:LIKE THIS**, and other documents as defined in Rule 34 of the South Carolina Rules of Civil Procedure.

2. "Identify" shall mean (with respect to any natural person) to state the full name, home address, business address, employer and position or positions within each organization employing such person at the present time and at the time in question; and (with respect to any other person as defined in definition 1) to state its full name, address and principal place of business.

3. "Identify" shall mean, with respect to any document, to set forth the date thereof, the title (if any), the name of the person or persons authorizing such document, the name of the person or persons to whom such document was given or transmitted, the present location and custodian of such document, and the topic dealt with therein with reasonable specificity, and to describe the relevant page or pages and line or lines thereof (or annex a copy to the responses to these Interrogatories with appropriate designations of such page or pages and line or lines).

4. "Identify" shall mean, with respect to any oral statement, to set forth the date and place thereof, the mean of the person or persons making, issuing or communicating the oral statement, the name of the person or persons to whom and in whose presence such oral statement was made, and the substance thereof, and to identify each document in which such statement was recorded, described or referred to.

5. "**Dr. Brumby McLeod**," "you" or "your" means you, your employees, managers, agents, independent contractors or other persons or entities working on your behalf.

6. "And" and "or" as used herein are both conjunctive and disjunctive.

7. "Each" shall be construed to include the word "every" and "every" shall be construed to include the word "each".

8. "Any" shall be construed to include "all", and "all" shall be construed to include "any".

9. Where the context herein makes it appropriate, each singular word shall include its plural and each plural word shall include its singular.

10. The present tense shall be construed to include the past tense and the past tense shall be construed to include the present tense.

11. "Pertaining to", "relating to", "pertain to", or "relate to", mean referring to, relating to, alluding to, responding to, discussing, commenting upon, showing, disclosing, analyzing, reporting about, explaining, mentioning, constituting, compromising, evidencing, setting forth, containing, summarizing or characterizing, either directly or indirectly, in whole or in part, the given subject matter.

12. "Case" shall mean the case of Zachary Zoul, et al. vs. Lawrence Leary, et al. filed in Beaufort County Common Pleas Court with case number 2019-CP-07-117

REQUESTS

1. Produce all communications pertaining to this Case.
2. Produce all Documents you relied on to form any opinion in this Case.
3. Produce all information which was provided to you in this Case.
4. Produce all expert reports you have prepared in the last Ten (10) years.
5. Produce all deposition transcripts from any case you worked as an expert in the last Ten (10) years.
6. Produce any agreements, or contracts you were provided or reviewed related to this Case.
7. Produce all payments, or accounting for any of your services related to this Case.
8. Produce all Documents you relied on to form any opinion in this Case.
9. Produce all notes you have related to this Case.
10. Produce your rate schedules for expert services.

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs, -vs- LAWRENCE LEARY, ET AL. Defendants.	IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **VERIFICATION**

I _____, the records custodian for _____, hereby accept service of the subpoena this ____ day of _____, 2021. I certify the enclosed records to be true, correct and complete copies.

_____
Records Custodian

Sworn to and Subscribed before me
This _____ day of _____, 2021.

_____
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:_____

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

Re: Zoul v. Leary, 2019-CP-07-117

McLeod, Brumby <mcleodb@cofc.edu>
Wed 4/28/2021 11:21 AM

To: Marty McCay <mmccay@galvinlawgroup.com>
Cc: Ward Borden <WBorden@jsplaw.net>; Greg Galvin <ggalvin@galvinlawgroup.com>

Good morning Marty,

I am happy to begin if you are ready for me to engage in the above referenced matter. Please advise. The cost for me to engage is $250 per hour. My mobile number is 843-708-8814. Prior to this email were a couple phone calls with Ward Borden and an email exchange of the upcoming potential court dates.

Sincerely,

Brumby

Brumby Mcleod, Ph. D
Riley Center Research Fellow
Associate Professor, Chair
Department of Hospitality & Tourism Management
School of Business
College of Charleston
843-953-0735

From: Marty McCay <mmccay@galvinlawgroup.com>
Date: Wednesday, April 28, 2021 at 11:03 AM
To: "McLeod, Brumby" <mcleodb@cofc.edu>
Cc: Ward Borden <WBorden@jsplaw.net>, Greg Galvin <ggalvin@galvinlawgroup.com>
Subject: Zoul v. Leary, 2019-CP-07-117

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. McLeod:

Please find attached a Subpoena for documents in the above-referenced matter.

Thank you,

Marty McCay
Paralegal to Gregory M. Galvin, Esq.
Galvin Law Group
P.O. Box 887
Bluffton, SC 29910
(843) 405-2934

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

Re: Zoul vs. Leary

Greg Galvin <ggalvin@galvinlawgroup.com>

Thu 5/13/2021 10:23 AM

To: Ward Borden <WBorden@jsplaw.net>

I appreciate the honesty. I am going to file a Motion in Limine since I cannot find an expert at the very last minute to refute any claims this new gentleman testifies to. I appreciate the email.

Gregory Michael Galvin, Esq. | Attorney at Law

Galvin Law Group, LLC
23 Plantation Park, Suite 503 • PO Box 887
Bluffton, SC 29910
843-227-2231 phone
888-362-0714 fax
ggalvin@galvinlawgroup.com

From: Ward Borden <WBorden@jsplaw.net>
Sent: Thursday, May 13, 2021 10:18 AM
To: Greg Galvin <ggalvin@galvinlawgroup.com>
Subject: RE: Zoul vs. Leary

Greg –

The expert withdrew. I found someone else however, who is working from the same information as the first fellow. I will attach the information.

I will make him available for you to speak with or Zoom if necessary. I only confirmed his participation last night, so I would have been misleading to tell you I had him until I had confirmation. If I did not have him confirmed. The man's name is John Salazar, and he used to live in Bluffton. I will provide his personal information. As follow up.

Ward Borden

From: Greg Galvin <ggalvin@galvinlawgroup.com>
Sent: Thursday, May 13, 2021 10:04 AM
To: Ward Borden <WBorden@jsplaw.net>
Subject: Zoul vs. Leary

Ward,

I am getting ready to file a Motion in Limine about the expert you disclosed in the last 30 days. Before I go through the trouble I wanted to check first if you were going to use the professor before I began working on the motion.

DEFENDANT'S EXHIBIT
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Record___82

Gregory Michael Galvin, Esq. | Attorney at Law

Galvin Law Group, LLC
23 Plantation Park, Suite 503 • PO Box 887
Bluffton, SC 29910
843-227-2231 phone
888-362-0714 fax
ggalvin@galvinlawgroup.com

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2019-CP-07-117
ZACHARY ZOUL, ET AL	)	
	)	
Plaintiffs,	)	**AFFIDAVIT**
	)	**OF**
-vs-	)	**GREGORY MICHAEL GALVIN, ESQ.**
	)	
LAWRENCE LEARY, ET AL.	)	
	)	
Defendants.	)	
	)	
	)	

I, Gregory Michael Galvin, Esq., having been duly sworn, depose and say the following:

1. I am 18 years of age or older, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.

2. I am a licensed attorney in South Carolina, Ohio, The District of Columbia and as a patent attorney before the United States Patent and Trademark Office.

3. I am an ENCE certified forensic examiner with my accreditation through guidance software, now opentext.

4. I am representing all of the remaining Defendants in the aforementioned action.

5. On April 23, 2021 (25 days before trial), I was informed that the Plaintiffs planned to use Professor Brumby as an expert in this matter.

6. After the identification of Dr. Brumby, I believed that the disclosure was highly prejudicial and did not allow me enough time to defend any opinion of Dr. Brumby.

7. I had no idea what Dr. Brumby would conclude, or even testify to before the trial, but I sent him a subpoena to at least see the documents which he would rely for his opinion.

8. The subpoena required a response by May 12, 2021.

9. I did not receive a response by May 12, 2021.

10. After inquiring if the Plaintiffs were intending to use Mr. Bumby as an expert on May 13, 2021.

11. After inquiring to whether the Plaintiffs intended to use Mr. Brumby I was informed on May 13, 2021 that the Plaintiffs were no longer using Dr. Brumby as an expert, but instead were planning to use John Salazar.

12. The new expert was identified Five (5) days before trial.

13. As a result of this last-minute disclosure, I do not have the ability to hire an expert, subpoena the expert, or refute any allegations of the expert.

14. I was surprised by the addition of Dr. Brumby and was not informed that he was not going to be the Plaintiffs' expert. However, I was floored by the late disclosure of an entirely new expert witness the week of trial.

15. I cannot prepare a defense against these new allegations, nor can I hire an expert to refute the claims of this new expert. Further, I cannot even subpoena the new expert to try to discover information from him before the trial.

16. I believe if either Dr. Brumby, or Dr. Salazar is able to testify it is highly prejudicial to my client's interest and significantly prejudices the Defendants' ability to mount a proper defense to the lawsuit, or even refute last minute conclusions of a newly disclosed expert.

17. A true copy of a standard discovery order I received from Judge Gergel is attached as Exhibit "1".

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

Gregory Michael Galvin

Sworn to and subscribed before me this 13th day of May, 2021.

Penny Kimbrell
Notary Public for South Carolina
My Commission Expires: 10.29.2030

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Liaison Internationale LLC, et al.	)	9:15cv03528
	)	
Plaintiffs,	)	CONFERENCE AND
	)	SCHEDULING ORDER
v.	)	
	)	Judge Richard Mark Gergel
North American Bison Cooperative LLC, et al.	)	
	)	
Defendants.	)	

Pursuant to the Federal Rules of Civil Procedure and the Local Civil Rules of this Court, the following schedule is established for this case. This order is entered to administer the trial of cases in a manner consistent with the ends of justice, in the shortest possible time, and at the least possible cost to litigants. Discovery may begin upon receipt of this order.

1. Rule 26(f) Conference: A conference of the parties pursuant to Fed. R. Civ. P. 26(f) shall be held no later than **April 28, 2016.**[1]

2. Rule 26(a)(1) Initial Disclosures: No later than **May 12, 2016**, the required initial disclosures under Fed. R. Civ. P. 26(a)(1) shall be made.[2]

3. Rule 26(f) Report: No later than **May 12, 2016**, the parties shall file a Fed. R. Civ. P. 26(f) Report in the form attached to this order.[3]

4. Mediation: As part of the Rule 26(f) Report, the parties are to file the form entitled "Mediation of Cases Pending Before Judge Gergel," which is attached hereto.[4]

5. Amendment of Pleadings: Motions to join other parties and amend the pleadings shall be filed no later than **July 6, 2016.**

[1] Plaintiff's counsel shall initiate the scheduling of the Rule 26(f) conference with all counsel known to plaintiff regardless of whether they have filed appearances. At conference, the parties shall confer concerning all matters set forth in Rule 26(f) and whether the schedule set forth in this order is appropriate and, if not, what modifications are necessary. See attached form – RULE 26(f) REPORT. The parties shall also consider whether they wish to consent to trial before a United States Magistrate Judge (form available on website).

[2] Pursuant to Fed. R. Civ. P. 26(a)(1), the parties may, by stipulation, agree not to make some or all of the Rule 26(a)(1) initial disclosures. If such a stipulation is made, it shall be confirmed in writing between the parties. See Fed. R. Civ. P. 29 and Local Civil Rule 29.01.

[3] Parties are hereby notified that Local Civil Rule 26.03 lists additional queries to be answered in the Rule 26(f) Report. See also Local Civil Rule 26.02 (rules for answering court interrogatories).

[4] The Court will issue a separate Order on mediation.

DEFENDANT'S EXHIBIT 1

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

6. Expert Witnesses: Parties shall file and serve a document identifying by full name, address, and telephone number each person whom they expect to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Fed. R. Civ. P. 26(a)(2)(B) has been disclosed to the parties by the following dates:

   Plaintiff: **August 5, 2016**
   Defendant: **September 6, 2016**

7. Records Custodian Witnesses: Counsel shall file and serve affidavits of records custodian witnesses proposed to be presented by affidavit at trial no later than **September 12, 2016**. Objections to such affidavits must be made within fourteen (14) days after the service of the disclosure. (See Fed. R. Evid. 803(6), 902(11), or 902(12) and Local Civil Rule 16.02(D)(3)).

8. Discovery: Discovery shall be completed no later than **October 4, 2016**. All discovery requests shall be served in time for the responses thereto to be served by this deadline. De bene esse depositions must be completed by discovery deadline. No motions relating to discovery shall be filed until counsel have consulted and attempted to resolve the matter as required by Local Civil Rule 7.02.

9. Motions in Limine: Motions in limine must be filed no later than **fifteen (15) business days prior to jury selection.**

10. Dispositive Motions and Daubert Motions: All dispositive motions and Daubert motions shall be filed on or before **October 18, 2016**.

11. Pretrial Disclosures: No later than twenty-one (21) business days prior to Jury Selection, the parties shall file and exchange Fed. R. Civ. P. 26(a)(3) pretrial disclosures. Within fourteen (14) days thereafter, a party shall file and exchange Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party and any deposition counter-designations under Fed. R. Civ. P. 32(a)(4).

12. Pretrial Briefs: Parties shall furnish the Court and serve pretrial briefs five (5) business days prior to the date set for jury selection (Local Civil Rule 26.05). Attorneys shall meet at least five (5) business days prior to the date set for submission of pretrial briefs for the purpose of exchanging and marking all exhibits. See Local Civil Rule 26.07.

13. Trial: This case is subject to being called for jury selection and/or trial on or after **January 3, 2017**.

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

The parties' attention is directed to the Special Instructions for Cases Before Judge Richard Mark Gergel, attached hereto and also available on the District Court's website at www.scd.uscourts.gov.

April 8, 2016
Charleston, South Carolina

Richard Mark Gergel
United States District Judge

Attachments:

- Rule 26(f) Report
- Special Instructions for Cases Before Judge Richard Mark Gergel

LAW OFFICES
JONES, SIMPSON & NEWTON, P.A.

WILLIAM W. JONES, JR. (retired)
MARK S. SIMPSON
WM. WESTON JONES NEWTON
SAMUEL L. KIRKLAND
F. WARD BORDEN (SC, VA & DC)
DEAN S. HASKELL (SC & CT)
NICHOLAS McEWEN

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THIS CORRESPONDENCE ORIGINATED AT THE BLUFFTON OFFICE

E-mail: wborden@jsplaw.net

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

May 6, 2021

Beaufort County Clerk of Court
102 Ribaut Road, Second Floor
Beaufort, South Carolina 29902

Re: Zoul, et al. v. Leary, et al.; Beaufort County Court of Common Pleas, Civil Action No. 2019-CP-07-00117

Dear Sir or Madam:

Our law firm represents the Plaintiffs in the above-referenced case. The case is scheduled for a date certain bench trial on May 18, 2021.

Defendants transmitted a Notice of Deposition on May 4, 2021 to schedule a ZOOM deposition of the primary Defendant while he is out of state. It is Defendants' intent to use a tape or transcript so that Defendant Lawrence Leary does not have to appear before the Court in Beaufort County at trial. Accordingly, Plaintiffs yesterday (5/5/21) filed a Motion to Quash or for Protective Order opposing the taking of the out of state deposition to be used at trial. Our Motion was three pages long. On page 2 we referenced attaching a copy of the Notice of Deposition as Exhibit 1. We inadvertently did not attach the Notice of Deposition with our Motion. It is requested that you please accept as filed the Exhibit 1 Notice of Deposition attached hereto, and incorporate it with Plaintiffs' Motion filed yesterday.

If there are questions, please feel free to call. Thank you.

Sincerely,

JONES, SIMPSON & NEWTON, P.A.

F. Ward Borden

F. Ward Borden

Enclosure

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs, -vs- LAWRENCE LEARY, ET AL. Defendants.	IN THE IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **NOTICE OF DEPOSITION**

YOU WILL PLEASE TAKE NOTICE that the Defendants' Attorney will take the deposition (by stenography and/or video) of the following person at the time set forth herein, upon oral examination before the herein described Notary Public or before any other Notary Public or officer authorized by law to take depositions, at which time you are notified to appear and take part in such examination as you may be advised, and as shall be fit and proper and will continue from day to day until completed.

WITNESS **Lawrence Leary**

DATE: May 14, 2021

TIME: 9:00 am

PLACE: Via Zoom

YOU WILL PLEASE TAKE FURTHER NOTICE at the time of the deposition the Deponent is commanded to produce the documents listed in Exhibit A, attached hereto.

The deposition may be conducted via videoconferencing or telephonic means, and may be recorded on videotape in addition to stenographic transcription. This deposition is being taken for use at trial, and for all other purposes as we are permitted under the rules of this Court and all applicable statutes and laws.

GALVIN LAW GROUP, LLC
/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
P.O. Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
4th day of **May**, **2021**

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs -vs- LAWRENCE LEARY, ET AL. Defendants	IN THE IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the **NOTICE OF DEPOSITION of Lawrence Leary** electronically, or by mailing a true and correct copy of same to the following, with adequate postage affixed thereto, addressed as follows on the day set forth below:

Ward Borden, Esq.
Jones Simpson and Newton, PA
7 Plantation Park Dr.
Bluffton, SC 29910

GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
P.O. Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
4th day of **May**, **2021**

EXHIBIT A

None

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

The South Carolina Court of Appeals

Zachary Z. Zoul and Zoul Hospitality, LLC d/b/a Hospitality Advisors Group, Respondents,

v.

Lawrence Leary and Old Town Bluffton Inn, LLC, Appellants.

Appellate Case No. 2021-000862

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2019CP0700117

ORDER

The time for serving the record on appeal is hereby extended until May 13, 2022.

FOR THE COURT

BY _____ CLERK

Columbia, South Carolina

FILED
May 04 2022

cc:
F. Ward Borden, Esquire
Gregory Michael Galvin, Esquire

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY Z. ZOUL, ET AL. Plaintiffs, v. LAWRENCE LEARY, et al. Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO. 2019-CP-07-117 **DEFENDANTS' PRETRIAL BRIEF**

Now comes the Defendants, Lawrence Leary and Old Town Bluffton Inn, LLC who files its pretrial brief as follows.

Remaining Defendants and Claims

The case was filed on January 22, 2019 with many Defendants named. After the Motion for Summary Judgment the only remaining Defendants were Lawrence Leary and Old Town Bluffton Inn, LLC and the only remaining claims were for Breach of Contract Express or Implied in Fact, Promissory Estoppel and Quantum Meruit.

Factual Background

The Defendant, Lawrence Leary, built a luxury hotel, the Old Town Bluffton Inn, LLC ("OTBI") in Old Towne Bluffton. Lawrence Leary is a Seventy-Six (76) year old man who has a severe case of dyslexia. As a result, he only reads at a Third Grade (3^{rd}) level and he did not finish grade school. The initial plan was to run the hotel with his Mr. Leary's daughter, Dannielle Harrison.

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

Before the hotel opened, Mr. Leary's daughter and her husband contacted Zachary Zoul, the Plaintiff, for help in obtaining a loading zone from the Town of Bluffton. Mr. Zoul sent an invoice dated June 27, 2018 and charged the Old Town Bluffton Inn, LLC, One Thousand Three Hundred Fifty Dollars ($1,350.00) for his work on the loading zone. Zoul and Hotel Associates Group (collectively "HAG") was paid for his work under this contract. (See Exhibit "A").

Next, on September 17, 2018, OTBI through Lawrence Leary, its manager, hired HAG under a Consulting Services Agreement whereby HAG would charge Six (6%) of the sale of the hotel only if they brought a buyer for the hotel. Under this agreement, HAG "will be responsible for all professional services and expenses which it incurs." Further, HAG agreed to "visit the property with a representative of a qualified investor group to the property as early as September 2018 or in the near term thereafter." The terms of the agreement expired on December 31, 2018. (See Exhibit "B").

Shortly after entering into the Consulting Services Agreement, HAG informed Mr. Leary that it could manage the hotel. HAG informed Leary that if HAG got the hotel running it would sell to a higher price to a new purchaser.

HAG claims that they discussed all of the terms of the proposed agreement and Leary agreed orally to the terms of the agreement, but Mr. Leary adamantly disputes any allegation that he orally accepted the contract, but he does note that there were discussions about the potential of having HAG run the inn. On October 8, 2018, HAG met with Mr. Leary at the hotel. During this meeting HAG continued to attempt to sell Mr. Leary on allowing them to run the hotel. After meeting Mr. Leary on October 8, 2018, Mr. Zoul, on behalf of HAG sent Mr. Leary a draft of the proposed contract and stated that "Attached, please find a Draft Agreement for your review. Please let me know if you have any questions or comments." Further, the email finished stating that "We

[HAG] would be proud to manage your property and meet and exceed your standards and expectations." (See Exhibit "C").

The draft agreement which was sent was not signed by HAG and sought the signature of Mr. Leary on behalf of the Old Town Bluffton Inn, LLC. There is no allegation that Mr. Leary, or anyone on behalf of Old Town Bluffton Inn, LLC signed the management agreement.

At the meeting and thereafter, Mr. Leary became suspicious of HAG because initially they indicated that they would have their on staff on site to manage the hotel. However, at the meeting on October 8, 2018, HAG informed Mr. Leary that they would hire an innkeeper, at OTBI's expense. At this point the offer did not make sense to the inn because they would incur a significant amount of management fees and then be required to hire the staff to run the inn. As a result, Mr. Leary began to question if he accepting HAG's offer made sense. As a result, he asked his advisors to investigate HAG and determine if the offer made business sense. One of the advisors, Mr. Richard Ulbrich, attempted to research HAG and advised Mr. Leary to decline their offer to manage the property.

To show that the parties did not have a contract, on October 15, 2018, Mr. Zoul emailed Mr. Leary and asked him to provide the specific name of the legal entities on the contract. (See Exhibit "D").

The Plaintiffs allege that they attempted to pickup a copy of the signed agreement from Mr. Leary, but he was not available.

On October 24, 2018, Mr. Leary informed HAG that he was not going to hire HAG to manage the hotel and he would manage the hotel himself. HAG claims that Mr. Leary agreed to pay HAG's invoice, but Leary adamantly disputes that he ever agreed to pay any invoice.

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On October 29, 2018, HAG issues a bill to Mr. Leary for all of their services under the contract claiming that they are owed Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15) for their costs and services. (See Exhibit "E")

The Pending Causes of Action

Breach of Contract

The Plaintiffs have a pending claim for breach of contract against Mr. Leary and the Old Town Bluffton Inn, LLC. "In order to prevail on his claim of breach of contract, Plaintiff bears the burden of establishing the existence and terms of the contract, defendant's breach of one or more of the contractual terms, and damages resulting from the breach." Taylor v. Cummins Atl.,852 F Supp. 1279, 1286 (D.S.C' 1994). The Plaintiffs will have a major hurdle in establishing a cause of action for Breach of Contract.

> "It is well settled in South Carolina that in order for there to be a binding contract between the parties, there must be a mutual manifestation of assent to the terms . . . the assent must be as to all of the terms of contract." *See also Aperm of South Carolina v. Roof*, 290 S.C. 442, 351 S.E.2d 171, 173 (Ct. App. 1986) (material terms must not be left for future settlement). Blanton Enters., Inc. v. Burger King Corp., 680 F. Supp. 753, 770 (D.S.C. 1988)

The issue is that the Plaintiffs sought acceptance through a written signed acceptance. All parties agree that the contract was never signed. Pursuant to Insurance Co. of N. Am. v. United States, 159 F.2d 699 (4th Cir. 1947) (a contract is not complete as long as there remains something to be done to establish contractual relations as contemplated by both parties to the contract). The signed contract was not ever executed by either party and therefore it is not binding. Further under

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South Carolina Law, in a similar case the Plaintiff tried to prove a written contract was accepted orally. The Court held as follows:

> Fender & Latham asserts it had a binding contract with First Union because, at a meeting between the parties on August 13, 1990, representatives for Fender & Latham orally agreed to the terms of the contract. Fender & Latham's oral acceptance, however, was insufficient because the offer expressly required a written acceptance. See Bugg v. Bugg, 272 S.C. 122, 125, 249 S.E.2d 505, 507 (1978) ("Where it is determined that the parties intended not to be bound until the written contract is executed, no valid and enforceable obligation will be held to arise."); Restatement (2nd) of Contracts § 58 (1981) (if an offer prescribes the manner of acceptance, the offeree must comply with its terms in order to create a contract). Fender & Latham, Inc. v. First Union Nat'l Bank, 316 S.C. 48 (Ct.App 1994).

The South Carolina District Court followed the same reasoning when it decided the following:

> For a contract to arise from an offer, "[a]n acceptance must comply with the requirements of the offer as to the promise to be made or the performance to be rendered." Restatement (Second) of Contracts § 58 (June 2006). When a written offer to contract expressly requires a written acceptance, only a written acceptance will convert the offer into a contract. Fender & Latham, Inc. v. First Union Nat'l Bank, 446 S.E.2d 448, 449-50 (S.C. Ct. App. 1994) (holding that an oral acceptance of a written offer to make a loan was not sufficient to create a contract because the offer expressly required a written acceptance).
>
> Abn Amro Mortg. Group v. Investors Title Ins. Co. 2006 U.S. Dist. LEXIS 111095.

Under both of these cases, since HAG sought a written acceptance of the written contract, they cannot claim that the contract was orally accepted. As a result, a contract was not established.

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

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Promissory Estoppel

The second cause of action at issue is the cause of action for Promissory Estoppel. Under this theory "[T]he party asserting promissory estoppel must demonstrate: (l) a promise with unambiguous terms; (2) reasonable reliance upon the unambiguous promise; (3) foreseeability of the promisee's reliance; and (4) injury sustained in relying on the promise because of the promisor's inconsistent disposition. " Barnes v. Johnson, 402 S.C. 458, 469, 142 S.E.2d 6, 11 (Ct. App.20l3). The issue with the Plaintiffs' Cause of Action for promissory estoppel is due to the fact that the inn did not believe that there was any reliance because the inn did not sign a written contract and thus could not reasonably rely on any oral statements when they required an executed agreement. The South Carolina District Court examined an identical issue regarding promissory estoppel and reasoned as follows:

> This conclusion raises what the court believes to be the threshold issue in resolving plaintiff's promissory estoppel cause of action: Would allowing plaintiff in this case to recover damages under a promissory estoppel theory undermine the contract principle announced in Bugg that the parties may control the time at which they intend to be bound by an oral promise? The court holds that where, as here, the facts and circumstances of a case demonstrate that the parties to an alleged oral promise did not intend to be bound until they had reduced the promise to writing and this never occurred, one party cannot recover on that promise under a promissory estoppel theory. To hold otherwise would undermine the universally recognized contract principle that the parties to a promise may control the time at which it becomes obligatory. The court is confident that, if presented with the issue, the South Carolina courts would likewise construe the promissory estoppel doctrine in such a way that it compliments, rather than undermines, traditional contract principles.
> Blanton Enters., Inc. v. Burger King Corp., 680 F. Supp. 753, 775 (D.S.C. 1988)

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

Quantum Merit

The final cause of action outstanding is for Quantum Meruit. To establish a claim for Quantum Meruit the Plaintiff must prove the following: "(l) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hosp. v. City of Myrtle Beach,341 S.C. l, 8-9, 532 S.E .2d 868,872 (2000). If the Plaintiffs prevail on this theory Plaintiff can recover reasonable value of the performance and prejudgment interest. Okatie River L.L.C. v. Southeastern Site Prep, L.L.C, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003); Restatement of Contracts Sec 347 (1932).

This cause of action fails as well because the Plaintiff cannot show that the Defendants received valuable services. First, the services provided were to benefit the sale of the property under the sales contract. Further, the only services that the HAG provided were in an attempt to provide the OTBI with enough proposed value to convince them to hire HAG. Further, it is not unjust for a party to decline an offer of services. Even if HAG can show that they provided some value, which the Defendants do not believe is possible it would be unjust to allow HAG to collect on a contract which they knew had not been accepted.

GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
PO Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
18th day of **May**, **2021**

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

HOSPITALITY
ADVISORS GROUP

STATEMENT

June 27, 2018

Mr. Vincent T. Harrison
Marketing Director
Old Town Bluffton Inn
1321 May River Road
Bluffton, South Carolina 29910
Vincent@blufftoninn.com

Invoice #2018-03109 – Development Services – Old Town Bluffton Inn

Consulting services associated with the site planning and intergovernmental relations associated with Inn loading zone. Project site visits, research, meeting with Town officials, presentation documents, and Town Council meeting preparation. Hourly rate of $150.

Professional Services:

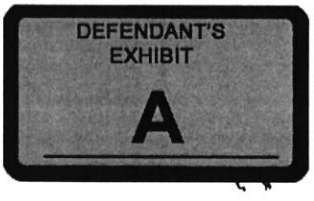
5/16/18: Initial visit including travel and mileage	$300.00
5/25/18: Draft presentation to Town Council	$300.00
5/30/18: Meeting with Vince Harrison and Town officials	$300.00
5/31/18: Meeting minutes recapping discussion	$150.00
6/01/18: Meeting with Vince Harrison and Mayor Sulka	$300.00

Expenses:

No charge

Total $1,350.00

Remittance to:
Hospitality Advisors Group
404 South Webb Road
Grand Island, Nebraska 68803
Or electronically at: Five Points Bank. Account: 10107371; Routing: 104901678



ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

HOSPITALITY
ADVISORS GROUP

CONSULTING SERVICES AGREEMENT

This Agreement between Hospitality Advisors Group and Larry Leary provides for the following.

Larry Leary engages Hospitality Advisors Group for the purposes of securing a Buyer for the Old Town Bluffton Inn. This shall be handled on a confidential basis and information shall be shared only with a qualified prospective Buyer(s). No information will be shared with any members of the Old Town Bluffton Inn staff or anyone in Bluffton or Beaufort County. Knowledge of this Agreement and the engagement of Hospitality Advisors Group will not be shared with other members of the firm and only Zachary Zoul and Eric Brooks will be aware of it.

Hospitality Advisors Group will be compensated only in the event that a Buyer is found and a sale is consummated. Hospitality Advisors Group will be responsible for all professional services and expenses which it incurs. Larry Leary agrees to pay a consulting fee equivalent to 6% of the sale price at the time of closing in the event that Hospitality Advisors Group secures a Buyer and the sale is substantially effectuated as set forth in any Purchase Agreement.

Hospitality Advisors Group will visit the property with a representative of a qualified investor group to the property as early as September 2018 or in the near term thereafter. The firm will present the property to an already identified investor group(s). In the event that the initial investment group(s) decline to submit a satisfactory offer and perform accordingly, Hospitality Advisors Group with the consent of Larry Leary may engage in limited marketing to select prospective buyers as set forth in a protocol submitted to Larry Leary for approval.

The initial term of this consulting services engagement shall be effective this date and continue through December 31, 2018. The terms of this Agreement shall apply thereafter for any Buyer identified through the services of Hospitality Advisors Group.

Entered into this 17 day of September 2018 by and between the following.

Larry Leary, Owner – Old Town Bluffton Inn

Zachary Z. Zoul, CEO - Hospitality Advisors Group

DEFENDANT'S EXHIBIT B

180

Zoul Depo 5-11-2021---000031

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

Subject: Update, Innkeeper, and Draft Management Agreement

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com;

Date: Monday, October 8, 2018 7:56 PM

Larry,

It was a pleasure meeting with you today. The property is exceptional; very impressive. I believe it will be a strong performer in the market and region.

I had a dinner meeting this evening with an Innkeeper candidate and her husband. She reported to me at Palmetto Bluff and worked with both Mike and I. She has excellent management, organizational, and people skills. She also happens to live in the Old Town area and travels there regularly by golf cart. Her location is an added plus. I would like her to meet with you.

Attached, please find a Draft Agreement for your review. Please let me know if you have any questions or comments.

There is a great deal of pre-opening work to complete from an operational perspective. Please know that Eric, Mike, myself, and our support team are fully committed to making your property our top priority and moving expeditiously to place it in operation.

Eric will plan to be in Charleston on Friday.

We would be proud to manage your property and meet and exceed your standards and expectations.

Best,

Zack

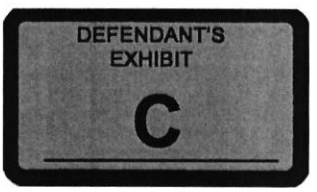
Zachary Z. Zoul
Chairman and CEO

Hospitality Advisors Group

HOSPITALITY ADVISORS GROUP

HOSPITALITY ADVISORS GROUP

888-731-0515 (o)
308-380-2450 (m)



Zoul Depo 5-11-2021---000045

----- Forwarded Message -----
From: Zachary Z. Zoul <zacharyzoul@hospitalityadvisorsgroup.com>
To: Zachary Z. Zoul <zacharyzoul@hospitalityadvisorsgroup.com>

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

MANAGEMENT AGREEMENT BETWEEN HOSPITALITY ADVISORS GROUP AND LARRY LEARY

This agreement shall constitute a management services agreement between Hospitality Advisors Group (Operator) and Larry Leary (Owner) for the Old Town Bluffton Inn (Inn) in Bluffton, South Carolina and shall provide for the following.

Management: Owner engages Operator to provide full service management of the Inn effective upon the date of execution. Operator shall be responsible for executing and maintaining the full array of services customarily provided by a boutique hotel and shall operate the Inn in accord with industry standards and – to the extent provided for by Owner in the capital and operating budgets - fulfill a service level approaching, or comparable to, a modified four diamond standard in terms of hospitality services and amenities. Management services shall encompass service standards, maintenance, housekeeping, recruitment, personnel supervision, guest services, marketing, inspections, compliance with applicable laws, ordinances, and industry standards, and general oversight. The Operator's management team principals – Zachary Zoul, Eric, Brooks, and Mike Alsko, among others as may be necessary, will be assigned to the property on either an ongoing or rotating basis to provide general oversight, management, and supervision. Except for Zoul, who is the Owner and CEO, the Operator has the right to substitute other firm associates as personal circumstances change.

Operations Staff: The Operator will be responsible for hiring Inn employees, including an Innkeeper, who will be employees of Owner, but will report to, and be supervised by, the Operator. The Owner shall have sign-off authority on the hiring of the Innkeeper. The Innkeeper will be the sole full time on-site management team member and shall have direct reporting responsibility to the Operator. During the period of pre-opening and transitions, Operator may deploy temporary personnel while recruitment is underway. The staffing level of the Inn, the nature and number of staff positions, and the compensation schedule will be set forth in an annual budget/pro forma which shall be approved by the Owner.

Budget/Pro Forma: Operator has provided a preliminary Operating Pro forma and shall – prior to opening – provide a revised pro forma and operating and capital budget to the Owner for approval. This, and a more detailed operating budget, will be reviewed from time to time and will be submitted to the Owner for approval should revisions be necessary. Operator shall consult with Owner and obtain approval for the rack rate schedule.

Financial, Purchasing, and Accounting: Operator, with the approval of the Owner, shall engage a bookkeeping firm to perform any financial and accounting services which are not part of the Inn's property management system. The contractor will also provide payroll service processing. Operator shall have the right to procure supplies, materials, and services to operate the Inn as provided for in line item budget presented and approved by the Owner. Invoices from vendors and contractors shall be obligations of the Owner and will be submitted to the contract bookkeeper on a weekly basis for payment after approval by the Owner. The Operator shall submit individual purchases to the Owner for approval in advance for any expenditure in excess of $1,000.00 except for those standard and/or reoccurring expenses for items such as laundry, housekeeping, and marketing. The Operator will oversee the development of, and provide the Owner with, monthly financial reports including ADR, occupancy, and occupancy projections. It is recognized that some "counter" checks with limited Innkeeper signing authority may be needed for certain goods such as liquor.

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Marketing and Professional Networking: Operator shall present to the Owner for approval a Marketing Plan and budget. Operator shall have comp privileges for the purposes of marketing, public relations, and industry purposes with such extensions to anticipated non-peak occupancy periods.

Pre-Opening Services: This agreement provides for ongoing management and operational services. Separate and distinct from these shall be pre-opening services from the date of execution to 30 days post opening. During this 60-90 day period, it recognized that Operator will be providing specialized pre-opening services primarily through the work and deployment of the three principles – Zoul, Alsko, and Brooks and support staff of the firm. During some portion of this time, there will not be an Innkeeper on staff and the fee schedule for this period shall reflect this. Pre-opening services include: procurement, systems development, systems integration, coordination with installations, vendor and contractor identification and establishment, budget and pro forma development, accounting systems development, staff recruitment, marketing plan development, pre-opening marketing, training, pre-opening events, communications systems, and service standard development. The Pre-opening period commenced with Operator's work beginning October 1, 2018

Sale: The Agreement between the Operator and the owner for the sale of the Inn and the associated fee will continue throughout the term of the agreement.

Fees and Expenses: The Owner will compensate Operator the sum of $5,000 on the first of each month for management services effective 30 days after opening. During the defined pre-opening period, the Owner will compensate the Operator the sum of $10,000 upon the date of execution of this agreement and on the first of any month thereafter during the pre-opening term by electronic bank transmission. The Operator will be entitled to a quarterly bonus of 10% of any excess in the gross operating profit of the Inn based on a rolling twelve month operating pro forma. These management fees are exclusive of expenses. All property related expenses, including travel, materials, and supplies shall be paid by Owner upon presentation of a periodic statement. Standard management fees and expenses shall be paid on the 1st of each month by electronic bank transmission.

Term: The initial term of this agreement shall be one year. It shall continue thereafter unless sixty days advance notice is provided by either party. The Owner shall have the right to cancel the agreement unilaterally at any time with sixty days' notice in the event that the Inn is sold.

Entered into this ____ day of 2018 by and between the following:

_____

Larry Leary, Owner

_____

Zachary Z. Zoul, Managing Member and CEO

DBA Entity Name

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com

Date: Monday, October 15, 2018, 04:04 PM CDT

Larry,

I tried to reach your attorney on Friday to confirm my email address (zacharyzoul@hospitalityadvisorsgroup.com) and also the legal entity name. I restructured the firm and we operate out of Nebraska under Zoul Hospitality LLC. Would you please pass the entity name along?

Thank you.

Best,

Zack

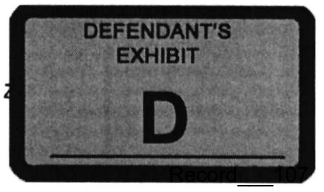
Zachary Z. Zoul
Chairman and CEO

Hospitality Advisors Group

HOSPITALITY ADVISORS GROUP

HOSPITALITY ADVISORS GROUP

888-731-0515 (o)
308-380-2450 (c)



ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

LAW OFFICES
JONES, SIMPSON & NEWTON, P.A.

WILLIAM W. JONES, JR. (retired)
MARK S. SIMPSON
WM. WESTON JONES NEWTON
SAMUEL L. KIRKLAND
F. WARD BORDEN (SC, VA & DC)
DEAN S. HASKELL (SC & CT)
NICHOLAS McEWEN

OF COUNSEL
J. THOMAS MIKELL

BLUFFTON OFFICES
7 PLANTATION PARK DRIVE, SUITE 3
P.O. BOX 1938
BLUFFTON, SC 29910
Telephone (843) 706-6111
Fax (843) 706-5667
E-Mail: jsplaw@jsplaw.net

BEAUFORT OFFICES
510-C CARTERET STREET
P.O. BOX 1727
BEAUFORT, SC 29901
Telephone (843) 524-2110
Fax (843) 524-4995
E-Mail: jsplaw@jsplaw.net

THIS CORRESPONDENCE ORIGINATED AT THE BLUFFTON OFFICE

E-mail: wborden@jsplaw.net

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

May 6, 2021

Beaufort County Clerk of Court
102 Ribaut Road, Second Floor
Beaufort, South Carolina 29902

Re: Zoul, et al. v. Leary, et al.; Beaufort County Court of Common Pleas, Civil Action No. 2019-CP-07-00117

Dear Sir or Madam:

Our law firm represents the Plaintiffs in the above-referenced case. The case is scheduled for a date certain bench trial on May 18, 2021.

Defendants transmitted a Notice of Deposition on May 4, 2021 to schedule a ZOOM deposition of the primary Defendant while he is out of state. It is Defendants' intent to use a tape or transcript so that Defendant Lawrence Leary does not have to appear before the Court in Beaufort County at trial. Accordingly, Plaintiffs yesterday (5/5/21) filed a Motion to Quash or for Protective Order opposing the taking of the out of state deposition to be used at trial. Our Motion was three pages long. On page 2 we referenced attaching a copy of the Notice of Deposition as Exhibit 1. We inadvertently did not attach the Notice of Deposition with our Motion. It is requested that you please accept as filed the Exhibit 1 Notice of Deposition attached hereto, and incorporate it with Plaintiffs' Motion filed yesterday.

If there are questions, please feel free to call. Thank you.

Sincerely,

JONES, SIMPSON & NEWTON, P.A.

F. Ward Borden

F. Ward Borden

Enclosure

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs, -vs- LAWRENCE LEARY, ET AL. Defendants.	IN THE IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **NOTICE OF DEPOSITION**

YOU WILL PLEASE TAKE NOTICE that the Defendants' Attorney will take the deposition (by stenography and/or video) of the following person at the time set forth herein, upon oral examination before the herein described Notary Public or before any other Notary Public or officer authorized by law to take depositions, at which time you are notified to appear and take part in such examination as you may be advised, and as shall be fit and proper and will continue from day to day until completed.

WITNESS **Lawrence Leary**

DATE: May 14, 2021

TIME: 9:00 am

PLACE: Via Zoom

YOU WILL PLEASE TAKE FURTHER NOTICE at the time of the deposition the Deponent is commanded to produce the documents listed in Exhibit A, attached hereto.

The deposition may be conducted via videoconferencing or telephonic means, and may be recorded on videotape in addition to stenographic transcription. This deposition is being taken for use at trial, and for all other purposes as we are permitted under the rules of this Court and all applicable statutes and laws.

GALVIN LAW GROUP, LLC
/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
P.O. Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
4th day of **May**, **2021**

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs -vs- LAWRENCE LEARY, ET AL. Defendants	IN THE IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the **NOTICE OF DEPOSITION of Lawrence Leary** electronically, or by mailing a true and correct copy of same to the following, with adequate postage affixed thereto, addressed as follows on the day set forth below:

Ward Borden, Esq.
Jones Simpson and Newton, PA
7 Plantation Park Dr.
Bluffton, SC 29910

GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
P.O. Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
4th day of **May**, **2021**

EXHIBIT A

None

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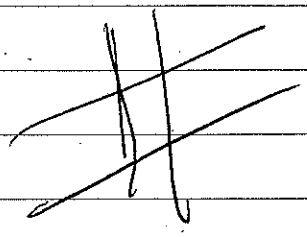
~~Ex 1 Amended Complaint~~

P-1 Proforma
P-2 Best case scenario proforma
P-3 Notes for proforma
P-4 Action List
P-5 Action List
P-6 Background for Q4 ~~Bow~~ Launch meeting
P-7 Confirmation of Testing on Emailing Reservations
P-8 Memorandum of Vendor Contract Information
P-9 E-Mail
P-10 Secretary of State Reservation
P-11 Operating Agreement
R-12 Quitclaim Deed
R-13 Statement
R-14 Copy of Unsigned Check
R-15 Letter about unsigned check
R-16 Email
P-17 Consulting Services Agreement
P-18 Email
P-19 Management Agreement
P-20 Email
P-21 Email
R-22 Email

P-23 Statement

P-24 CV of Mr. Salazar



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700117

Zachary Z Zoul , et al
PLAINTIFF(S)

Lawrence Leary , et al
DEFENDANT(S)

Submitted by: COURT	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 Motion to Reconsider Order Denying the Motion to Dismiss the Counterclaims filed on 6/7/2021, and Motion to Alter or Amend Judgment/Motion for New Trial/Motion to Reconsider filed on 6/10/2021 are respectfully denied without a hearing.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

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:

ELECTRONICALLY FILED - 2021 Jul 19 8:40 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

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.

	2142	7/13/2021
Circuit Court Judge- Carmen T. Mullen	**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:

Ward Borden	Gregory Galvin
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter: N/A

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), SCRCP.

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 Jul 19 8:40 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

ELECTRONICALLY FILED - 2021 Jul 19 8:40 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

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ELECTRONICALLY FILED - 2021 Jul 19 8:40 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Beaufort Common Pleas

Case Caption: Zachary Z Zoul , plaintiff, et al VS Lawrence Leary , defendant, et al

Case Number: 2019CP0700117

Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF BEAUFORT)**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2019-CP-07-00117**
ZACHARY Z. ZOUL, AND ZOUL) **HOSPITALITY, LLC d/b/a)** **HOSPITALITY ADVISORS)** **GROUP,)** **)** **Plaintiff,)** **)** **v.)** **)** **LAWRENCE LEARY, AND OLD)** **TOWN BLUFFTON INN, LLC,)** **)** **Defendants.)** **)**	**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENT, MOTION FOR A NEW TRIAL AND MOTION TO RECONSIDER**

COME THE PLAINTIFFS, and for their Memorandum of Points and Authorities in Opposition to Defendants' [Amended] Motion to Alter/Amend Judgment, Motion for a New Trial and Motion to Reconsider, and in opposition to any other challenge by Defendants by virtue of them obtaining leave of this court to amend, state the following.

Argument

The Plaintiffs and Defendants, personally or by counsel, participated, on the 18th day of May 2021 at 9:30 a.m. in a trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.[1] Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' motion was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving

[1] The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

against the two remaining Defendants.

I. The was no failure to rule on Defendants' Motion in Limine and it was not error by the court to allow testimony of Plaintiffs' expert.

Virtually the entire issue raised by Defendants concerns Plaintiffs' intended expert witness, whose specialty and opinions were identified in advance. Confusion by Defendants, which is not here conceded, could only be attributed to Plaintiffs' single expert withdrawing before trial. Plaintiffs were compelled by circumstances, and did find a replacement in the same practice discipline as the withdrawn expert, who testified to the same scope of information and opinion as had been identified to Defendants. The withdrawn expert gave notice of withdrawal 12 days before trial.

A pertinent timeline for this issue is as follows:

- April 16, 2021 On-line publication of the non-jury trial roster for the week of May 17, 2021 was published to counsel.
-
- April 23, 2021 Updated Plaintiffs' discovery responses to identify Dr. Brumby McLeod as expert were delivered to Defendants (see attachment describing qualifications and intended areas of opinion testimony, Exhibit A).

- April 26, 2021 Parties and court confirm May 18, 2021, as trial date.

- May 7, 2021 Dr. Brumby McLeod unexpectedly withdrew as Plaintiffs' expert.
-
- May 12, 2021 Dr. John Salazar agrees to be Plaintiffs' expert for the same subject and opinions as the prior expert. Moreover, Defendants are made aware of the change as soon as a new expert was on board, and Plaintiffs informed that they would make the expert available for interview or deposition (see, Exhibit B). Defendants did not take Plaintiffs up on their offer of questioning Plaintiffs' expert, and Defendants did not once assert, at any time of which we are aware, that they intended to have an expert of their own to counter Plaintiffs' expert.

- May 18, 2021 Trial date.

Plaintiffs and Defendants both faced preparations for the May 18, 2021 trial. It was not necessary for Defendants to subpoena Plaintiffs' new expert because (a) Defendants had shown no interest in the initial expert identified to them for the same purposes on April 23, 2021; and, (b) upon there being a change in identity in Plaintiffs' expert, Plaintiffs offered to make him available before trial for interview or deposition by Defendants. (See, Exhibit B) Defendants preferred to

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keep Defendant Lawrence Leary in New Jersey, and file a motion in limine.

Plaintiffs identified in advance the witnesses they presented at trial, including as to their qualified expert witness. A case setting forth *criteria* in South Carolina for determining exclusion of evidence and/or witnesses is Jumper v. Hawkins, 348 S.C. 142, 558 S.E.2d 911 (Ct.App. 2001). According to Jumper, a judge is to consider and evaluate the following prior to excluding a witness: "(1) the type of witness involved; (2) the content of the evidence emanating from the proffered witness; (3) the nature of the failure or neglect or refusal to furnish the witness' name; (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and (5) the prejudice to the opposing party." Jumper, 348 S.C. at 152, 558 S.E.2d at 916.

Defendants knew from April 23, 2021 forward that Plaintiffs planned to put on a hospitality/tourism expert witness. Neither the areas of expertise, nor scope of proposed expert testimony materially changed thereafter. Just the expert's identity. Plaintiffs took maximum measures under the circumstances to enable Defendants to familiarize themselves with Plaintiffs' witnesses. Plaintiffs' expert Dr. John Salazar's curriculum vitae was made available. (Plaintiffs' Trial Exhibit 24)

Plaintiff's expert Dr. John Salazar, in testimony, provided useful information to the court, to a reasonable degree of expert certainty, on at least four matters: (a) What it means to be a hospitality or tourism specialist; (b) that the hospitality/tourism industry is a recognized field of endeavor in which there are professionals and those that are less so; (c) Dr. Salazar testified that the quality of Plaintiffs' work was a competent level; and (d) Dr. Salazar testified as to the amount of the non-gratuitous benefit bestowed by Plaintiffs upon Defendants (jointly and severally), which Defendants had knowingly retained. The providing and consideration of testimony from Plaintiffs' expert witness appeared consistent with communications about same. The court's holdings on fact and expert testimony should stand as held in the Judgment Order.

II. The Defendants request that this court apply a contract damages "cap" to what was expressly described to be a *quantum meruit* theory of recovery. To do so would be legal error. The court's ruling on damages was consistent with the law and evidence.

Defendants' argument II is error, and not a sincere outlook on the parties or the case. In October 2018, after accepting substantial services, Lawrence Leary and Old Town Bluffton Inn, LLC terminated Plaintiffs from managing the Inn. As was explained in testimony by Plaintiff Zachary Zoul, a statement from his company dated October 29, 2018 for $11,753.15 was delivered

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to Defendants. Mr. Zoul explained that *the charges on his invoice were much less than his normal charges for such work.* In conversation with Defendant Lawrence Leary at about the time of termination of Plaintiffs at the Inn, Plaintiff Zoul was informed to send an invoice and it would be paid. Plaintiff Zoul had the impression the matter might be quickly concluded, so to avoid protracted difficulty, Plaintiffs presented the reduced demand of $11,753.15, which was treated dismissively by the Defendants. While this took place, and thereafter, Defendants' position remained that they had no contract with the Plaintiffs. Figuratively speaking, the invoice sat in plain view from October 2018 through the date of trial on May 18, 2021, but was ignored by Defendants who did not pay anything on it, and asserted that there was no contract with Plaintiffs.

The Defendants, having gone to trial and had a $30,000.00 judgment entered against them, jointly and severally, *now* maintain they recognize Plaintiffs' initial demand which they ignored and effectively rejected for nearly two years. Defendants now argue to have the court grant Plaintiffs a purported contract amount Defendants only chose to acknowledge following trial.

Plaintiffs pleaded in their Complaint, without limit, breach of express contract, breach of implied in fact contract, and *quantum meruit*. "Relief in the alternative or of several different types may be demanded." Rule 8(a), S.C. Rules of Civil Procedure (2020). As a general matter, an express contract and *quantum meruit* are not considered to exist together from the same facts and circumstances. Generally, there is a contract – or if no contract – possibly a *quantum meruit* recovery. This court directed that an order be prepared for a judgment against the Defendants, jointly and severally, based in *quantum meruit*, with the damages left blank for the court's determination. The court made the damages amount $30,000.00, apparently based upon testimony by Plaintiffs' expert, and possibly others, about the value of Plaintiffs' services. The $30,000.00 amount was on the lower end of Dr. Salazar's valuation, which was $30,000.00 to $50,000.00.

According to the Defendants, pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (1986), the S.C. Court of Appeals stands for the position that "plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price". (Defendants' Motion, page 3) The Court of Appeals in Johnston v. Brown reduced the amount of the jury's award of *quantum meruit* damages.

Defendants' position is invalid. First, Defendants postured for nearly two years that there was no contract price and no worth to what was delivered by Plaintiffs. Further, Johnston v. Brown was taken up by the Supreme Court of South Carolina on certiorari. "This court [Supreme Court of South Carolina] granted certiorari to consider only the issue of whether the Court of Appeals erred

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in overturning the jury verdict for the quantum meruit award. We hold that it did, reverse and reinstate the jury verdict." Johnston v. Brown, 292 S.C. 478, 479, 357 S.E.2d 450, ___ (1987). The Supreme Court of South Carolina continued:

> "Under the theory of implied contract, when there is no agreement as to the price to be paid for services one is entitled to recover the fair or reasonable value of the services rendered. [citation omitted] The Court of Appeals erred in concluding Dr. Johnston received the 'agreed payment' for his services because there was evidence showing there was no agreement. It was for the jury to determine what compensation was reasonable for 1980-1982. Its quantum meruit award of $19,000.00 is supported by the evidence Dr. Johnston presented."
> Id. at 481, 357 S.E.2d at ____.

Dr. Salazar as an expert, and fact witnesses, provided the court information supporting the court's ruling. The judgment amount in the Judgment Order should not be reduced.

III.The court was correct in making the liability of the parties joint and several including holding Defendant Lawrence Leary liable.

Lawrence Leary is, or at relevant times was, majority member of Old Town Bluffton Inn, LLC. Upon best information, Lawrence Leary, for a period, took control of the managing member position of Old Town Bluffton, Inn, LLC from his daughter Danielle. On an affidavit filed in this case in connection with summary judgment motions, Defendant Lawrence Leary was quoted, "I control 51% of the Old Town Bluffton Inn, LLC ("OTBI")". He continued, "According to the Operating Agreement I am the manager of the OTBI." (Leary Affidavit of March 13, 2020). Mr. Sulka, formerly of Coastal States Bank, went to Lawrence Leary when he wanted answers. Testimony to that effect was given at trial. When Mr. Leary's banker asked him a question, Mr. Leary told his banker to speak with Plaintiffs.

Further, questions about the integrity and viability of Plaintiff Zachary Zoul and his company were raised by Lawrence Leary through his "licensed private investigator in South Carolina and New Jersey" Richard Ulbrich, and his Connecticut attorney, Randolph T. Lovallo. *See,* Leary Affidavit, paragraphs 11 and 12; Richard Ulbrich Affidavit paragraphs 3 and 7; and Randolph T. Lovallo Affidavit, paragraphs 3, 6 and 7. All the referenced affidavits were filed in this case by Lawrence Leary or his local counsel in relation to summary judgment motions, and are part of the case file. The affidavits demonstrate that Lawrence Leary dominated decision-making and involved personal friends in the startup of the Old Town Bluffton Inn. It is apparent that Lawrence Leary wants to shield himself personally, while being at the forefront of activities at the

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Inn. The facts and Mr. Leary's own actions speak for themselves. Mr. Leary is properly a judgment debtor in this case

IV. The court was not obligated to apportion damages, and Defendants did not cite to legal authority requiring same.

While it has been raised by the Defendants, no factual or legal reason has been given why damages awarded in this case should not be against Lawrence Leary and the Old Town Bluffton, Inn, LLC jointly and severally. There appears to be no error in the ruling.

V. The judgment amount is consistent with the measure of damages under *quantum meruit* and consistent with testimony of Plaintiff's expert, Dr. John Salazar.

Plaintiff's expert Dr. John Salazar contributed to the court at least four things to a degree of expert certainty: (a) What it means to be a hospitality or tourism specialist; (b) that the hospitality/tourism industry is a recognized field of endeavor in which there are professionals and those that are less so; (c) Dr. Salazar testified that the quality of Plaintiffs' work was a competent level; and (d) Dr. Salazar testified as to the amount of the non-gratuitous benefit bestowed by Plaintiffs upon Defendants (jointly and severally), which Defendants had knowingly retained. Dr. Salazar stated that he had charged much more for similar jobs. He valued Plaintiffs' work at $30,000.00 to $50,000.00, with the value being nearer the upper end. This is consistent with the law of awards in *quantum meruit*. The court's holdings on fact and expert testimony should stand as held in the Judgment Order.

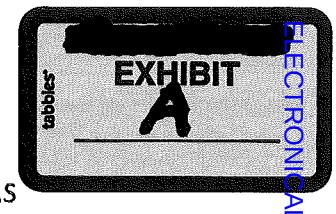
Conclusion

Based upon the testimony and exhibits of the trial of this case on May 18, 2021, content of this memorandum, the facts and controlling law, Plaintiffs respectfully request that Defendants' motion be denied in its entirety.

JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-8868

By: */s/ F. Ward Borden*
F. Ward Borden S.C. Bar # 10117

Bluffton, SC
June 15, 2021



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION # 2019-CP-07-00117
ZACHARY Z. ZOUL and ZOUL HOSPITALITY, LLC d/b/a HOSPITALITY ADVISORS GROUP,	)	
Plaintiffs,	)	PLAINTIFFS' SUPPLEMENT TO THEIR ANSWERS TO DEFENDANTS' FIRST INTERROGATORIES
v.	)	
LAWRENCE LEARY, LANDMARK 2 DEVELOPERS, LLC, OLD TOWN BLUFFTON INN, LLC, BLUFFTON INN SC, LLC, AND BLUFFTON INN MANAGEMENT, LLC,	)	
Defendants.	)	

COME NOW Plaintiffs Zachary Z. Zoul and Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") and herein below supplement their answer to Interrogatory 6 of Defendants' First Interrogatories. Notwithstanding this supplementation, Plaintiffs restate and incorporate herein by reference their previous general objections and privileges identified in their initial answers.

Interrogatory 6 – List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Objection/Answer: Dr. Brumby McLeod, Department Chair and Associate Professor at the College of Charleston, School of Business in the Department of Hospitality & Tourism Management; College of Charleston, Beatty Center, Room 315, Charleston, South Carolina. Dr. McLeod is expected to describe the work undertaken by the Plaintiffs. He is expected to testify to a reasonable degree of expert certainty about the work Plaintiffs performed for Defendants, the length of time Plaintiffs spent on work for Defendants, the purposes and functions of work performed, the understanding that Plaintiffs were providing a non-gratuitous benefit and the reasonable market value of the benefits conferred upon the Defendants by the

Plaintiffs, said benefits being knowingly received and retained by the Defendants without paying the Plaintiffs.

Dr. McLeod's opinions will be based upon his visual inspection of photographs, literature, and notes maintained by Plaintiffs, discovery documents, pleadings, consultations, other applicable resources, his education, training and experience, and other facts or data of a type reasonably relied upon by experts in his particular field. All of Dr. McLeod's opinions described are maintained to a reasonable degree of expert certainty.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

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7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-8868

/s/ F. Ward Borden
F. Ward Borden
Counsel for the Plaintiffs

Bluffton, SC
April 23, 2021

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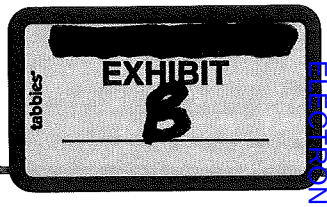

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Ward Borden

From: Ward Borden
Sent: Thursday, May 13, 2021 11:31 AM
To: 'ggalvin@galvinlawgroup.com'
Subject: Zoul, et al. v. Leary, et al.
Attachments: DISCOVERY.SUPPLEMENTATION.4.23.21.docx; GALVIN.LETTER.4.23.21.doc; johnsalazar.cv.pdf; LETTER.CLARIFYING.MISSING.EXHIBIT.5.6.21.pdf; PARTIAL.PRE.TRIAL.BRIEF.5.3.21.pdf; RESPONSE.TO.CONTINUANCE.MATTER.4.22.21.pdf

Greg –

On April 23, 2021, I identified a hospitality expert named Brumby McLeod as an expert witness for Plaintiffs. That was in fulfillment of my duty to supplement discovery responses. Mr. McLeod's field of work and testimony were described. You had from April 23 or 24, 2021 to the present to find an expert to counter Plaintiffs'. Mr. McLeod withdrew for his own reasons. Since, I have spoken with multiple experts in hospitality and secured another one. He is in the same field and will testify about the same things identified for Mr. McLeod. You have not been forced to find an expert in a limited amount of time; I think it likely that your client will not pay for an expert and so notice of an expert given April 23 is now treated by Defendants as a big surprise.

Again, on May 3, 2021, we listed Mr. McLeod as hospitality expert. Wouldn't the time have been then to file a Motion in Limine if you were having trouble.

I expect Dr. John Salazar, who only confirmed his actual appearance yesterday evening, to cover the same information and provide the same opinions previously identified and attributed to the hospitality expert that withdrew. Dr. Salazar's CV is attached along with copies of other notices we have sent you. Additionally, if you wish to speak with Dr. Salazar before trial off record or under oath, we are prepared to make him available.

You and your client have been on notice of Plaintiffs having a hospitality expert intending to give testimony **for nearly a month** before the trial date. There is no unfair surprise and no unfair prejudice to your client.

JONES, SIMPSON & NEWTON, P.A.

Ward Borden
Counsel for the Plaintiffs

Attachments

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	Civil Action No. 2019-CP-07-117
Zachary Z. Zoul, et al.	)	
	)	
Plaintiff,	)	**MOTION TO RECONSIDER THE ORDER DENYING THE MOTION TO DISMISS THE COUNTERCLAIMS**
v.	)	
	)	
Lawrence Leary, et al.	)	
Defendants.	)	
	)	

This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778–79 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). Defendants received an email on May 25, 2021, but on this date a notice of the entry of the Court's ruling has never been filed (See Exhibit "A"). Out of an abundance of caution, the Defendants are filing this Motion.

Defendants respectfully submit the Court may have overlooked or misapprehended the following points in reaching its decision:

I. Failure to Rule on the Motion in Limine and Failure to Exclude the Expert's Testimony

The Court improperly allowed the testimony of the Plaintiff's expert and failed to rule on the Defendants' Motion in Limine. Just five (5) days before the trial in the aforementioned case the Plaintiffs notified the Defendant that they had hired a new replacement expert. In response to the expert, the Defendants were shocked by the naming of the new expert, did not have time to hire an expert to assist in the opposition to the newly named expert, and did not have the ability to combat the testimony of the expert. Nor did the Defendants even have time to send a subpoena to

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the expert, or even investigate the expert. Further, no expert reports were produced, or any information was produced providing information on the expert, or what the expert would testify to, or provide an opinion. The Defendants filed a Motion in Limine on May 13, 2021 and the Court did not rule on this Motion.

Further, the Court made an error on relying on the expert's testimony because the Defendants did not have the ability within five (5) days to rebut the testimony of the expert. In addition, the expert testified that he worked all weekend before the trial reviewing the documents. Therefore, the expert was only ready to testify just before trial. The Defendants incorporate all arguments included in their Motion in Limine filed before trial in this matter as if fully rewritten herein.

As discussed below, the Court's failure to exclude the expert testimony resulted in an excessive verdict as explained below.

II. The Maximum Recovery Amount for Damages Under Quantum Merit is the Contract Amount

The Plaintiffs only successful cause of action was on the cause of action for Quantum Merit. The Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they had issued a statement for their work claiming that they were owed Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15). Pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986) the South Carolina Court of Appeals explained:

> Even if we assume, as Johnston argues, that Brown breached an agreement to make him a partner, the result is the same. Although Johnston alleges a contract in his pleadings, he elected to sue, not on the contract for his expectancy damages, but in quantum meruit for the fair value of the services already rendered. Cf., Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936) (complaint alleged matters as to a contract between parties, but cause of action was in quantum meruit, not on contract); Coens v. Marousis, supra. **While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid**

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> **for the services**. United States Potash Co. v. McNutt, 70 F. (2d) 126 (10th Cir. 1984); Atkins v. County of Barnstable, 97 Mass. 428 (1867); Higgins v. Desert Braemer, Inc., 219 Cal. App. (2d) 744, 33 Cal. Rptr. 527 (1963) **(plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price**) [Emphasis Added]
>
> Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986)

Under the Johnson v. Brown analysis, the judgment amount is limited to Eleven Thousand Seven Hundred Fifty-Three and 15/100ths ($11,753.15), or the amount charged in the statement issued on October 29, 2021. Quantum Merit does not allow a recovery and is limited to the amount the parties agree should be paid for the services and thus the statement sent is the limiting amount of damages available to the Plaintiffs.

III. The Court Errored When Finding that Lawrence Leary Personally Benefitted

In order to succeed on a claim for Quantum Merit the Plaintiff must prove the following:

> 1. Benefit conferred by the plaintiff upon the defendant;
> 2. Realization of that benefit by the defendant; and
> 3. Retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value."
>
> Myrtle Beach Hosp. vs. City of Myrtle Beach, 341 SC 1, 8-9, 532 SE 2d 868, 872 (2000).

At trial the Plaintiffs never contended that Mr. Leary received any benefits personally for the alleged work which the Plaintiffs claimed they performed. Instead, at trial all of the Plaintiffs testified that all of the benefits were received by the Old Town Bluffton Inn, LLC and not Mr. Leary personally. Due to the fact that Mr. Leary did not receive any personal benefit from the alleged services the Court should not apportion the judgment to him personally and any judgment should only be against the inn itself.

IV. The Court Failed to Apportion the Damages

At trial the Defendants proved that Mr. Leary owned the inn One Percent (1%) personally and Fifty Percent (50%) through his trust. The other owner of the inn is Mr. Leary's daughter,

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Dannille Harrison. Ms. Harrison is as a 49% owner of the inn and would have received Forty Nine Percent (49%) of any benefits like Mr. Leary. However, Ms. Harrison was not named as a party and as a result, the Court errored in apportioning the damages One Hundred Percent (100%) to Mr. Leary. Instead, at best, Mr. Leary should have received One Percent (1%) of the judgment to him personally. Mr. Leary's trust was not a named party and he was only named individually. As a result, if any of the damages are apportioned against Mr. Leary personally, they should only amount to One Percent (1%) of the award since Mr. Leary only owned One Percent (1%) of the inn.

V. The Award of Damages was Excessive

At trial, the Plaintiff agreed that the Plaintiff only sought Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15) in the statement sent to the inn. Further, at trial the Plaintiffs testified that they only sought approximately Twenty Thousand ($20,000.00) in damages. However, the Court found that the Plaintiffs were entitled to Thirty Thousand Dollars ($30,000.00). At trial the expert, which was named Five (5) days before trial, testified that the majority of the benefit conferred upon the Defendants was the pro forma which was prepared. However, the verdict failed to recognize that the Plaintiffs testified that the pro forma was performed pursuant to the signed contract for the sale of the business. It was not disputed by the Plaintiffs that the Plaintiffs would only recover on the signed contract if they procured a buyer. The Plaintiffs never procured a buyer and as a result were not owed any monies for preparing the pro forma.

The Court sat in the position as the jury and as a result would be subject to the same review as a jury sitting trial. Under this analysis, the Plaintiffs testified that their damages were approximately Twenty Thousand Dollars ($20,000.00) and they only sought approximately

Twenty Thousand Dollars ($20,000.00) in damages. However, the Court provided the Plaintiffs with an additional Ten Thousand Dollars ($10,000.00) in damages, which were not even sought, or believed to be owed to the Plaintiffs.

When a verdict is so grossly excessive and the amount awarded so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other consideration not found on the evidence that it becomes the duty of this court, as well as of the trial court, to set aside the **verdict** absolutely. *Ray v. Simon*, 245 S.C. 346, 140 S.E. (2d) 575. Young v. Warr, 252 S.C. 179, 187, 165 S.E.2d 797, 800-01 (1969)

The verdict in this matter does not bear any rational view of the evidence since Quantum Merit only allows recovery in the contract amount. The Plaintiffs testified that they only sought Twenty Thousand ($20,000.00) in damages, but the Court awarded Thirty Thousand Dollars ($30,000.00), or Ten Thousand Dollars ($10,000.00) in excess of the damages sought by the Plaintiffs.

The Court also errored when it examined the testimony of the expert. The expert testimony should not have been allowed due to the late notice. However, an analysis of the testimony of the expert revealed that the work which he believed was valuable was the preparation of the pro forma (a few pages document). The Court errored when it failed to recognize that the Plaintiff testified that no monies were owed for the pro forma preparation since it was performed under business sale agreement which the Plaintiffs would only be owed a commission if the property sold. The Plaintiffs testified that they were not owed money for this work.

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VI. It is Inequitable to Award Damages to the Defendants

Quantum Merit only allows the recovery of services expended which inequitably benefited the Defendant. However, the case reveals that the Plaintiffs knew that they did not have a signed contract, demanded a signed contract and decided to perform work even without a signed contract. The Plaintiffs took the risk that the Defendant would not enter into a contract when they chose to begin work. The evidence presented at trial revealed that the Defendants were reviewing the contract and had not chosen to hire the Plaintiffs.

Further, the Court recognized that there was not a meeting of the minds when the Defendants realized that the Plaintiff was going to charge for both its services, plus the cost of the innkeeper. With this misunderstanding and until the in-person meeting, it is unjust to punish the Defendants for reviewing the contract and determining whether the Defendants wanted to hire the Plaintiffs.

The Court also failed to analyze which work was performed under the contract for the sale of the business. This work was done with the hope of a large commission payment and pursuant to the sales contract, the Plaintiffs were not entitled to recover any monies for the work which was performed pursuant to the sales contract.

Conclusion

Plaintiff respectfully requests the Court to reconsider its ruling and requests an Order from this Court for the following relief:

(1) Ruling on the Motion in Limine and Excluding the Expert's Testimony;

(2) Reducing the Award of Damages to $11,753.15 to the Old Town Bluffton Inn, LLC since Quantum Merit cannot exceed the amount of the contract;

(3) Removing the Judgment from Lawrence Leary Personally since he did not receive any benefit;

(4) If the award against Lawrence Leary is not entirely removed from the judgment rolls, reducing the judgment amount to One Percent (1%) of the total award since he only owned One Percent (1%) of the inn personally;

(5) Granting the Defendants, a new trial due to the excessive award; and

(6) Overturning the verdict because it is inequitable for the Plaintiffs to prevail when the Plaintiffs knew that they did not have a signed agreement, knew that they did not have a contract for their services, but chose to take the risk and move forward with their alleged work.

RESPECTFULLY SUBMITTED,

__s/ Gregory Michael Galvin, Esq.
Galvin Law Group, LLC
PO Box 887
Bluffton, SC 29910
843-227-2231
888-362-0714 fax

Attorney for Defendants

June 4, 2021
Bluffton, SC

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF BEAUFORT)**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2019-CP-07-00117**
ZACHARY Z. ZOUL, AND ZOUL) **HOSPITALITY, LLC d/b/a)** **HOSPITALITY ADVISORS)** **GROUP,)** **)** **Plaintiff,)** **)** **v.)** **)** **LAWRENCE LEARY, AND OLD)** **TOWN BLUFFTON INN, LLC,)** **)** **Defendants.)** **)**	**JUDGMENT ORDER**

Date/Time of Trial: Tuesday, May 18, 2021; 9:30 a.m.
Presiding Judge: Honorable Carmen Mullen
Plaintiffs' Counsel: F. Ward Borden, Esq.
Defendants' Counsel: Gregory M. Galvin, Esq.

CAME the parties, by their respective counsel, on the 18th day of May 2021 at 9:30 a.m. for a bench trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.[1] Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving against the two remaining Defendants.

Findings of Fact

1. Plaintiff Zachary Z. Zoul (individually "Mr. Zoul") is a natural person, over 21 years of age,

[1] The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

DEFENDANT'S EXHIBIT A

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and a citizen and resident of Grand Island, Nebraska. Plaintiff Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") is a Nebraska-organized limited liability company that has been licensed to transact business in the State of South Carolina. Mr. Zoul is the LLC's chief operating officer. Plaintiffs are assisted in their trade work by Mr. Eric Brooks of Savannah, Georgia (hereinafter "Mr. Brooks"), and Mr. Mike Alsko (hereinafter Mr. Alsko) of Hilton Head Island, South Carolina. Mr. Zoul and Mr. Brooks attended the bench trial and gave testimony and identified written exhibits.

2. Defendant Lawrence Leary (hereinafter "Mr. Leary") owns property in Beaufort County, South Carolina at 63 Honesty Lane, Bluffton, Beaufort County, South Carolina. Mr. Leary did not attend the trial; however, a deposition transcript taken while Mr. Leary was physically in New Jersey was filed with the court.

3. Mr. Leary and Old Town Bluffton Inn, LLC (hereinafter "LLC") were represented by counsel at trial. The court was informed that Mr. Leary owns a majority member interest in the LLC and his daughter Danielle Harrison holds a minority member interest in the LLC, but that daughter Danielle Harrison now manages the Old Town Bluffton Inn. Without more, the court regards the referenced circumstances to be facts of the case.

4. This court has received and reviewed the complete deposition transcript of Lawrence Leary, who was questioned by his own attorney and was able to state his views. Mr. Leary was not at trial. The fact recollections of the Plaintiffs and the Defendants differ on some issues. The court took full opportunity to review Defendants' positions as to the facts and to draw conclusions on the facts as stated by all parties.

5. Plaintiffs opened their case with testimony and records provided or testified to by Mr. Brooks. Mr. Brooks is semi-retired, a resident of Savannah, Georgia, and per his testimony, an associate of HAG who has over twenty (45) years of experience in the hospitality and tourism trades. Mr. Brooks acknowledged his relationship with Mr. Zoul and HAG, and testified specifically about the work he performed from September 2018 through at least October 2018 for Mr. Leary and LLC. Specifically, he prepared multiple *pro formas*, prepared notes to accompany the *pro formas* and an action list of logistical items remaining to be addressed. Mr. Brooks also travelled to Mt. Pleasant with Mr. Leary, and met with company representatives of a company called Q4 Launch, which is an internet booking company. Mr. Brooks testified to also interacting with multiple vendors, with the objective of having the Old Town Bluffton Inn up and running by Thanksgiving 2018. More than once the Thanksgiving timing was described as ambitious and labor

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intensive. Mr. Brooks estimated that he had worked 80 to 100 hours on the Old Town Bluffton Inn project. Importantly, Mr. Brooks delivered his work product to Mr. Leary and the LLC. They physically received the products being produced by Mr. Brooks as HAG's associate.

6. Plaintiffs' next witness was John Sulka (hereinafter "Mr. Sulka"), a commercial banker employed now at Palmetto State Bank in Bluffton, South Carolina. Mr. Sulka testified that in the September 2018 through October 2018 time frame he was with Coastal States Bank located in Bluffton, South Carolina. Mr. Sulka verified an account told by Mr. Brooks that during the relevant time, Mr. Sulka encountered Mr. Leary in public. Mr. Sulka asked about the progress of the Old Town Bluffton Inn. Mr. Leary referred Mr. Sulka to Mr. Brooks, who was in the lobby of the Inn, and Mr. Sulka met Mr. Brooks and they conversed briefly. Mr. Sulka was Defendants' lender for the Old Town Bluffton Inn project, and Mr. Leary essentially relied upon Mr. Brooks and HAG to lend credibility to the project with their banker.

7. Mr. Zoul was Plaintiffs' witness who followed Mr. Sulka. Mr. Zoul testified to having had numerous communications with Mr. Leary concerning the LLC and Old Town Bluffton Inn. Mr. Zoul, as well, identified and described multiple documents including Plaintiffs' exhibits 10 through 23. Mr. Zoul testified to travelling to Bluffton to work on the Old Town Bluffton Inn project. Through a set of Plaintiffs' exhibits that included public records, a Deed of property to Old Town Bluffton Inn, LLC, and additional records, Mr. Zoul described three transactions between HAG on one hand, and Mr. Leary and LLC on the other. The tasks being undertaken merged.

In May 2018 Mr. Leary's son-in-law Vincent Harrison asked HAG to assist with getting the Town of Bluffton to approve a loading zone at the Inn for dropping off and picking up guests. HAG charged its hourly rate and invoiced Mr. Harrison $1,350.00. HAG received an unsigned check from Mr. Leary dated September 8, 2018 – about the time Mr. Leary needed more assistance from HAG. Payment of the $1,350.00 occurred. According to Mr. Zoul and Mr. Brooks, Mr. Leary and LLC wanted HAG to find a buyer for the Old Town Bluffton Inn. A Consulting Services Agreement (Plaintiff's Exhibit 17) was prepared by Mr. Zoul for the referenced purpose and was signed by Mr. Zoul on behalf of HAG, and Mr. Leary as "Owner" of the Inn. Testimony of Mr. Zoul and Mr. Brooks indicates that Mr. Leary shortly after signing the Consulting Services Agreement thought that the marketing of the Inn might go better if it was in operation. Mr. Leary communicated that he wanted a dual approach such that the Inn could be rendered operational by Thanksgiving 2018, and operated, and maybe sold in the future. Mr. Zoul prepared a Management

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Agreement that described a new set of responsibilities to accomplish Mr. Leary and LLC's stated changing needs.

The alteration by Mr. Leary and the LLC of their objectives, particularly setting a Thanksgiving 2018 opening date for the Inn, outpaced the ability of Mr. Zoul and HAG to create and execute with Mr. Leary and the LLC a discrete, distinct writing. Mr. Brooks and Mr. Zoul, at the urging of Mr. Leary, plunged into taking measures to enable the Old Town Bluffton Inn to open at or near the scheduled time. Mr. Leary and the LLC wanted it, and the court finds as a fact that Mr. Leary and the LLC sought just what it was being given by Mr. Brooks, Mr. Zoul and HAG. The Management Agreement was not signed, and Defendants took the position there was no written contract involving a meeting of the minds. Objectives appear to have been occurring too rapidly for an adequately discussed written contract for opening and managing the Old Town Bluffton Inn to be prepared and executed. However, while Mr. Leary's deposition essentially denies that he understood the Management Agreement and was receiving nothing for which he should pay, the fact evidence undermines the denials of Mr. Leary and the LLC. Mr. Leary sought for Mr. Brooks, Mr. Zoul and HAG to provide professional services while waiting for their down payment and signed Management Agreement to be returned. In late-October 2018, Mr. Leary had decided the Management Agreement and down payment, were not going to be delivered. Mr. Leary and LLC, by Mr. Leary's advisor, informed Mr. Zoul and HAG that their services were being terminated. Mr. Zoul prepared and delivered to Mr. Leary a discounted invoice dated October 29, 2018 (Plaintiff's Exhibit 23) that provided a discount in order that the separation be quick and clean. Notwithstanding statements to the contrary, no payment to Mr. Zoul, HAG and Mr. Brooks was forthcoming.

This court finds as fact that Plaintiffs Zoul and HAG conferred valuable benefits upon Defendants Mr. Leary and LLC; and that Defendants were not ignorant of the benefits conferred upon them but were seeking them and realized those benefits conferred. The Defendants Mr. Leary and LLC retained the benefits conferred upon them by Plaintiffs Zoul and HAG under conditions that make it unjust for Defendants to take those benefits without paying their value.

Following a break, the Plaintiffs introduced as a witness Dr. John Salazar. Dr. Salazar identified his curriculum vitae, which identified an extensive background in education, hospitality, tourism and related undertakings. Dr. Salazar was moved in, and accepted by the court, as an expert in the fields of hospitality and tourism. Dr. Salazar reviewed pleadings and discovery documents from the case, as well as having lived in Bluffton, South Carolina for years. Dr. Salazar stated that

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after reviewing the work of Plaintiffs Mr. Zoul, HAG and Mr. Brooks, that their work was competent, and appropriate for that which they had been requested to do. Dr. Salazar stated that to a reasonable degree of expert certainty, the work of Mr. Brooks and Mr. Zoul was competent and had significant value. He testified that if the work product of Mr. Zoul, Mr. Brooks and HAG was given to Defendants Mr. Leary and LLC, that they [Defendants] had received a significant and valuable benefit. Dr. Salazar, in discussing the value of Plaintiffs' work, stated that he had been paid far more for similar work. Dr. Salazar testified that, to a reasonable degree of expert certainty, the value of what Plaintiffs have conferred on Defendants is worth $30,000.00 to $50,000.00. He stated to a reasonable degree of expert certainty that of that range, the higher amount was more appropriate. It is noted that Dr. Salazar's estimate does not reflect the out-of-pocket expenses Mr. Zoul has identified.

Conclusions of Law

Following summary judgment arguments earlier in the case, the Plaintiffs had three remaining theories of recovery going into trial. Plaintiffs had pleaded (1) Breach of Express or Implied in Fact Contract; (2) Promissory Estoppel; and (3) *Quantum Meruit*.

In a Breach of Contract action, the burden was on the Plaintiffs to prove the existence and terms of the contract, to prove its breach, and to prove damages caused by the breach. Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As noted above, *supra.* P. 4, Defendants Mr. Leary and LLC were altering what they wanted, and there was no agreed upon signed contact. Breach of Contact does not fit these circumstances.

Like a Breach of Contract action, an action in Promissory Estoppel starts with a promise unambiguous in its terms. Satcher v. Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, __ (Ct.App. 2002). Defendants' objectives were too much a moving target to constitute an unambiguous promise, and made it untenable for Plaintiffs to assert an unambiguous promise. Plaintiffs initially charged hourly. Defendants decided they wanted Plaintiffs to find a buyer for the Inn, in which case the payment was to be a percentage. Before the September 17, 2018 Consulting Services Agreement had even begun to cause performance, the objective was changed by Defendants to Plaintiffs enabling a Thanksgiving opening of the Inn. Therefore, Promissory Estoppel also appears to not fit the circumstances.

Quantum Meruit is an equitable doctrine allowing recovery for unjust enrichment. The elements, as set forth by the Supreme Court of South Carolina, are "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868 (2000). Plaintiffs proved by the requisite

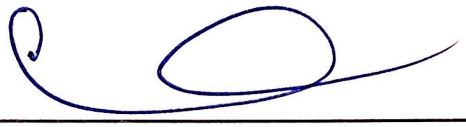
evidence that all the elements for a recovery in *quantum meruit* exist in this case. The value conferred by the Plaintiffs and retained by the Defendants was established by expert testimony and is considerable. Accordingly, it is

ORDERED, ADJUDGED AND DECREED as follows:

a. Plaintiffs are hereby granted judgment against the Defendants Lawrence Leary and Old Town Bluffton Inn, LLC, jointly and severally in the amount of $30,000 (thirty thousand dollars)

b. Plaintiff shall be entitled to post-judgment interest at the rate provided by law on any unpaid amount of the judgment until the judgment has been paid

IT IS SO ORDERED. THIS ORDER IS FINAL.



Honorable Carmen Mullen
Judge, Beaufort County Circuit Court

5/24, **2021**
Beaufort, SC

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ELECTRONICALLY FILED - 2021 May 28 8:46 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY Z. ZOUL, ET AL. Plaintiffs, v. LAWRENCE LEARY, et al. Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO. 2019-CP-07-117 **DEFENDANTS' SUPPLEMENTAL MEMO**

Now comes the Defendants, Lawrence Leary and Old Town Bluffton Inn, LLC who files its supplemental memorandum in the aforementioned action. The Defendants hereby notify the Court that South Carolina Law limits the recovery of Quantum Merit damages to the contracted amount charged. Pursuant to Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986) the South Carolina Court of Appeals explained:

> Even if we assume, as Johnston argues, that Brown breached an agreement to make him a partner, the result is the same. Although Johnston alleges a contract in his pleadings, he elected to sue, not on the contract for his expectancy damages, but in quantum meruit for the fair value of the services already rendered. Cf., Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936) (complaint alleged matters as to a contract between parties, but cause of action was in quantum meruit, not on contract); Coens v. Marousis, supra. **While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services**. United States Potash Co. v. McNutt, 70 F. (2d) 126 (10th Cir. 1984); Atkins v. County of Barnstable, 97 Mass. 428 (1867); Higgins v. Desert Braemer, Inc., 219 Cal. App. (2d) 744, 33 Cal. Rptr. 527 (1963) **(plaintiff who has rendered services agreed to may recover such sum as the services were worth, not exceeding the contract price**) [Emphasis Added]
>
> Johnston v. Brown, 290 S.C. 141, 148-49, 348 S.E.2d 391, 395 (Ct. App. 1986)

Under the Johnson v. Brown analysis, the judgment amount is limited the Eleven Thousand Seven Hundred Fifty-Three and 15/100ths ($11,753.15), or the amount charged in the statement issued on October 29, 2021

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GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
PO Box 887
Bluffton, South Carolina 29910
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ggalvin@galvinlawgroup.com

Bluffton, South Carolina
28th day of **May**, **2021**

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs, -vs- LAWRENCE LEARY, ET AL. Defendants.	IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **MOTION IN LIMINE AS TO EXPERT JOHN SALAZAR AND IN AN ABUNDANCE OF CAUTION, DR. BRUMBY MCLEOD**

The Defendants move the court for an order in limine barring the Plaintiffs from offering, referring, or alluding to, in the Court's presence, any evidence during the trial, opening, or at any time during trial, either directly or indirectly, with respect to any matter testified to by the expert, John Salazar, identified less than a week before trial in this matter.

In support of the motion, the Defendants, will show the following to the Court:

1. On November 15, 2019, (550 days before trial) the Plaintiffs answered the Defendants First Set of Interrogatories (See Exhibit "A"). In this answer, the Plaintiffs did not identify an expert.
2. On April 23, 2021, (25 days before trial) the Plaintiffs amended their interrogatories and identified Dr. Brumby McLeod from the College of Charleston as an expert (See Exhibit "B").
3. In response to the late disclosure of Professor McLeod the Defendants immediately sent a subpoena to Dr. McLeod to attempt to at least determine the basis for any of his opinions. (See Exhibit "C").

4. On April 28, 2021, (20 days before the trial) Dr. McLeod sent an email to the Defendants' counsel informing his office that he was not retained yet and was refusing to answer the discovery without payment of $250.00 per hour (See Exhibit "D").
5. The response to the Defendants subpoena was due on May 12, 2021 (See Exhibit "D").
6. No responses were received on May 12, 2021 from Dr. McLeod as required by the subpoena.
7. On May 13, 2021 (5 days before trial) the Defendants' counsel began to wonder if Dr. McLeod was actually retained and before filing a Motion in Limine the Defendants counsel emailed the Plaintiffs' counsel to inquire into the status of Dr. McLeod. (Exhibit "E").
8. On May 13, 2021 (5 days before trial) the Plaintiffs' counsel informed the Defendants counsel that the Plaintiffs did not hire the previously identified expert, Professor McLeod, but had hired a substitute expert John Salazar. (See Exhibit "E").
9. For a guidepost, the Defendants counsel pulled a standard scheduling order used by Judge Gergel to determine how long the Federal Court's generally expect the disclosure of experts before the trial. I have attached a copy of one of these scheduling orders to my affidavit in support of this Motion (See Exhibit "F").
    a. The standard scheduling order proposed by Judge Gergel generally requires the disclosure of the Plaintiff's expert with an expert report, One Hundred and Fifty-One (151), days before trial. (See Exhibit "F").
    b. After the disclosure of the Plaintiffs' expert with the report, the Federal Court generally provides the Defendant with Thirty (30) days to prepare an expert report and file a Defendants' expert report (See Exhibit "F").

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10. The disclosure of an expert witness Five (5) days before the date of trial is highly prejudicial to the Defendants.
11. The content of the evidence emanating from the proffered witness is wide ranging, detail oriented, and would take possibly a month to find an expert to digest the opinions and analyze the testimony of this witness.
12. The prejudice to the Defendants is significant.

WHEREFORE, the Defendants respectfully request that the court enter an order in limine prohibiting the admission of the evidence, testimony, any reliance on the opinions of either Expert John Salazar, or Dr. McLeod and excluding their ability to testify, or provide any opinion at trial.

GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
P.O. Box 887
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Bluffton, South Carolina
13th day of **May**, **2021**

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ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

November 15, 2019

Gregory Michael Galvin, Esquire
GALVIN LAW GROUP, LLC
23 Plantation Park, Suite 503
Bluffton, South Carolina 29910

Re: Zoul, et al. v. Leary, et al.; Beaufort County Court of Common Pleas, Civil Action No. 2019-CP-07-00117

Dear Greg:

In connection with the above-referenced case, please find enclosed a copy of Plaintiffs' Objections and Answers to Interrogatories, and of Plaintiffs' Objections and Responses to Requests to Produce (with a copy of initial document copies). If there are any questions, please contact me.

Sincerely,

JONES, SIMPSON & NEWTON, P.A.

F. Ward Borden

Enclosures
cc: Zoul Hospitality, LLC

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT	)	**CIVIL ACTION # 2019-CP-07-00117**
ZACHARY Z. ZOUL and ZOUL HOSPITALITY, LLC d/b/a HOSPITALITY ADVISORS GROUP,	)	
Plaintiffs,	)	**PLAINTIFFS' OBJECTIONS AND ANSWERS TO DEFENDANTS' INTERROGATORIES**
v.	)	
LAWRENCE LEARY, LANDMARK 2 DEVELOPERS, LLC, OLD TOWN BLUFFTON INN, LLC, BLUFFTON INN SC, LLC, and BLUFFTON INN MANAGEMENT, LLC,	)	
Defendants.	)	

TO: ALL DEFENDANTS AND/OR COUNSEL OF RECORD FOR SAID DEFENDANTS

Plaintiffs Zachary Z. Zoul and Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") herein below answers the following Interrogatories in accordance with Rule 33 of the Code of South Carolina Civil Procedure.

In setting forth these answers, the Plaintiffs do not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information called for herein, responsive to, the interrogatory. Plaintiffs do not concede the relevance or materiality of the interrogatory, or the subject matter for which the interrogatory refers. These answers are submitted by the Plaintiffs subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving;

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matter of the interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Plaintiffs object to these interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

E. Plaintiffs object to Defendants' Instructions and Definitions to the extent that those Instructions and Definitions purport to place a greater or different burden upon the Plaintiffs in answering interrogatories than is provided for in applicable South Carolina Rules of Civil Procedure and other applicable law.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Objection/Answer:

Lawrence Leary, 63 Honesty Lane, Bluffton, SC 29909. Upon best information a transcript was typed of a telephone call in which Mr. Leary was a participant in the call. Plaintiffs' counsel has a copy of the transcript. Plaintiffs are not aware of any other statements from Mr. Leary.

Danielle Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Plaintiffs have no knowledge of a statement given by Ms. Harrison and do not know who would have possession of such statement.

Vincent Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Plaintiffs have no knowledge of a statement given by Mr. Harrison and do not know who would have possession of such statement.

Zachary Z. Zoul, 404 South Webb Road, Grand Island, Nebraska 68803. Mr. Zoul has knowledge of facts and circumstances of the case, and has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Mr. Zoul's sworn affidavit.

Eric A. Brooks, Savannah, Georgia. Mr. Brooks has knowledge of facts and circumstances of the case, and has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Mr. Brooks' sworn affidavit.

Mike Alsko, 19 Margarita Court, Hilton Head Island, South Carolina. Mr. Alsko has some knowledge of facts and circumstances of the case. Plaintiffs are not aware of Mr. Alsko having given any written statement concerning this case.

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John Sulka, Vice President and Commercial Loan Officer for Coastal States Bank, 7 Thurmond Way, Bluffton, SC 29910. Mr. Sulka has some knowledge of facts and circumstances of the case. Mr. Sulka has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Mr. Sulka's affidavit.

Margaret Johnson of Colleton County, South Carolina has some knowledge of facts and circumstances of the case. Ms. Johnson has given and executed a sworn affidavit. Plaintiffs' counsel has possession of Ms. Johnson's affidavit.

Q4Launch principals and employees, of Mt. Pleasant, South Carolina, have some knowledge of facts and circumstances of the case. Plaintiffs are not aware of Q4Launch personnel having given any written statement concerning this case.

Upon best information, attorneys Gregory Galvin, Esquire and Jason Ward, Esquire may have knowledge of facts and circumstances of the case. Plaintiffs are not aware of those lawyers having given any written statement concerning the case.

Plaintiffs' counsel has some knowledge of facts of the case, most particularly of legal expenses and procedural undertakings in the case. Plaintiffs' counsel has presently prepared no written statement other than firm invoices.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

Objection/Answer:

Affidavit of Zachary Zoul
Supplemental Affidavit of Zachary Zoul
Affidavit of Eric A. Brooks
Affidavit of John Sulka
Affidavit of Margaret Johnson
E-mails and/or texts from Q4Launch
Quit-Claim Deed to Old Town Bluffton Inn, LLC
Consulting Services Agreement
Proposed Management Agreement
Statements
Written communications between parties

Plaintiffs reserve the right to supplement their answer to this interrogatory.

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3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

Objection/Answer: This case involves some tortious conduct, but not physical personal injuries and so the interrogatory is not applicable to this case.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Objection/Answer: Plaintiffs do not know what liability coverage is held that may be applied to claims in this case.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Objection/Answer: Plaintiffs object that the interrogatory seeks to elicit disclosure of the mental impressions, conclusions, opinions, or legal theories of Plaintiff's attorney concerning the litigation. Subject to that objection, and without waiving same, Plaintiffs respond as follows:

$18,753.15	Professional services and expenses
$2,000.00	Charges to transition ongoing work to others
Pending	Costs
Pending	Plaintiffs' attorney fees

Plaintiffs reserve the right to supplement their answer to this interrogatory.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Objection/Answer: Zachary Zoul, Eric Brooks and Mike Alsko each have qualifications in the hospitality trade for which they are consulted, and that would qualify them as experts. They are parties and/or fact witnesses in this matter, and they may offer opinions in their area(s) of expertise.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Objection/Answer:

Lawrence Leary. Mr. Leary knows that Zoul Hospitality, LLC provided Old Town Bluffton Inn, LLC services in May 2018 which were invoiced in June 2018, but not paid until September 2018. Mr. Leary knows that he signed a written consulting services agreement with Zoul Hospitality, LLC on September 17, 2018. Mr. Leary knows that he sought changing and broadening service from Zoul Hospitality, LLC in September and October 2018, and was sent a proposed draft agreement on October 8, 2018 for review. Mr. Leary knows that he sought out assistance from Zoul Hospitality, LLC in September and October 2018 to facilitate the opening of the Old Town Bluffton Inn. Mr. Leary knows that his banker met Eric Brooks of Zoul Hospitality, LLC at Old Town Bluffton Inn in October 2018 in connection with banker's inquiry of the progress on preparing to open the Old Town Bluffton Inn. Mr. Leary knows that he induced delivery of material and/or service from Zoul Hospitality, LLC in 2018, that services were provided to Mr. Leary and his company and accepted by them, but that neither Mr. Leary nor Old Town Bluffton Inn, LLC paid Zoul Hospitality, LLC for services provided in September and October 2018.

Danielle Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Ms. Harrison knows that personally or as trustee, Ms. Harrison was a member of Old Town Bluffton Inn, LLC. Ms. Harrison knows of a disagreement within that limited liability company, and that she was denied the ability to exercise power in Old Town Bluffton Inn, LLC by Mr. Leary personally or as trustee.

Vincent Harrison, 82 Heritage Lakes Drive, Bluffton, SC 29910. Plaintiffs do not know Mr. Harrison's fact knowledge except as to services provided by Zoul Hospitality, LLC concerning a loading zone for Old Town Bluffton Inn.

Zachary Z. Zoul, 404 South Webb Road, Grand Island, Nebraska 68803. A copy of Mr. Zoul's affidavit(s) are attached. Mr. Zoul is not limited in his knowledge to solely the contents of the affidavit(s).

Eric A. Brooks, Savannah, Georgia. A copy of Mr. Brooks' affidavit is attached. Mr. Brooks is not limited in his knowledge to solely the contents of the affidavit.

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Mike Alsko, 19 Margarita Court, Hilton Head Island, South Carolina. Mr. Alsko is able to testify about his own communications and activities in this matter, as well as his background in the hospitality trade.

John Sulka, Vice President and Commercial Loan Officer for Coastal States Bank, 7 Thurmond Way, Bluffton, SC 29910. A copy of Mr. Sulka's affidavit is attached.

Margaret Johnson of Colleton County, South Carolina has some knowledge of facts and circumstances of the case. A copy of Ms. Johnson's affidavit is attached.

Q4Launch principals and employees, of Mt. Pleasant, South Carolina. The referenced principals and employees can testify to meeting with personnel of Zoul Hospitality, LLC and Lawrence Leary. These principals and employees can testify concerning bookings that were directed to Eric Brooks.

Upon best information, attorneys Gregory Galvin, Esquire and Jason Ward, Esquire will not be providing any testimony in this case.

Plaintiffs' counsel is not expected to testify in this case except possibly by affidavit to attorney's fees.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

/s/ F. Ward Borden S.C. Bar # 10117
F. Ward Borden
JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-8868
Counsel for the Plaintiffs

~~October~~ November 15, 2019
Bluffton, SC

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

LAW OFFICES
JONES, SIMPSON & NEWTON, P.A.

WILLIAM W. JONES, JR. (retired)
MARK S. SIMPSON
WM. WESTON JONES NEWTON
SAMUEL L. KIRKLAND
F. WARD BORDEN (SC, VA & DC)
DEAN S. HASKELL (SC & CT)
NICHOLAS McEWEN

OF COUNSEL
J. THOMAS MIKELL

BLUFFTON OFFICES
7 PLANTATION PARK DRIVE, SUITE 3
P.O. BOX 1938
BLUFFTON, SC 29910
Telephone (843) 706-6111
Fax (843) 706-5667
E-Mail: jsplaw@jsplaw.net

BEAUFORT OFFICES
510-C CARTERET STREET
P.O. BOX 1727
BEAUFORT, SC 29901
Telephone (843) 524-2110
Fax (843) 524-4995
E-Mail: jsplaw@jsplaw.net

THIS CORRESPONDENCE ORIGINATED AT THE BLUFFTON OFFICE

E-mail: wborden@jsplaw.net

April 23, 2021

VIA E-MAIL AND U.S. MAIL

Gregory Michael Galvin, Esquire
GALVIN LAW GROUP, LLC
P.O. Box 887
Bluffton, South Carolina 29910

Re: Zoul, et al. v. Leary, et al.; Beaufort County Court of Common Pleas, Civil Action No. 2019-CP-07-00117

Dear Greg:

In connection with the above-referenced case, please find attached a copy of Plaintiffs' Supplement To Their Answers to Defendants' First Interrogatories. An original is being mailed.

Sincerely,

JONES, SIMPSON & NEWTON, P.A.

F. Ward Borden

F. Ward Borden

Enclosure

DEFENDANT'S EXHIBIT
B

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION # 2019-CP-07-00117
ZACHARY Z. ZOUL and ZOUL HOSPITALITY, LLC d/b/a HOSPITALITY ADVISORS GROUP,	)	
Plaintiffs,	)	PLAINTIFFS' SUPPLEMENT TO THEIR ANSWERS TO DEFENDANTS' FIRST INTERROGATORIES
v.	)	
LAWRENCE LEARY, LANDMARK 2 DEVELOPERS, LLC, OLD TOWN BLUFFTON INN, LLC, BLUFFTON INN SC, LLC, AND BLUFFTON INN MANAGEMENT, LLC,	)	
Defendants.	)	

COME NOW Plaintiffs Zachary Z. Zoul and Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") and herein below supplement their answer to interrogatory 6 of Defendants' First Interrogatories. Notwithstanding this supplementation, Plaintiffs restate and incorporate herein by reference their previous general objections and privileges identified in their initial answers.

Interrogatory 6 – List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Objection/Answer: Dr. Brumby McLeod, Department Chair and Associate Professor at the College of Charleston, School of Business in the Department of Hospitality & Tourism Management; College of Charleston, Beatty Center, Room 315, Charleston, South Carolina. Dr. McLeod is expected to describe the work undertaken by the Plaintiffs. He is expected to testify to a reasonable degree of expert certainty about the work Plaintiffs performed for Defendants, the length of time Plaintiffs spent on work for Defendants, the purposes and functions of work performed, the understanding that Plaintiffs were providing a non-gratuitous benefit and the reasonable market value of the benefits conferred upon the Defendants by the

Plaintiffs, said benefits being knowingly received and retained by the Defendants without paying the Plaintiffs.

Dr. McLeod's opinions will be based upon his visual inspection of photographs, literature, and notes maintained by Plaintiffs, discovery documents, pleadings, consultations, other applicable resources, his education, training and experience, and other facts or data of a type reasonably relied upon by experts in his particular field. All of Dr. McLeod's opinions described are maintained to a reasonable degree of expert certainty.

Plaintiffs reserve the right to supplement their answer to this interrogatory.

JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910
(843) 706-8868

/s/ F. Ward Borden
F. Ward Borden
Counsel for the Plaintiffs

Bluffton, SC
April 23, 2021

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GalvinLawGroup
Probate ▪ Criminal Defense ▪ Civil Litigation ▪ Real Estate
PO Box 887 Bluffton, SC 29910
843-227-2231
888-362-0714 Facsimile

Encase Certified Computer Forensic Examiner
Licensed in District of Columbia, Ohio & South Carolina
Also licensed as a Patent Attorney before the United States Patent & Trademark Office
AV Rated by Martindale-Hubbell

April 28, 2021

Via Certified Mail and Electronic Mail
Dr. Brumby McLeod
College of Charleston - School of Business
66 George Street
Charleston, SC 29424

Re: Zoul, et al. vs. Leary, et al.
Case No. 2019-CP-07-117

Dear Sir or Madam:

You are in receipt of a subpoena duces Tecum compelling the production of the documents described in the subpoena, or any of its exhibits. Also enclosed is an Acceptance of Service. Please sign the Acceptance of Service verifying your receipt of the subpoena and return it to me as soon as possible.

It will not be necessary for you to appear on the day and time specified in the Subpoena if you have supplied me with the requested documentation and provided a letter certifying the records to be true, correct and complete copies of all records maintained by your office on or before May 12, 2021.

If you have any questions whatsoever concerning this subpoena, please do not hesitate to contact our office. If the cost to reproduce the requested documents exceeds $50.00, please contact me before incurring any expenses.

Sincerely,

Gregory Michael Galvin, Esq.

DEFENDANT'S EXHIBIT
C

ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA

ISSUED BY THE COURT OF COMMON PLEAS COURT IN THE COUNTY OF BEAUFORT

Zachary Zoul, et al Plaintiff(s)

v.

SUBPOENA IN A CIVIL CASE
Defendant Case Number: 2019-CP-07-117

Lawrence Leary, et al., Defendant(s)

Pending in Beaufort County

TO: Dr. Brumby McLeod, College of Charleston - School of Business , 66 George Street
Charleston, SC 29424

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

All documents described in Exhibit "A

PLACE	DATE AND TIME
Galvin Law Group, LLC. P.O. Box 887 (mailing) 23 Plantation Park, Suite 503 (physical) Bluffton, SC 29910	May 12, 2021, 9:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE April 28, 2021

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

4/28/2021 Gregory Michael Galvin, Esq.

CLERK OF COURT/ISSUING OFFICER SIGNATURE DATE PRINT NAME

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert=s opinion or information not describing specific events or occurrences in dispute and resulting from the expert=s study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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Exhibit "A"

DEFINITIONS

As used herein, the following words shall have the meanings indicated:

1. "Document" shall mean any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts thereof, and including but not limited to: papers, book, letters, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, work papers, intra-corporate communications, calendar or diary entries, appointment books, minutes, transcripts, agendas, reports, and recordings of telephone or other conversations, or of interviews, or of conferences or other meetings, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, lists, tabulations, all other records kept by electronic, photographic or mechanical means, things similar to the foregoing, however denominated by **:LIKE THIS**, and other documents as defined in Rule 34 of the South Carolina Rules of Civil Procedure.

2. "Identify" shall mean (with respect to any natural person) to state the full name, home address, business address, employer and position or positions within each organization employing such person at the present time and at the time in question; and (with respect to any other person as defined in definition 1) to state its full name, address and principal place of business.

3. "Identify" shall mean, with respect to any document, to set forth the date thereof, the title (if any), the name of the person or persons authorizing such document, the name of the person or persons to whom such document was given or transmitted, the present location and custodian of such document, and the topic dealt with therein with reasonable specificity, and to describe the relevant page or pages and line or lines thereof (or annex a copy to the responses to these Interrogatories with appropriate designations of such page or pages and line or lines).

4. "Identify" shall mean, with respect to any oral statement, to set forth the date and place thereof, the mean of the person or persons making, issuing or communicating the oral statement, the name of the person or persons to whom and in whose presence such oral statement was made, and the substance thereof, and to identify each document in which such statement was recorded, described or referred to.

5. "**Dr. Brumby McLeod**," "you" or "your" means you, your employees, managers, agents, independent contractors or other persons or entities working on your behalf.

6. "And" and "or" as used herein are both conjunctive and disjunctive.

7. "Each" shall be construed to include the word "every" and "every" shall be construed to include the word "each".

8. "Any" shall be construed to include "all", and "all" shall be construed to include "any".

9. Where the context herein makes it appropriate, each singular word shall include its plural and each plural word shall include its singular.

10. The present tense shall be construed to include the past tense and the past tense shall be construed to include the present tense.

11. "Pertaining to", "relating to", "pertain to", or "relate to", mean referring to, relating to, alluding to, responding to, discussing, commenting upon, showing, disclosing, analyzing, reporting about, explaining, mentioning, constituting, compromising, evidencing, setting forth, containing, summarizing or characterizing, either directly or indirectly, in whole or in part, the given subject matter.

12. "Case" shall mean the case of Zachary Zoul, et al. vs. Lawrence Leary, et al. filed in Beaufort County Common Pleas Court with case number 2019-CP-07-117

REQUESTS

1. Produce all communications pertaining to this Case.
2. Produce all Documents you relied on to form any opinion in this Case.
3. Produce all information which was provided to you in this Case.
4. Produce all expert reports you have prepared in the last Ten (10) years.
5. Produce all deposition transcripts from any case you worked as an expert in the last Ten (10) years.
6. Produce any agreements, or contracts you were provided or reviewed related to this Case.
7. Produce all payments, or accounting for any of your services related to this Case.
8. Produce all Documents you relied on to form any opinion in this Case.
9. Produce all notes you have related to this Case.
10. Produce your rate schedules for expert services.

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ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs, -vs- LAWRENCE LEARY, ET AL. Defendants.	IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **VERIFICATION**

I _____, the records custodian for _____, hereby accept service of the subpoena this ____ day of _____, 2021. I certify the enclosed records to be true, correct and complete copies.

_____
Records Custodian

Sworn to and Subscribed before me
This _____ day of _____, 2021.

_____
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:_____

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Re: Zoul v. Leary, 2019-CP-07-117

McLeod, Brumby <mcleodb@cofc.edu>
Wed 4/28/2021 11:21 AM

To: Marty McCay <mmccay@galvinlawgroup.com>
Cc: Ward Borden <WBorden@jsplaw.net>; Greg Galvin <ggalvin@galvinlawgroup.com>

Good morning Marty,

I am happy to begin if you are ready for me to engage in the above referenced matter. Please advise. The cost for me to engage is $250 per hour. My mobile number is 843-708-8814. Prior to this email were a couple phone calls with Ward Borden and an email exchange of the upcoming potential court dates.

Sincerely,

Brumby

Brumby Mcleod, Ph. D
Riley Center Research Fellow
Associate Professor, Chair
Department of Hospitality & Tourism Management
School of Business
College of Charleston
843-953-0735

From: Marty McCay <mmccay@galvinlawgroup.com>
Date: Wednesday, April 28, 2021 at 11:03 AM
To: "McLeod, Brumby" <mcleodb@cofc.edu>
Cc: Ward Borden <WBorden@jsplaw.net>, Greg Galvin <ggalvin@galvinlawgroup.com>
Subject: Zoul v. Leary, 2019-CP-07-117

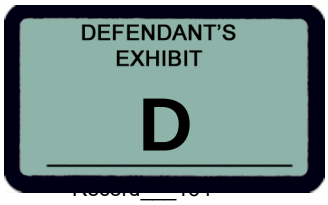
CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. McLeod:

Please find attached a Subpoena for documents in the above-referenced matter.

Thank you,

Marty McCay
Paralegal to Gregory M. Galvin, Esq.
Galvin Law Group
P.O. Box 887
Bluffton, SC 29910
(843) 405-2934



ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

Re: Zoul vs. Leary

Greg Galvin <ggalvin@galvinlawgroup.com>

Thu 5/13/2021 10:23 AM

To: Ward Borden <WBorden@jsplaw.net>

I appreciate the honesty. I am going to file a Motion in Limine since I cannot find an expert at the very last minute to refute any claims this new gentleman testifies to. I appreciate the email.

Gregory Michael Galvin, Esq. | Attorney at Law

Galvin Law Group, LLC
23 Plantation Park, Suite 503 • PO Box 887
Bluffton, SC 29910
843-227-2231 phone
888-362-0714 fax
ggalvin@galvinlawgroup.com

From: Ward Borden <WBorden@jsplaw.net>
Sent: Thursday, May 13, 2021 10:18 AM
To: Greg Galvin <ggalvin@galvinlawgroup.com>
Subject: RE: Zoul vs. Leary

Greg –

The expert withdrew. I found someone else however, who is working from the same information as the first fellow. I will attach the information.

I will make him available for you to speak with or Zoom if necessary. I only confirmed his participation last night, so I would have been misleading to tell you I had him until I had confirmation. If I did not have him confirmed. The man's name is John Salazar, and he used to live in Bluffton. I will provide his personal information. As follow up.

Ward Borden

From: Greg Galvin <ggalvin@galvinlawgroup.com>
Sent: Thursday, May 13, 2021 10:04 AM
To: Ward Borden <WBorden@jsplaw.net>
Subject: Zoul vs. Leary

Ward,

I am getting ready to file a Motion in Limine about the expert you disclosed in the last 30 days. Before I go through the trouble I wanted to check first if you were going to use the professor before I began working on the motion.

DEFENDANT'S EXHIBIT
E
Record___165

Gregory Michael Galvin, Esq. | Attorney at Law

Galvin Law Group, LLC
23 Plantation Park, Suite 503 • PO Box 887
Bluffton, SC 29910
843-227-2231 phone
888-362-0714 fax
ggalvin@galvinlawgroup.com

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ELECTRONICALLY FILED - 2021 May 13 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2019-CP-07-117
ZACHARY ZOUL, ET AL	)	
	)	
Plaintiffs,	)	**AFFIDAVIT**
	)	**OF**
-vs-	)	**GREGORY MICHAEL GALVIN, ESQ.**
	)	
LAWRENCE LEARY, ET AL.	)	
	)	
Defendants.	)	
	)	
	)	

I, Gregory Michael Galvin, Esq., having been duly sworn, depose and say the following:

1. I am 18 years of age or older, and I give this affidavit on the basis of my personal knowledge of facts and circumstances concerning the matters described herein.

2. I am a licensed attorney in South Carolina, Ohio, The District of Columbia and as a patent attorney before the United States Patent and Trademark Office.

3. I am an ENCE certified forensic examiner with my accreditation through guidance software, now opentext.

4. I am representing all of the remaining Defendants in the aforementioned action.

5. On April 23, 2021 (25 days before trial), I was informed that the Plaintiffs planned to use Professor Brumby as an expert in this matter.

6. After the identification of Dr. Brumby, I believed that the disclosure was highly prejudicial and did not allow me enough time to defend any opinion of Dr. Brumby.

7. I had no idea what Dr. Brumby would conclude, or even testify to before the trial, but I sent him a subpoena to at least see the documents which he would rely for his opinion.

8. The subpoena required a response by May 12, 2021.

9. I did not receive a response by May 12, 2021.

10. After inquiring if the Plaintiffs were intending to use Mr. Bumby as an expert on May 13, 2021.

11. After inquiring to whether the Plaintiffs intended to use Mr. Brumby I was informed on May 13, 2021 that the Plaintiffs were no longer using Dr. Brumby as an expert, but instead were planning to use John Salazar.

12. The new expert was identified Five (5) days before trial.

13. As a result of this last-minute disclosure, I do not have the ability to hire an expert, subpoena the expert, or refute any allegations of the expert.

14. I was surprised by the addition of Dr. Brumby and was not informed that he was not going to be the Plaintiffs' expert. However, I was floored by the late disclosure of an entirely new expert witness the week of trial.

15. I cannot prepare a defense against these new allegations, nor can I hire an expert to refute the claims of this new expert. Further, I cannot even subpoena the new expert to try to discover information from him before the trial.

16. I believe if either Dr. Brumby, or Dr. Salazar is able to testify it is highly prejudicial to my client's interest and significantly prejudices the Defendants' ability to mount a proper defense to the lawsuit, or even refute last minute conclusions of a newly disclosed expert.

17. A true copy of a standard discovery order I received from Judge Gergel is attached as Exhibit "1".

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Gregory Michael Galvin

Sworn to and subscribed before me this 13th day of May, 2021.

Penny Kimbrell
Notary Public for South Carolina
My Commission Expires: 10.29.2030

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Liaison Internationale LLC, et al.	)	9:15cv03528
	)	
Plaintiffs,	)	CONFERENCE AND
	)	SCHEDULING ORDER
v.	)	
	)	Judge Richard Mark Gergel
North American Bison Cooperative LLC, et al.	)	
	)	
Defendants.	)	

Pursuant to the Federal Rules of Civil Procedure and the Local Civil Rules of this Court, the following schedule is established for this case. This order is entered to administer the trial of cases in a manner consistent with the ends of justice, in the shortest possible time, and at the least possible cost to litigants. Discovery may begin upon receipt of this order.

1. Rule 26(f) Conference: A conference of the parties pursuant to Fed. R. Civ. P. 26(f) shall be held no later than **April 28, 2016.**[1]

2. Rule 26(a)(1) Initial Disclosures: No later than **May 12, 2016**, the required initial disclosures under Fed. R. Civ. P. 26(a)(1) shall be made.[2]

3. Rule 26(f) Report: No later than **May 12, 2016**, the parties shall file a Fed. R. Civ. P. 26(f) Report in the form attached to this order.[3]

4. Mediation: As part of the Rule 26(f) Report, the parties are to file the form entitled "Mediation of Cases Pending Before Judge Gergel," which is attached hereto.[4]

5. Amendment of Pleadings: Motions to join other parties and amend the pleadings shall be filed no later than **July 6, 2016.**

[1] Plaintiff's counsel shall initiate the scheduling of the Rule 26(f) conference with all counsel known to plaintiff regardless of whether they have filed appearances. At conference, the parties shall confer concerning all matters set forth in Rule 26(f) and whether the schedule set forth in this order is appropriate and, if not, what modifications are necessary. See attached form – RULE 26(f) REPORT. The parties shall also consider whether they wish to consent to trial before a United States Magistrate Judge (form available on website).

[2] Pursuant to Fed. R. Civ. P. 26(a)(1), the parties may, by stipulation, agree not to make some or all of the Rule 26(a)(1) initial disclosures. If such a stipulation is made, it shall be confirmed in writing between the parties. See Fed. R. Civ. P. 29 and Local Civil Rule 29.01.

[3] Parties are hereby notified that Local Civil Rule 26.03 lists additional queries to be answered in the Rule 26(f) Report. See also Local Civil Rule 26.02 (rules for answering court interrogatories).

[4] The Court will issue a separate Order on mediation.

DEFENDANT'S EXHIBIT 1

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6. Expert Witnesses: Parties shall file and serve a document identifying by full name, address, and telephone number each person whom they expect to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Fed. R. Civ. P. 26(a)(2)(B) has been disclosed to the parties by the following dates:
   Plaintiff: **August 5, 2016**
   Defendant: **September 6, 2016**

7. Records Custodian Witnesses: Counsel shall file and serve affidavits of records custodian witnesses proposed to be presented by affidavit at trial no later than **September 12, 2016**. Objections to such affidavits must be made within fourteen (14) days after the service of the disclosure. (See Fed. R. Evid. 803(6), 902(11), or 902(12) and Local Civil Rule 16.02(D)(3)).

8. Discovery: Discovery shall be completed no later than **October 4, 2016**. All discovery requests shall be served in time for the responses thereto to be served by this deadline. De bene esse depositions must be completed by discovery deadline. No motions relating to discovery shall be filed until counsel have consulted and attempted to resolve the matter as required by Local Civil Rule 7.02.

9. Motions in Limine: Motions in limine must be filed no later than **fifteen (15) business days prior to jury selection.**

10. Dispositive Motions and Daubert Motions: All dispositive motions and Daubert motions shall be filed on or before **October 18, 2016**.

11. Pretrial Disclosures: No later than twenty-one (21) business days prior to Jury Selection, the parties shall file and exchange Fed. R. Civ. P. 26(a)(3) pretrial disclosures. Within fourteen (14) days thereafter, a party shall file and exchange Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party and any deposition counter-designations under Fed. R. Civ. P. 32(a)(4).

12. Pretrial Briefs: Parties shall furnish the Court and serve pretrial briefs five (5) business days prior to the date set for jury selection (Local Civil Rule 26.05). Attorneys shall meet at least five (5) business days prior to the date set for submission of pretrial briefs for the purpose of exchanging and marking all exhibits. See Local Civil Rule 26.07.

13. Trial: This case is subject to being called for jury selection and/or trial on or after **January 3, 2017**.

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The parties' attention is directed to the Special Instructions for Cases Before Judge Richard Mark Gergel, attached hereto and also available on the District Court's website at www.scd.uscourts.gov.

April 8, 2016
Charleston, South Carolina

Richard Mark Gergel
United States District Judge

Attachments:

- Rule 26(f) Report
- Special Instructions for Cases Before Judge Richard Mark Gergel

ELECTRONICALLY FILED - 2021 Jun 10 4:56 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2019-CP-07-00117
ZACHARY Z. ZOUL, AND ZOUL HOSPITALITY, LLC d/b/a HOSPITALITY ADVISORS GROUP,)	
Plaintiff,)	
v.)	JUDGMENT ORDER
LAWRENCE LEARY, AND OLD TOWN BLUFFTON INN, LLC,)	
Defendants.)	

Date/Time of Trial:	**Tuesday, May 18, 2021; 9:30 a.m.**
Presiding Judge:	**Honorable Carmen Mullen**
Plaintiffs' Counsel:	**F. Ward Borden, Esq.**
Defendants' Counsel:	**Gregory M. Galvin, Esq.**

CAME the parties, by their respective counsel, on the 18th day of May 2021 at 9:30 a.m. for a bench trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.[1] Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving against the two remaining Defendants.

Findings of Fact

1. Plaintiff Zachary Z. Zoul (individually "Mr. Zoul") is a natural person, over 21 years of age,

[1] The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

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and a citizen and resident of Grand Island, Nebraska. Plaintiff Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") is a Nebraska-organized limited liability company that has been licensed to transact business in the State of South Carolina. Mr. Zoul is the LLC's chief operating officer. Plaintiffs are assisted in their trade work by Mr. Eric Brooks of Savannah, Georgia (hereinafter "Mr. Brooks"), and Mr. Mike Alsko (hereinafter Mr. Alsko) of Hilton Head Island, South Carolina. Mr. Zoul and Mr. Brooks attended the bench trial and gave testimony and identified written exhibits.

2. Defendant Lawrence Leary (hereinafter "Mr. Leary") owns property in Beaufort County, South Carolina at 63 Honesty Lane, Bluffton, Beaufort County, South Carolina. Mr. Leary did not attend the trial; however, a deposition transcript taken while Mr. Leary was physically in New Jersey was filed with the court.

3. Mr. Leary and Old Town Bluffton Inn, LLC (hereinafter "LLC") were represented by counsel at trial. The court was informed that Mr. Leary owns a majority member interest in the LLC and his daughter Danielle Harrison holds a minority member interest in the LLC, but that daughter Danielle Harrison now manages the Old Town Bluffton Inn. Without more, the court regards the referenced circumstances to be facts of the case.

4. This court has received and reviewed the complete deposition transcript of Lawrence Leary, who was questioned by his own attorney and was able to state his views. Mr. Leary was not at trial. The fact recollections of the Plaintiffs and the Defendants differ on some issues. The court took full opportunity to review Defendants' positions as to the facts and to draw conclusions on the facts as stated by all parties.

5. Plaintiffs opened their case with testimony and records provided or testified to by Mr. Brooks. Mr. Brooks is semi-retired, a resident of Savannah, Georgia, and per his testimony, an associate of HAG who has over twenty (45) years of experience in the hospitality and tourism trades. Mr. Brooks acknowledged his relationship with Mr. Zoul and HAG, and testified specifically about the work he performed from September 2018 through at least October 2018 for Mr. Leary and LLC. Specifically, he prepared multiple *pro formas*, prepared notes to accompany the *pro formas* and an action list of logistical items remaining to be addressed. Mr. Brooks also travelled to Mt. Pleasant with Mr. Leary, and met with company representatives of a company called Q4 Launch, which is an internet booking company. Mr. Brooks testified to also interacting with multiple vendors, with the objective of having the Old Town Bluffton Inn up and running by Thanksgiving 2018. More than once the Thanksgiving timing was described as ambitious and labor

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intensive. Mr. Brooks estimated that he had worked 80 to 100 hours on the Old Town Bluffton Inn project. Importantly, Mr. Brooks delivered his work product to Mr. Leary and the LLC. They physically received the products being produced by Mr. Brooks as HAG's associate.

6. Plaintiffs' next witness was John Sulka (hereinafter "Mr. Sulka"), a commercial banker employed now at Palmetto State Bank in Bluffton, South Carolina. Mr. Sulka testified that in the September 2018 through October 2018 time frame he was with Coastal States Bank located in Bluffton, South Carolina. Mr. Sulka verified an account told by Mr. Brooks that during the relevant time, Mr. Sulka encountered Mr. Leary in public. Mr. Sulka asked about the progress of the Old Town Bluffton Inn. Mr. Leary referred Mr. Sulka to Mr. Brooks, who was in the lobby of the Inn, and Mr. Sulka met Mr. Brooks and they conversed briefly. Mr. Sulka was Defendants' lender for the Old Town Bluffton Inn project, and Mr. Leary essentially relied upon Mr. Brooks and HAG to lend credibility to the project with their banker.

7. Mr. Zoul was Plaintiffs' witness who followed Mr. Sulka. Mr. Zoul testified to having had numerous communications with Mr. Leary concerning the LLC and Old Town Bluffton Inn. Mr. Zoul, as well, identified and described multiple documents including Plaintiffs' exhibits 10 through 23. Mr. Zoul testified to travelling to Bluffton to work on the Old Town Bluffton Inn project. Through a set of Plaintiffs' exhibits that included public records, a Deed of property to Old Town Bluffton Inn, LLC, and additional records, Mr. Zoul described three transactions between HAG on one hand, and Mr. Leary and LLC on the other. The tasks being undertaken merged.

In May 2018 Mr. Leary's son-in-law Vincent Harrison asked HAG to assist with getting the Town of Bluffton to approve a loading zone at the Inn for dropping off and picking up guests. HAG charged its hourly rate and invoiced Mr. Harrison $1,350.00. HAG received an unsigned check from Mr. Leary dated September 8, 2018 – about the time Mr. Leary needed more assistance from HAG. Payment of the $1,350.00 occurred. According to Mr. Zoul and Mr. Brooks, Mr. Leary and LLC wanted HAG to find a buyer for the Old Town Bluffton Inn. A Consulting Services Agreement (Plaintiff's Exhibit 17) was prepared by Mr. Zoul for the referenced purpose and was signed by Mr. Zoul on behalf of HAG, and Mr. Leary as "Owner" of the Inn. Testimony of Mr. Zoul and Mr. Brooks indicates that Mr. Leary shortly after signing the Consulting Services Agreement thought that the marketing of the Inn might go better if it was in operation. Mr. Leary communicated that he wanted a dual approach such that the Inn could be rendered operational by Thanksgiving 2018, and operated, and maybe sold in the future. Mr. Zoul prepared a Management

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Agreement that described a new set of responsibilities to accomplish Mr. Leary and LLC's stated changing needs.

The alteration by Mr. Leary and the LLC of their objectives, particularly setting a Thanksgiving 2018 opening date for the Inn, outpaced the ability of Mr. Zoul and HAG to create and execute with Mr. Leary and the LLC a discrete, distinct writing. Mr. Brooks and Mr. Zoul, at the urging of Mr. Leary, plunged into taking measures to enable the Old Town Bluffton Inn to open at or near the scheduled time. Mr. Leary and the LLC wanted it, and the court finds as a fact that Mr. Leary and the LLC sought just what it was being given by Mr. Brooks, Mr. Zoul and HAG. The Management Agreement was not signed, and Defendants took the position there was no written contract involving a meeting of the minds. Objectives appear to have been occurring too rapidly for an adequately discussed written contract for opening and managing the Old Town Bluffton Inn to be prepared and executed. However, while Mr. Leary's deposition essentially denies that he understood the Management Agreement and was receiving nothing for which he should pay, the fact evidence undermines the denials of Mr. Leary and the LLC. Mr. Leary sought for Mr. Brooks, Mr. Zoul and HAG to provide professional services while waiting for their down payment and signed Management Agreement to be returned. In late-October 2018, Mr. Leary had decided the Management Agreement and down payment, were not going to be delivered. Mr. Leary and LLC, by Mr. Leary's advisor, informed Mr. Zoul and HAG that their services were being terminated. Mr. Zoul prepared and delivered to Mr. Leary a discounted invoice dated October 29, 2018 (Plaintiff's Exhibit 23) that provided a discount in order that the separation be quick and clean. Notwithstanding statements to the contrary, no payment to Mr. Zoul, HAG and Mr. Brooks was forthcoming.

This court finds as fact that Plaintiffs Zoul and HAG conferred valuable benefits upon Defendants Mr. Leary and LLC; and that Defendants were not ignorant of the benefits conferred upon them but were seeking them and realized those benefits conferred. The Defendants Mr. Leary and LLC retained the benefits conferred upon them by Plaintiffs Zoul and HAG under conditions that make it unjust for Defendants to take those benefits without paying their value.

Following a break, the Plaintiffs introduced as a witness Dr. John Salazar. Dr. Salazar identified his curriculum vitae, which identified an extensive background in education, hospitality, tourism and related undertakings. Dr. Salazar was moved in, and accepted by the court, as an expert in the fields of hospitality and tourism. Dr. Salazar reviewed pleadings and discovery documents from the case, as well as having lived in Bluffton, South Carolina for years. Dr. Salazar stated that

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after reviewing the work of Plaintiffs Mr. Zoul, HAG and Mr. Brooks, that their work was competent, and appropriate for that which they had been requested to do. Dr. Salazar stated that to a reasonable degree of expert certainty, the work of Mr. Brooks and Mr. Zoul was competent and had significant value. He testified that if the work product of Mr. Zoul, Mr. Brooks and HAG was given to Defendants Mr. Leary and LLC, that they [Defendants] had received a significant and valuable benefit. Dr. Salazar, in discussing the value of Plaintiffs' work, stated that he had been paid far more for similar work. Dr. Salazar testified that, to a reasonable degree of expert certainty, the value of what Plaintiffs have conferred on Defendants is worth $30,000.00 to $50,000.00. He stated to a reasonable degree of expert certainty that of that range, the higher amount was more appropriate. It is noted that Dr. Salazar's estimate does not reflect the out-of-pocket expenses Mr. Zoul has identified.

Conclusions of Law

Following summary judgment arguments earlier in the case, the Plaintiffs had three remaining theories of recovery going into trial. Plaintiffs had pleaded (1) Breach of Express or Implied in Fact Contract; (2) Promissory Estoppel; and (3) *Quantum Meruit*.

In a Breach of Contract action, the burden was on the Plaintiffs to prove the existence and terms of the contract, to prove its breach, and to prove damages caused by the breach. Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As noted above, *supra*. P. 4, Defendants Mr. Leary and LLC were altering what they wanted, and there was no agreed upon signed contact. Breach of Contact does not fit these circumstances.

Like a Breach of Contract action, an action in Promissory Estoppel starts with a promise unambiguous in its terms. Satcher v. Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, __ (Ct.App. 2002). Defendants' objectives were too much a moving target to constitute an unambiguous promise, and made it untenable for Plaintiffs to assert an unambiguous promise. Plaintiffs initially charged hourly. Defendants decided they wanted Plaintiffs to find a buyer for the Inn, in which case the payment was to be a percentage. Before the September 17, 2018 Consulting Services Agreement had even begun to cause performance, the objective was changed by Defendants to Plaintiffs enabling a Thanksgiving opening of the Inn. Therefore, Promissory Estoppel also appears to not fit the circumstances.

Quantum Meruit is an equitable doctrine allowing recovery for unjust enrichment. The elements, as set forth by the Supreme Court of South Carolina, are "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868 (2000). Plaintiffs proved by the requisite

evidence that all the elements for a recovery in *quantum meruit* exist in this case. The value conferred by the Plaintiffs and retained by the Defendants was established by expert testimony and is considerable. Accordingly, it is

ORDERED, ADJUDGED AND DECREED as follows:

a. Plaintiffs are hereby granted judgment against the Defendants Lawrence Leary and Old Town Bluffton Inn, LLC, jointly and severally in the amount of $30,000 (thirty thousand dollars)

b. Plaintiff shall be entitled to post-judgment interest at the rate provided by law on any unpaid amount of the judgment until the judgment has been paid

IT IS SO ORDERED. THIS ORDER IS FINAL.

Honorable Carmen Mullen
Judge, Beaufort County Circuit Court

5/24, 2021
Beaufort, SC

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP- 07-00117

ZACHARY Z. ZOUL.

ZOUL HOSPITALITY, LLC d/b/a HOSPITALITY etc.

PLAINTIFF(S)

LAWRENCE LEARY

OLD TOWN BLUFFTON INN, LLC

DEFENDANT(S)

Submitted by: F. Ward Borden, Esq., Plaintiffs' counsel	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Order w/Findings of Fact, Conclusions of Law prepared by Plaintiff and signed by Judge Mullen who presided over bench trial. See written Judgment Order.

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)
Zachary Z. Zoul	Lawrence Leary	$30,000.00
Zoul Hospitality, LLC d/b/a Hospitality Advisors Group	Old Town Bluffton Inn, LLC	$30,000.00
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

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.

Circuit Court Judge | 2142 Judge Code | 6/10/21 Date

For Clerk of Court Office Use Only

This judgment was entered on the 24th day of May, 20 21 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:

F. Ward Borden, Esquire
ATTORNEY(S) FOR THE PLAINTIFF(S)

Gregory Galvin, Esquire
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), SCRCP.

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.

The date of the Judgment in this case shall be entered per the date of the order signed by Judg Mullen on 5/24/21. JRP

ELECTRONICALLY FILED - 2021 Jun 10 4:56 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

ELECTRONICALLY FILED - 2021 May 24 1:00 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY Z. ZOUL, ET AL. Plaintiffs, v. LAWRENCE LEARY, et al. Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO. 2019-CP-07-117 **DEFENDANTS' PRETRIAL BRIEF**

Now comes the Defendants, Lawrence Leary and Old Town Bluffton Inn, LLC who files its pretrial brief as follows.

Remaining Defendants and Claims

The case was filed on January 22, 2019 with many Defendants named. After the Motion for Summary Judgment the only remaining Defendants were Lawrence Leary and Old Town Bluffton Inn, LLC and the only remaining claims were for Breach of Contract Express or Implied in Fact, Promissory Estoppel and Quantum Meruit.

Factual Background

The Defendant, Lawrence Leary, built a luxury hotel, the Old Town Bluffton Inn, LLC ("OTBI") in Old Towne Bluffton. Lawrence Leary is a Seventy-Six (76) year old man who has a severe case of dyslexia. As a result, he only reads at a Third Grade (3^{rd}) level and he did not finish grade school. The initial plan was to run the hotel with his Mr. Leary's daughter, Dannielle Harrison.

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Before the hotel opened, Mr. Leary's daughter and her husband contacted Zachary Zoul, the Plaintiff, for help in obtaining a loading zone from the Town of Bluffton. Mr. Zoul sent an invoice dated June 27, 2018 and charged the Old Town Bluffton Inn, LLC, One Thousand Three Hundred Fifty Dollars ($1,350.00) for his work on the loading zone. Zoul and Hotel Associates Group (collectively "HAG") was paid for his work under this contract. (See Exhibit "A").

Next, on September 17, 2018, OTBI through Lawrence Leary, its manager, hired HAG under a Consulting Services Agreement whereby HAG would charge Six (6%) of the sale of the hotel only if they brought a buyer for the hotel. Under this agreement, HAG "will be responsible for all professional services and expenses which it incurs." Further, HAG agreed to "visit the property with a representative of a qualified investor group to the property as early as September 2018 or in the near term thereafter." The terms of the agreement expired on December 31, 2018. (See Exhibit "B").

Shortly after entering into the Consulting Services Agreement, HAG informed Mr. Leary that it could manage the hotel. HAG informed Leary that if HAG got the hotel running it would sell to a higher price to a new purchaser.

HAG claims that they discussed all of the terms of the proposed agreement and Leary agreed orally to the terms of the agreement, but Mr. Leary adamantly disputes any allegation that he orally accepted the contract, but he does note that there were discussions about the potential of having HAG run the inn. On October 8, 2018, HAG met with Mr. Leary at the hotel. During this meeting HAG continued to attempt to sell Mr. Leary on allowing them to run the hotel. After meeting Mr. Leary on October 8, 2018, Mr. Zoul, on behalf of HAG sent Mr. Leary a draft of the proposed contract and stated that "Attached, please find a Draft Agreement for your review. Please let me know if you have any questions or comments." Further, the email finished stating that "We

[HAG] would be proud to manage your property and meet and exceed your standards and expectations." (See Exhibit "C").

The draft agreement which was sent was not signed by HAG and sought the signature of Mr. Leary on behalf of the Old Town Bluffton Inn, LLC. There is no allegation that Mr. Leary, or anyone on behalf of Old Town Bluffton Inn, LLC signed the management agreement.

At the meeting and thereafter, Mr. Leary became suspicious of HAG because initially they indicated that they would have their on staff on site to manage the hotel. However, at the meeting on October 8, 2018, HAG informed Mr. Leary that they would hire an innkeeper, at OTBI's expense. At this point the offer did not make sense to the inn because they would incur a significant amount of management fees and then be required to hire the staff to run the inn. As a result, Mr. Leary began to question if he accepting HAG's offer made sense. As a result, he asked his advisors to investigate HAG and determine if the offer made business sense. One of the advisors, Mr. Richard Ulbrich, attempted to research HAG and advised Mr. Leary to decline their offer to manage the property.

To show that the parties did not have a contract, on October 15, 2018, Mr. Zoul emailed Mr. Leary and asked him to provide the specific name of the legal entities on the contract. (See Exhibit "D").

The Plaintiffs allege that they attempted to pickup a copy of the signed agreement from Mr. Leary, but he was not available.

On October 24, 2018, Mr. Leary informed HAG that he was not going to hire HAG to manage the hotel and he would manage the hotel himself. HAG claims that Mr. Leary agreed to pay HAG's invoice, but Leary adamantly disputes that he ever agreed to pay any invoice.

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On October 29, 2018, HAG issues a bill to Mr. Leary for all of their services under the contract claiming that they are owed Eleven Thousand Seven Hundred Fifty-Three and 15/100ths Dollars ($11,753.15) for their costs and services. (See Exhibit "E")

The Pending Causes of Action

Breach of Contract

The Plaintiffs have a pending claim for breach of contract against Mr. Leary and the Old Town Bluffton Inn, LLC. "In order to prevail on his claim of breach of contract, Plaintiff bears the burden of establishing the existence and terms of the contract, defendant's breach of one or more of the contractual terms, and damages resulting from the breach." Taylor v. Cummins Atl.,852 F Supp. 1279, 1286 (D.S.C' 1994). The Plaintiffs will have a major hurdle in establishing a cause of action for Breach of Contract.

> "It is well settled in South Carolina that in order for there to be a binding contract between the parties, there must be a mutual manifestation of assent to the terms . . . the assent must be as to all of the terms of contract." *See also Aperm of South Carolina v. Roof*, 290 S.C. 442, 351 S.E.2d 171, 173 (Ct. App. 1986) (material terms must not be left for future settlement). Blanton Enters., Inc. v. Burger King Corp., 680 F. Supp. 753, 770 (D.S.C. 1988)

The issue is that the Plaintiffs sought acceptance through a written signed acceptance. All parties agree that the contract was never signed. Pursuant to Insurance Co. of N. Am. v. United States, 159 F.2d 699 (4th Cir. 1947) (a contract is not complete as long as there remains something to be done to establish contractual relations as contemplated by both parties to the contract). The signed contract was not ever executed by either party and therefore it is not binding. Further under

South Carolina Law, in a similar case the Plaintiff tried to prove a written contract was accepted orally. The Court held as follows:

> Fender & Latham asserts it had a binding contract with First Union because, at a meeting between the parties on August 13, 1990, representatives for Fender & Latham orally agreed to the terms of the contract. Fender & Latham's oral acceptance, however, was insufficient because the offer expressly required a written acceptance. See Bugg v. Bugg, 272 S.C. 122, 125, 249 S.E.2d 505, 507 (1978) ("Where it is determined that the parties intended not to be bound until the written contract is executed, no valid and enforceable obligation will be held to arise."); Restatement (2nd) of Contracts § 58 (1981) (if an offer prescribes the manner of acceptance, the offeree must comply with its terms in order to create a contract). Fender & Latham, Inc. v. First Union Nat'l Bank, 316 S.C. 48 (Ct.App 1994).

The South Carolina District Court followed the same reasoning when it decided the following:

> For a contract to arise from an offer, "[a]n acceptance must comply with the requirements of the offer as to the promise to be made or the performance to be rendered." Restatement (Second) of Contracts § 58 (June 2006). When a written offer to contract expressly requires a written acceptance, only a written acceptance will convert the offer into a contract. Fender & Latham, Inc. v. First Union Nat'l Bank, 446 S.E.2d 448, 449-50 (S.C. Ct. App. 1994) (holding that an oral acceptance of a written offer to make a loan was not sufficient to create a contract because the offer expressly required a written acceptance).
>
> Abn Amro Mortg. Group v. Investors Title Ins. Co. 2006 U.S. Dist. LEXIS 111095.

Under both of these cases, since HAG sought a written acceptance of the written contract, they cannot claim that the contract was orally accepted. As a result, a contract was not established.

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Promissory Estoppel

The second cause of action at issue is the cause of action for Promissory Estoppel. Under this theory "[T]he party asserting promissory estoppel must demonstrate: (l) a promise with unambiguous terms; (2) reasonable reliance upon the unambiguous promise; (3) foreseeability of the promisee's reliance; and (4) injury sustained in relying on the promise because of the promisor's inconsistent disposition. " Barnes v. Johnson, 402 S.C. 458, 469, 142 S.E.2d 6, 11 (Ct. App.20l3). The issue with the Plaintiffs' Cause of Action for promissory estoppel is due to the fact that the inn did not believe that there was any reliance because the inn did not sign a written contract and thus could not reasonably rely on any oral statements when they required an executed agreement. The South Carolina District Court examined an identical issue regarding promissory estoppel and reasoned as follows:

> This conclusion raises what the court believes to be the threshold issue in resolving plaintiff's promissory estoppel cause of action: Would allowing plaintiff in this case to recover damages under a promissory estoppel theory undermine the contract principle announced in Bugg that the parties may control the time at which they intend to be bound by an oral promise? The court holds that where, as here, the facts and circumstances of a case demonstrate that the parties to an alleged oral promise did not intend to be bound until they had reduced the promise to writing and this never occurred, one party cannot recover on that promise under a promissory estoppel theory. To hold otherwise would undermine the universally recognized contract principle that the parties to a promise may control the time at which it becomes obligatory. The court is confident that, if presented with the issue, the South Carolina courts would likewise construe the promissory estoppel doctrine in such a way that it compliments, rather than undermines, traditional contract principles.
> Blanton Enters., Inc. v. Burger King Corp., 680 F. Supp. 753, 775 (D.S.C. 1988)

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Quantum Merit

The final cause of action outstanding is for Quantum Meruit. To establish a claim for Quantum Meruit the Plaintiff must prove the following: "(l) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hosp. v. City of Myrtle Beach,341 S.C. l, 8-9, 532 S.E .2d 868,872 (2000). If the Plaintiffs prevail on this theory Plaintiff can recover reasonable value of the performance and prejudgment interest. Okatie River L.L.C. v. Southeastern Site Prep, L.L.C, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003); Restatement of Contracts Sec 347 (1932).

This cause of action fails as well because the Plaintiff cannot show that the Defendants received valuable services. First, the services provided were to benefit the sale of the property under the sales contract. Further, the only services that the HAG provided were in an attempt to provide the OTBI with enough proposed value to convince them to hire HAG. Further, it is not unjust for a party to decline an offer of services. Even if HAG can show that they provided some value, which the Defendants do not believe is possible it would be unjust to allow HAG to collect on a contract which they knew had not been accepted.

GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
PO Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
18th day of **May**, **2021**

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HOSPITALITY
ADVISORS GROUP

STATEMENT

June 27, 2018

Mr. Vincent T. Harrison
Marketing Director
Old Town Bluffton Inn
1321 May River Road
Bluffton, South Carolina 29910
Vincent@blufftoninn.com

Invoice #2018-03109 – Development Services – Old Town Bluffton Inn

Consulting services associated with the site planning and intergovernmental relations associated with Inn loading zone. Project site visits, research, meeting with Town officials, presentation documents, and Town Council meeting preparation. Hourly rate of $150.

Professional Services:

5/16/18: Initial visit including travel and mileage	$300.00
5/25/18: Draft presentation to Town Council	$300.00
5/30/18: Meeting with Vince Harrison and Town officials	$300.00
5/31/18: Meeting minutes recapping discussion	$150.00
6/01/18: Meeting with Vince Harrison and Mayor Sulka	$300.00

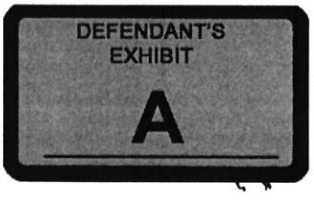
Expenses:

No charge

Total $1,350.00

Remittance to:

Hospitality Advisors Group
404 South Webb Road
Grand Island, Nebraska 68803
Or electronically at: Five Points Bank. Account: 10107371; Routing: 104901678



Zoul Depo 5-11-2021---000018

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HOSPITALITY
ADVISORS GROUP

CONSULTING SERVICES AGREEMENT

This Agreement between Hospitality Advisors Group and Larry Leary provides for the following.

Larry Leary engages Hospitality Advisors Group for the purposes of securing a Buyer for the Old Town Bluffton Inn. This shall be handled on a confidential basis and information shall be shared only with a qualified prospective Buyer(s). No information will be shared with any members of the Old Town Bluffton Inn staff or anyone in Bluffton or Beaufort County. Knowledge of this Agreement and the engagement of Hospitality Advisors Group will not be shared with other members of the firm and only Zachary Zoul and Eric Brooks will be aware of it.

Hospitality Advisors Group will be compensated only in the event that a Buyer is found and a sale is consummated. Hospitality Advisors Group will be responsible for all professional services and expenses which it incurs. Larry Leary agrees to pay a consulting fee equivalent to 6% of the sale price at the time of closing in the event that Hospitality Advisors Group secures a Buyer and the sale is substantially effectuated as set forth in any Purchase Agreement.

Hospitality Advisors Group will visit the property with a representative of a qualified investor group to the property as early as September 2018 or in the near term thereafter. The firm will present the property to an already identified investor group(s). In the event that the initial investment group(s) decline to submit a satisfactory offer and perform accordingly, Hospitality Advisors Group with the consent of Larry Leary may engage in limited marketing to select prospective buyers as set forth in a protocol submitted to Larry Leary for approval.

The initial term of this consulting services engagement shall be effective this date and continue through December 31, 2018. The terms of this Agreement shall apply thereafter for any Buyer identified through the services of Hospitality Advisors Group.

Entered into this 17 day of September 2018 by and between the following.

Larry Leary, Owner – Old Town Bluffton Inn

Zachary Z. Zoul, CEO - Hospitality Advisors Group

DEFENDANT'S EXHIBIT B

180

Zoul Depo 5-11-2021---000031

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Subject: Update, Innkeeper, and Draft Management Agreement

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com;

Date: Monday, October 8, 2018 7:56 PM

Larry,

It was a pleasure meeting with you today. The property is exceptional; very impressive. I believe it will be a strong performer in the market and region.

I had a dinner meeting this evening with an Innkeeper candidate and her husband. She reported to me at Palmetto Bluff and worked with both Mike and I. She has excellent management, organizational, and people skills. She also happens to live in the Old Town area and travels there regularly by golf cart. Her location is an added plus. I would like her to meet with you.

Attached, please find a Draft Agreement for your review. Please let me know if you have any questions or comments.

There is a great deal of pre-opening work to complete from an operational perspective. Please know that Eric, Mike, myself, and our support team are fully committed to making your property our top priority and moving expeditiously to place it in operation.

Eric will plan to be in Charleston on Friday.

We would be proud to manage your property and meet and exceed your standards and expectations.

Best,

Zack

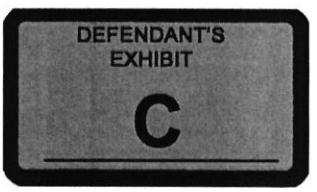
Zachary Z. Zoul
Chairman and CEO

Hospitality Advisors Group

HOSPITALITY ADVISORS GROUP

HOSPITALITY ADVISORS GROUP

888-731-0515 (o)
308-380-2450 (m)



Zoul Depo 5-11-2021---000045

----- Forwarded Message -----
From: Zachary Z. Zoul <zacharyzoul@hospitalityadvisorsgroup.com>
To: Zachary Z. Zoul <zacharyzoul@hospitalityadvisorsgroup.com>

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MANAGEMENT AGREEMENT BETWEEN HOSPITALITY ADVISORS GROUP AND LARRY LEARY

This agreement shall constitute a management services agreement between Hospitality Advisors Group (Operator) and Larry Leary (Owner) for the Old Town Bluffton Inn (Inn) in Bluffton, South Carolina and shall provide for the following.

Management: Owner engages Operator to provide full service management of the Inn effective upon the date of execution. Operator shall be responsible for executing and maintaining the full array of services customarily provided by a boutique hotel and shall operate the Inn in accord with industry standards and – to the extent provided for by Owner in the capital and operating budgets - fulfill a service level approaching, or comparable to, a modified four diamond standard in terms of hospitality services and amenities. Management services shall encompass service standards, maintenance, housekeeping, recruitment, personnel supervision, guest services, marketing, inspections, compliance with applicable laws, ordinances, and industry standards, and general oversight. The Operator's management team principals – Zachary Zoul, Eric, Brooks, and Mike Alsko, among others as may be necessary, will be assigned to the property on either an ongoing or rotating basis to provide general oversight, management, and supervision. Except for Zoul, who is the Owner and CEO, the Operator has the right to substitute other firm associates as personal circumstances change.

Operations Staff: The Operator will be responsible for hiring Inn employees, including an Innkeeper, who will be employees of Owner, but will report to, and be supervised by, the Operator. The Owner shall have sign-off authority on the hiring of the Innkeeper. The Innkeeper will be the sole full time on-site management team member and shall have direct reporting responsibility to the Operator. During the period of pre-opening and transitions, Operator may deploy temporary personnel while recruitment is underway. The staffing level of the Inn, the nature and number of staff positions, and the compensation schedule will be set forth in an annual budget/pro forma which shall be approved by the Owner.

Budget/Pro Forma: Operator has provided a preliminary Operating Pro forma and shall – prior to opening – provide a revised pro forma and operating and capital budget to the Owner for approval. This, and a more detailed operating budget, will be reviewed from time to time and will be submitted to the Owner for approval should revisions be necessary. Operator shall consult with Owner and obtain approval for the rack rate schedule.

Financial, Purchasing, and Accounting: Operator, with the approval of the Owner, shall engage a bookkeeping firm to perform any financial and accounting services which are not part of the Inn's property management system. The contractor will also provide payroll service processing. Operator shall have the right to procure supplies, materials, and services to operate the Inn as provided for in line item budget presented and approved by the Owner. Invoices from vendors and contractors shall be obligations of the Owner and will be submitted to the contract bookkeeper on a weekly basis for payment after approval by the Owner. The Operator shall submit individual purchases to the Owner for approval in advance for any expenditure in excess of $1,000.00 except for those standard and/or reoccurring expenses for items such as laundry, housekeeping, and marketing. The Operator will oversee the development of, and provide the Owner with, monthly financial reports including ADR, occupancy, and occupancy projections. It is recognized that some "counter" checks with limited Innkeeper signing authority may be needed for certain goods such as liquor.

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Marketing and Professional Networking: Operator shall present to the Owner for approval a Marketing Plan and budget. Operator shall have comp privileges for the purposes of marketing, public relations, and industry purposes with such extensions to anticipated non-peak occupancy periods.

Pre-Opening Services: This agreement provides for ongoing management and operational services. Separate and distinct from these shall be pre-opening services from the date of execution to 30 days post opening. During this 60-90 day period, it recognized that Operator will be providing specialized pre-opening services primarily through the work and deployment of the three principles – Zoul, Alsko, and Brooks and support staff of the firm. During some portion of this time, there will not be an Innkeeper on staff and the fee schedule for this period shall reflect this. Pre-opening services include: procurement, systems development, systems integration, coordination with installations, vendor and contractor identification and establishment, budget and pro forma development, accounting systems development, staff recruitment, marketing plan development, pre-opening marketing, training, pre-opening events, communications systems, and service standard development. The Pre-opening period commenced with Operator's work beginning October 1, 2018

Sale: The Agreement between the Operator and the owner for the sale of the Inn and the associated fee will continue throughout the term of the agreement.

Fees and Expenses: The Owner will compensate Operator the sum of $5,000 on the first of each month for management services effective 30 days after opening. During the defined pre-opening period, the Owner will compensate the Operator the sum of $10,000 upon the date of execution of this agreement and on the first of any month thereafter during the pre-opening term by electronic bank transmission. The Operator will be entitled to a quarterly bonus of 10% of any excess in the gross operating profit of the Inn based on a rolling twelve month operating pro forma. These management fees are exclusive of expenses. All property related expenses, including travel, materials, and supplies shall be paid by Owner upon presentation of a periodic statement. Standard management fees and expenses shall be paid on the 1st of each month by electronic bank transmission.

Term: The initial term of this agreement shall be one year. It shall continue thereafter unless sixty days advance notice is provided by either party. The Owner shall have the right to cancel the agreement unilaterally at any time with sixty days' notice in the event that the Inn is sold.

Entered into this ____ day of 2018 by and between the following:

_____

Larry Leary, Owner

_____

Zachary Z. Zoul, Managing Member and CEO

DBA Entity Name

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com

Date: Monday, October 15, 2018, 04:04 PM CDT

Larry,

I tried to reach your attorney on Friday to confirm my email address (zacharyzoul@hospitalityadvisorsgroup.com) and also the legal entity name. I restructured the firm and we operate out of Nebraska under Zoul Hospitality LLC. Would you please pass the entity name along?

Thank you.

Best,

Zack

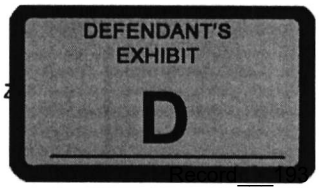
Zachary Z. Zoul
Chairman and CEO

Hospitality Advisors Group

HOSPITALITY ADVISORS GROUP

HOSPITALITY ADVISORS GROUP

888-731-0515 (o)
308-380-2450 (c)



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HOSPITALITY
ADVISORS GROUP

October 29, 2018

Mr. Larry Leary
Old Town Bluffton Inn
c/o leary4419@gmail.com

Dear Larry:

I am writing to follow up on our telephone conversation of Friday, October 26, 2018 concerning our engagement for management and consulting services.

We are disappointed by your decision to terminate our management agreement. Based on your repeated assurances - and that of your attorney - that we were engaged and were to move forward, we did so in good faith. To that end, our team mobilized immediately – recalibrating schedules and work assignments in order to make the Old Town Bluffton Inn our top and immediate priority. We immersed ourselves in this undertaking in order to meet your expectations.

Throughout the month of October, we moved forward expeditiously with the necessary preparations for managing the Inn and initiated – at your urging – numerous pre-opening tasks. To that end, we assumed - as you authorized - certain operational responsibilities including being the recipient of marketing and reservation inquiries and even taking reservations after inquiries were forwarded to us. We worked extensively on tasks as comprehensive and diverse as financial projections, pro forma development, FFE inventory and preparations, accounting service procurement, marketing, website and social media, booking engine analysis, Innkeeper recruitment, soft goods procurement, and other pre-opening logistics. We were just one week from hiring the Innkeeper.

Between the work of Eric Brooks, Mike Alsko, myself, and other staff, we have devoted since October 1, 2018 the equivalent of 17 days to the property. Our standard daily fee is $1,000 plus expenses. We had committed to a not to exceed monthly fee of $10,000 and you had indicated that a check in this amount had been issued. We are prepared to accept this plus partial out of pocket travel expenses of $1,753.15 as payment in full if remitted promptly. The attached statement with our discounted fees and expenses is attached.

Sincerely,

Zachary Z. Zoul
Chairman and CEO

DEFENDANT'S EXHIBIT
E

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HOSPITALITY
ADVISORS GROUP

STATEMENT

October 29, 2018

Mr. Larry Leary
Old Town Bluffton Inn
Bluffton, South Carolina

Invoice #2018-03110 – Old Town Bluffton Inn

Management services associated with the Old Town Bluffton Inn for the period October 1, 2018 – October 26, 2018 consisting of: October pre-opening management services including financial projections, pro-forma, FFE inventory and procurement, accounting service procurement, staffing matrix, Innkeeper recruitment, marketing, website and social media, booking engine analysis, soft goods procurement, and other pre-opening logistics.

Professional Services:

October 2018 Management Fee: 17 days equivalency @ $1,000 daily rate discounted per agreement to monthly rate of $10,000.00 $10,000.00

Expenses:

October expenses for Zoul travel to, and expenses in, Bluffton, SC consisting of: Delta - $996.40, National Car Rental - $163.80, Hampton Inn - $288.42, Airport parking - $36.50, Gas - $23.34, Gas - $29.29, NE mileage - $140.40, Per diem meals - $75.00. No charge for Innkeeper candidate meeting meal interviews and (6) Brooks trips to Bluffton and (1) trip to Charleston. $1,753.15

Total $11,753.15

Remittance to:
Hospitality Advisors Group
404 South Webb Road
Grand Island, Nebraska 68803
Or electronically at: Five Points Bank. Account: 10107371; Routing: 104901678

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Consulting Services provided to Old Town Bluffton Inn ("OTBI") by Hospitality Advisors Group ("HAG")

Following the September 16, 2018 agreement with HAG to reach out to potential buyers for OTBI, the owner, Larry Leary ("LL"), asked that HAG undertake the opening and management of OTBI until such time that the property was sold.

September 17, 2018:

Phone conference with LL

September 18, 19, and 20:

HAG team members conduct series of phone conferences to commence engagement including scope and characteristics of property. Outreach to local properties and contacts. Delineate work plan and assignment of HAG team member responsibilities.

September 26, 27 and 28, 2018:

Study the Bluffton/Hilton Head market for hotel metrics, competitive properties, and area amenities (historic district, golf, beaches, dining, retail).

Created a 'conservative' three-year Financial Pro Forma with notes per revenue and expense line items.

October 1, 2018:

On-site meeting with LL:
~ Detailed property inspection and inventory
~ Review Pro Forma
~ Record notes for actions required to complete construction and FF&E delivery and installation, and achieve a November 15 opening.

October 4 and 5, 2018:

Create Pre-opening Action List; Schedule October meeting in Mt. Pleasant, SC with LL and Q4Launch, designers and administrators of the OTBI destination marketing website.

~ Procure accounting services provider.

October 6, 2018:

HAG team prepares for October 8, 2018 meeting with LL

October 6 and 7, 2018:

PLAINTIFF'S EXHIBIT 8-B

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~ Create 'aggressive' three-year Financial Pro Forma with notes per revenue and expense line items (attached).
~ Continue Market Analysis. Review local hotel rate and occupancy data; engage with Inn at Palmetto Bluff and sales team there.
~ Reach out to array of prospective Innkeeper candidates; conduct phone interviews, set up interviews.
~ Zoul travels from central Nebraska to Bluffton (10/8)

October 8, 2018:

On-site meetings with LL and three HAG principals – Zachary Zoul, Eric Brooks, and Mike Alsko:
~ Review Management Agreement. It is important to note that LL insisted that the HAG Agreement would be signed after review by his attorney, and that we should proceed in our efforts.
~ Review revised Pro Forma
~ Review Action List with allocation of responsibilities.
~ 2 personal interviews and 1 phone interview with Innkeeper finalists
~ Review Pre-opening and FFE check list.
~ Zoul receives text message from LL – "Looking forward to with your tem. Let me know when I can meet the Innkeeper".

October 9, 2018:

Review various vendor agreements forwarded by LL:
~ Housekeeping Services of Hilton Head
~ Assa Abloy Locking Systems
~ Quotes for hangers and customization
~ Pest Control Agreement
~ Safemark Agreement
~ Spectrum Enterprise site progress report
~ Paradigm Trends (ice buckets, trash cans, amenity trays, etc.)

Review OTBI website in advance of OCT 11 meeting with Q4Launch
~ Propose edits that update target opening, delete references to Danielle and Vince Harrison, suggest new images, suggest improved marketing prose.

~ Review Think Reservations booking engine that will be located on the website.

~ Zoul meets with LL to discuss work underway and Innkeeper candidates and compensation.
~ Zoul travels from Bluffton to central Nebraska

October 11, 2018:

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Meeting at Q4Launch in Mt. Pleasant SC with LL and web design owner and staff regarding revisions. Assume role of Inquiries agent and all booking inquiries directed to HAG. Directed to get control of website.

October 15, 2018:

On-site meetings:

~ Housekeeping Services of Hilton Head
~ Collateral Design
~ Cottage Bakery (selected to provide breakfast items)
~ Bluffton Bookkeeper (to manage all accounting transactions, perform bank reconciliations)
~ Coastal States Bank (has development loan on OTBI). The Commercial Loan Officer wanted to meet a representative of the management company. We discussed the target opening date, and publication of an updated Pro Forma.

October 17, 2018:

Develop and take reservations for future group bookings:
~ 'Full house' destination wedding May 31 - June 2
~ 'Full house' Titleist Golf April 23 – 28

October 18, 2018:

Telephone interviews Innkeeper candidate in advance of on-site interviews scheduled for Oct 24.

LL postpones the pick-up of executed Management Agreement and initial check until Monday Oct 21.

October 21, 2018:

LL again cancels pick-up of Agreement and check saying he was out of town. Thereafter, there was no communication with LL.

October 24, 2018:

Drove to Bluffton to confront LL, who said our services were canceled, and that he had hired Margaret Johnson. I was told to send him an invoice for our services.

October 25, 2018:

Forwarded certain work product and group booking information to LL and Margaret Johnson.

October 29, 2019:

Issued Statement for Services to LL.

LAW OFFICES
JONES, SIMPSON & NEWTON, P.A.

WILLIAM W. JONES, JR. (retired)
MARK S. SIMPSON
WM. WESTON JONES NEWTON
SAMUEL L. KIRKLAND
F. WARD BORDEN (SC, VA & DC)
DEAN S. HASKELL (SC & CT)
NICHOLAS McEWEN

OF COUNSEL
J. THOMAS MIKELL

BLUFFTON OFFICES
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P.O. BOX 1938
BLUFFTON, SC 29910
Telephone (843) 706-6111
Fax (843) 706-5667
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BEAUFORT OFFICES
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P.O. BOX 1727
BEAUFORT, SC 29901
Telephone (843) 524-2110
Fax (843) 524-4995
E-Mail: jsplaw@jsplaw.net

THIS CORRESPONDENCE ORIGINATED AT THE BLUFFTON OFFICE

E-mail: wborden@jsplaw.net

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

May 6, 2021

Beaufort County Clerk of Court
102 Ribaut Road, Second Floor
Beaufort, South Carolina 29902

Re: Zoul, et al. v. Leary, et al.; Beaufort County Court of Common Pleas, Civil Action No. 2019-CP-07-00117

Dear Sir or Madam:

Our law firm represents the Plaintiffs in the above-referenced case. The case is scheduled for a date certain bench trial on May 18, 2021.

Defendants transmitted a Notice of Deposition on May 4, 2021 to schedule a ZOOM deposition of the primary Defendant while he is out of state. It is Defendants' intent to use a tape or transcript so that Defendant Lawrence Leary does not have to appear before the Court in Beaufort County at trial. Accordingly, Plaintiffs yesterday (5/5/21) filed a Motion to Quash or for Protective Order opposing the taking of the out of state deposition to be used at trial. Our Motion was three pages long. On page 2 we referenced attaching a copy of the Notice of Deposition as Exhibit 1. We inadvertently did not attach the Notice of Deposition with our Motion. It is requested that you please accept as filed the Exhibit 1 Notice of Deposition attached hereto, and incorporate it with Plaintiffs' Motion filed yesterday.

If there are questions, please feel free to call. Thank you.

Sincerely,

JONES, SIMPSON & NEWTON, P.A.

F. Ward Borden

F. Ward Borden

Enclosure

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs, -vs- LAWRENCE LEARY, ET AL. Defendants.	IN THE IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **NOTICE OF DEPOSITION**

YOU WILL PLEASE TAKE NOTICE that the Defendants' Attorney will take the deposition (by stenography and/or video) of the following person at the time set forth herein, upon oral examination before the herein described Notary Public or before any other Notary Public or officer authorized by law to take depositions, at which time you are notified to appear and take part in such examination as you may be advised, and as shall be fit and proper and will continue from day to day until completed.

WITNESS **Lawrence Leary**

DATE: May 14, 2021

TIME: 9:00 am

PLACE: Via Zoom

YOU WILL PLEASE TAKE FURTHER NOTICE at the time of the deposition the Deponent is commanded to produce the documents listed in Exhibit A, attached hereto.

The deposition may be conducted via videoconferencing or telephonic means, and may be recorded on videotape in addition to stenographic transcription. This deposition is being taken for use at trial, and for all other purposes as we are permitted under the rules of this Court and all applicable statutes and laws.

GALVIN LAW GROUP, LLC
/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
P.O. Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
4th day of **May**, **2021**

ELECTRONICALLY FILED - 2021 May 06 10:10 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700117

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ZACHARY ZOUL, ET AL Plaintiffs -vs- LAWRENCE LEARY, ET AL. Defendants	IN THE IN THE COMMON PLEAS COURT FOURTEENTH JUDICIAL CIRCUIT CASE NO: 2019-CP-07-117 **CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the **NOTICE OF DEPOSITION of Lawrence Leary** electronically, or by mailing a true and correct copy of same to the following, with adequate postage affixed thereto, addressed as follows on the day set forth below:

Ward Borden, Esq.
Jones Simpson and Newton, PA
7 Plantation Park Dr.
Bluffton, SC 29910

GALVIN LAW GROUP, LLC

/s/ Gregory Michael Galvin, Esq.
Gregory Michael Galvin, Esq.
P.O. Box 887
Bluffton, South Carolina 29910
843-227-2231
888-362-0714 Fax
ggalvin@galvinlawgroup.com

Bluffton, South Carolina
4th day of **May**, **2021**

EXHIBIT A

None

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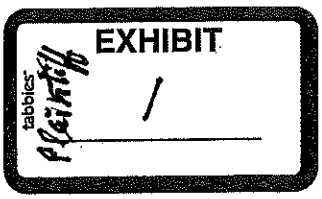

Sept 28, 2018 | Old Town Bluffton Inn Pro Forma | 14 Rooms | Draft for discussion

All number values are ($000's) except ADR and RevPAR

	2019		2020		2021		Notes
Rooms Available	5,110		5,124		5,110		
Rooms Sold	3,168		3,689		4,088		
Occupancy	62%		72%		80%		1
ADR	$220.00		$268.00		$310.00		2
RevPAR	$136.4		$192.96		$248.00		
	$	%	$	%	$	%	
Operating Revenue							
Rooms	$ 697.0	88.4%	$ 988.7	90.3%	$ 1,267.3	90.9%	3
Food & Beverage	$ 34.2	4.3%	$ 39.8	3.6%	$ 47.8	3.4%	4
Parking	$ 57.0	7.2%	$ 66.4	6.1%	$ 79.7	5.7%	5
Total Operating Revenue	$ 788.2	100.0%	$ 1,095.0	100.0%	$ 1,394.8	100.0%	
Departmental Expenses							
Rooms	$ 265.2	38.0%	$ 301.1	30.5%	$ 326.0	25.7%	6
Food & Beverage	$ 13.7	40.0%	$ 13.9	35.0%	$ 16.7	35.0%	7
Parking	$ 25.0	43.8%	$ 25.0	37.6%	$ 25.0	22.6%	8
Total Departmental Expenses	$ 290.2	36.8%	$ 340.1	31.1%	$ 367.7	26.4%	
Total Departmental Profit	$ 523.1	66.4%	$ 754.9	68.9%	$ 1,027.1	73.6%	
Undistributed Operating Expenses							
Administrative and General	$ 97.9	12.4%	$ 100.8	9.2%	$ 103.9	7.4%	9
Credit Card Fees	$ 19.7	2.5%	$ 27.4	2.5%	$ 34.9	2.5%	10
Management Fees	$ 60.0	7.6%	$ 60.0	5.5%	$ 60.0	4.3%	11
Information and Telecom Systems	$ 18.9	2.4%	$ 21.9	2.0%	$ 25.1	1.8%	12
Sales and Marketing	$ 63.1	8.0%	$ 60.2	5.5%	$ 61.4	4.4%	13
Property Ops and Maintenance	$ 15.8	2.0%	$ 21.9	2.0%	$ 34.9	2.5%	14
Utilities	$ 31.7	4.0%	$ 38.3	3.5%	$ 44.6	3.2%	15
Total Undistributed Operating Expenses	$ 307.0	39.0%	$ 330.6	30.2%	$ 364.7	26.1%	
Gross Operating Profit	$ 216.0	27.4%	$ 424.3	38.8%	$ 662.4	47.5%	
Non-Operating Income and Expenses							
Property and Other Taxes	$ 35.0	4.4%	$ 36.1	3.3%	$ 37.1	2.7%	16
Insurance	$ 17.0	2.2%	$ 17.5	1.6%	$ 18.0	1.3%	17
Replacement Reserve	$ 0.0	0.0%	$ 0.0	0.0%	$ 0.0	0.0%	18
Total Non-operating Income and Expenses	$ 52.0	6.6%	$ 53.6	4.9%	$ 55.2	4.0%	
Net Operating Income	$ 164.0	20.8%	$ 370.8	33.9%	$ 607.2	43.5%	19

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Table 1

	Position	# / Day	Wage	Hrs /Day	Days / Year	Total Annual Wages	P.T.&E.B 30%	Payroll
Year 1	Clerks	1.5	$14.00	8	365	$61,320	$18,396	$ 79,716
	Bellmen	2	$10.00	8	365	$58,400	$17,520	$ 75,920
	HSKPRS	1	$13.00	8	365	$37,960	$11,388	$ 49,348
								$ 204,984
	Travel Agent Commissions		5% of Room Revenue					$ 34,850
	Guest Supplies & Outside Laundry		$8.00 Cost per Occupied Room					$ 25,346
	Total Rooms Expenses							$ 265,180
Year 2	Clerks	1.5	$14.42	8	365	$63,160	$18,948	$ 82,107
	Bellmen	2	$10.30	8	365	$60,152	$18,046	$ 78,198
	HSKPRS	1.2	$13.39	8	365	$46,919	$14,076	$ 60,994
								$ 221,299
	TA Commissions		5% of Room Revenue					$ 49,436
	Guest Supplies & Outside Laundry		$8.24					$ 30,400
								$ 301,135
Year 3	Clerks	1.5	$14.85	8	365	$65,054	$19,516	$ 84,571
	Bellmen	2	$10.61	8	365	$61,957	$18,587	$ 80,544
	HSKPRS	1.2	$13.79	8	365	$48,325	$14,498	$ 62,824
								$ 227,938
	TA Commissions		5% of Room Revenue					$ 63,364
	Guest Supplies & Outside Laundry		$8.49					$ 34,696
								$ 325,998

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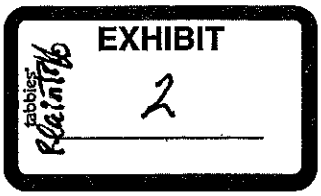
Administrative & General

	Year 1
General Manager	
Salary	65.0
20% P.T.&E.B	13.0
Total GM	78.0
Accounting & Payroll Service	12.0
Decorations	1.0
Dues & Subscriptions	1.5
Entertainment In-house	3.6
Equipment Rental	0.0
Legal Services	0.0
Licenses & Permits	1.5
Postage & Delivery	0.3
Security	0.0
Travel	0.0
	19.9
TOTAL A&G	97.9



Oct 2, 2018 — Old Town Bluffton Inn Pro Forma — 14 Rooms — Draft for discussion

All number values are ($000's) except ADR and RevPAR

	2019		2020		2021		Notes
Rooms Available	5,110		5,124		5,110		
Rooms Sold	3,168		3,689		4,088		
Occupancy	62%		72%		80%	$365	1
ADR	$235.00	(was $265)	$285.00	(was $310)	$345.00	(was ~~$245~~)	2
RevPAR	$145.7		$205.20		$276.00		
	$	%	$	%	$	%	
Operating Revenue							
Rooms	$ 744.5	87.9%	$ 1,051.4	88.8%	$ 1,410.4	89.8%	3
Food & Beverage	$ 45.6	5.4%	$ 66.4	5.6%	$ 80.9	5.2%	4
Parking	$ 57.0	6.7%	$ 66.4	5.6%	$ 79.7	5.1%	5
Total Operating Revenue	$ 847.2	100.0%	$ 1,184.3	100.0%	$ 1,571.0	100.0%	
Departmental Expenses							
Rooms	$ 332.1	44.6%	$ 379.6	36.1%	$ 427.0	30.3%	6
Food & Beverage	$ 18.2	40.0%	$ 23.2	35.0%	$ 28.3	35.0%	7
Parking	$ 25.0	43.8%	$ 25.0	37.6%	$ 25.0	22.6%	8
Total Departmental Expenses	$ 357.1	42.2%	$ 427.8	36.1%	$ 480.3	30.6%	
Total Departmental Profit	$ 515.0	60.8%	$ 756.4	63.9%	$ 1,090.7	69.4%	
Undistributed Operating Expenses							
Administrative and General	$ 106.8	12.6%	$ 110.0	9.3%	$ 113.3	7.2%	9
Credit Card Fees	$ 21.2	2.5%	$ 29.6	2.5%	$ 39.3	2.5%	10
Management Fees	$ 60.0	7.1%	$ 60.0	5.1%	$ 60.9	3.9%	11
Information and Telecom Systems	$ 20.3	2.4%	$ 23.7	2.0%	$ 28.3	1.8%	12
Sales and Marketing	$ 59.3	7.0%	$ 62.8	5.3%	$ 69.1	4.4%	13
Property Ops and Maintenance	$ 16.9	2.0%	$ 23.7	2.0%	$ 39.3	2.5%	14
Utilities	$ 31.7	3.7%	$ 41.4	3.5%	$ 50.3	3.2%	15
Total Undistributed Operating Expenses	$ 316.2	37.3%	$ 351.2	29.7%	$ 399.5	25.4%	
Gross Operating Profit	$ 198.8	23.5%	$ 405.2	34.2%	$ 691.2	44.0%	
Non-Operating Income and Expenses							
Property and Other Taxes	$ 35.0	4.1%	$ 36.1	3.0%	$ 37.1	2.4%	16
Insurance	$ 17.0	2.0%	$ 17.5	1.5%	$ 18.0	1.1%	17
Replacement Reserve	$ 0.0	0.0%	$ 0.0	0.0%	$ 0.0	0.0%	18
Total Non-operating Income and Expenses	$ 52.0	6.1%	$ 53.6	4.5%	$ 55.2	3.5%	
Net Operating Income	$ 146.8	17.3%	$ 351.7	29.7%	$ 636.0	40.5%	19

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Table 1

	Position	# / Day	Wage	Hrs /Day	Days / Year	Total Annual Wages	P.T.&E.B 30%		Payroll
Year 1	Clerks	2.0	$14.00	8	365	$81,760	$24,528	$	106,288
	Bellmen	2	$10.00	8	365	$58,400	$17,520	$	75,920
	HSKPRS	1	$13.00	8	365	$37,960	$11,388	$	49,348
								$	231,556
	Travel Agent Commissions		5%	of Room Revenue				$	37,226
	Complimentary Continental Breakfast		$12.00	Cost per occupied room				$	39,018
	Guest Supplies & Outside Laundry		$8.00	Cost per Occupied Room				$	25,949
	Total Rooms Expenses							$	332,148
Year 2	Clerks	2.0	$14.42	8	365	$84,213	$25,264	$	109,477
	Bellmen	2.0	$10.60	8	365	$60,152	$18,046	$	78,198
	HSKPRS	1.2	$13.39	8	365	$46,919	$14,076	$	60,994
								$	248,668
	TA Commissions		5%	of Room Revenue				$	52,572
	Complimentary Continental Breakfast		$13.00					$	47,961
	Guest Supplies & Outside Laundry		$8.24					$	30,400
	Total Rooms Expenses							$	379,601
Year 3	Clerks	2.0	$14.85	8	365	$86,739	$26,022	$	112,761
	Bellmen	2	$10.61	8	365	$61,957	$18,587	$	80,544
	HSKPRS	1.4	$13.79	8	365	$56,880	$16,914	$	73,295
								$	266,599
	TA Commissions		5%	of Room Revenue				$	70,510
	Complimentary Continental Breakfast		$13.50					$	55,188
	Guest Supplies & Outside Laundry		$8.49					$	34,696
	Total Rooms Expenses							$	427,001

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Administrative & General

	Year 1	
General Manager		
Salary	65.0	
30% P.T.&E.B	19.5	
Total GM	84.5	
Accounting & Payroll Service	12.0	
Decorations	1.0	
Dues & Subscriptions	1.5	
Entertainment In-house	0.0	Charged to S&M
Equipment Rental	0.0	
Legal Services	0.0	
Licenses & Permits	1.5	
Postage & Delivery	0.3	
Security	0.0	
Travel	6.0	Monthly travel by Zach Zoul from Omaha
	22.3	
TOTAL A&G	106.8	

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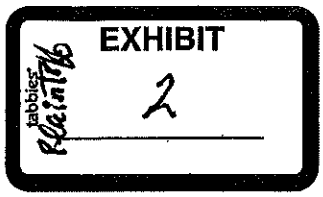

Oct 2, 2018 | Old Town Bluffton Inn Pro Forma | 14 Rooms | Draft for discussion

All number values are ($000's) except ADR and RevPAR

	2019		2020		2021		Notes
Rooms Available	5,110		5,124		5,110		
Rooms Sold	3,168		3,689		4,088		
Occupancy	62%		72%		80%	365	1
ADR	$235.00	(was $265)	$285.00	(was $310)	$345.00	(was ~~$249~~)	2
RevPAR	$145.7		$205.20		$276.00		
	$	%	$	%	$	%	
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Rooms	$ 744.5	87.9%	$ 1,051.4	88.8%	$ 1,410.4	89.8%	3
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Rooms	$ 332.1	44.6%	$ 379.6	36.1%	$ 427.0	30.3%	6
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Parking	$ 25.0	43.8%	$ 25.0	37.6%	$ 25.0	22.6%	8
Total Departmental Expenses	$ 357.1	42.2%	$ 427.8	36.1%	$ 480.3	30.6%	
Total Departmental Profit	$ 515.0	60.8%	$ 756.4	63.9%	$ 1,090.7	69.4%	
Undistributed Operating Expenses							
Administrative and General	$ 106.8	12.6%	$ 110.0	9.3%	$ 118.3	7.2%	9
Credit Card Fees	$ 21.2	2.5%	$ 29.6	2.5%	$ 39.3	2.5%	10
Management Fees	$ 60.0	7.1%	$ 60.0	5.1%	$ 60.0	3.8%	11
Information and Telecom Systems	$ 20.3	2.4%	$ 23.7	2.0%	$ 28.3	1.8%	12
Sales and Marketing	$ 59.3	7.0%	$ 62.8	5.3%	$ 69.1	4.4%	13
Property Ops and Maintenance	$ 16.9	2.0%	$ 23.7	2.0%	$ 39.3	2.5%	14
Utilities	$ 31.7	3.7%	$ 41.4	3.5%	$ 50.3	3.2%	15
Total Undistributed Operating Expenses	$ 316.2	37.3%	$ 351.2	29.7%	$ 399.5	25.4%	
Gross Operating Profit	$ 198.8	23.5%	$ 405.2	34.2%	$ 691.2	44.0%	
Non-Operating Income and Expenses							
Property and Other Taxes	$ 35.0	4.1%	$ 36.1	3.0%	$ 37.1	2.4%	16
Insurance	$ 17.0	2.0%	$ 17.5	1.5%	$ 18.0	1.1%	17
Replacement Reserve	$ 0.0	0.0%	$ 0.0	0.0%	$ 0.0	0.0%	18
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Net Operating Income	$ 146.8	17.3%	$ 351.7	29.7%	$ 636.0	40.5%	19

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Table 1

	Position	# / Day	Wage	Hrs /Day	Days / Year	Total Annual Wages	P.T.&E.B 30%		Payroll
Year 1	Clerks	2.0	$14.00	8	365	$81,760	$24,528	$	106,288
	Bellmen	2	$10.00	8	365	$58,400	$17,520	$	75,920
	HSKPRS	1	$13.00	8	365	$37,960	$11,388	$	49,348
								$	231,556
	Travel Agent Commissions		5%	of Room Revenue				$	37,226
	Complimentary Continental Breakfast		$12.00	Cost per occupied room				$	30,018
	Guest Supplies & Outside Laundry		$9.00	Cost per Occupied Room				$	25,946
	Total Rooms Expenses							$	332,146
Year 2	Clerks	2.0	$14.42	8	365	$84,213	$25,264	$	109,477
	Bellmen	2.0	$10.80	8	365	$60,152	$18,046	$	78,198
	HSKPRS	1.2	$13.39	8	365	$46,919	$14,076	$	60,994
								$	248,668
	TA Commissions		5%	of Room Revenue				$	52,572
	Complimentary Continental Breakfast		$13.00					$	47,961
	Guest Supplies & Outside Laundry		$8.24					$	30,400
	Total Rooms Expenses							$	379,601
Year 3	Clerks	2.0	$14.05	8	365	$86,739	$26,022	$	112,761
	Bellmen	2	$10.61	8	365	$61,957	$18,587	$	80,544
	HSKPRS	1.4	$13.79	8	365	$56,680	$16,914	$	73,295
								$	266,599
	TA Commissions		5%	of Room Revenue				$	70,610
	Complimentary Continental Breakfast		$13.59					$	55,188
	Guest Supplies & Outside Laundry		$8.49					$	34,696
	Total Rooms Expenses							$	427,001

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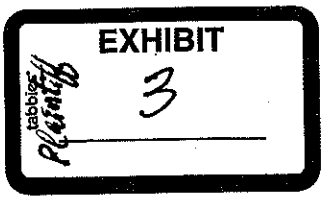
Administrative & General

	Year 1	
General Manager		
Salary	65.0	
30% P.T.&E.B	19.5	
Total GM	84.5	
Accounting & Payroll Service	12.0	
Decorations	1.0	
Dues & Subscriptions	1.5	
Entertainment In-house	0.0	Charged to S&M
Equipment Rental	0.0	
Legal Services	0.0	
Licenses & Permits	1.5	
Postage & Delivery	0.3	
Security	0.0	
Travel	6.0	Monthly travel by Zach Zoul from Omaha
	22.3	
TOTAL A&G	106.8	



October 7, 2018

Notes to 10.07.18 OTBI Pro Forma by EB

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General Assumptions and Format

It is assumed that 2019 will be the first full operating year. The Pro Forma is expressed in inflated dollars: in accordance with Notes 2 and 3 below for revenues, and 3% inflation from any current baseline value for expenses.

Old Town Bluffton Inn is designed, constructed and furnished as a luxury product. The operation will provide a high level of guest service and amenities. The Inn has an excellent position in Bluffton, which has high barriers to entry. The Inn is directly across from the Historic District and is at the doorstep to the Promenade development with restaurants, entertainment and boutiques. Additionally, there are four public-play golf courses within six-minutes of the Inn, and a public ocean-front beach within twenty-minutes. Most importantly, other than a handful of vacation rental properties, there are no other transient accommodations within Old Town Bluffton,

The Pro Forma generally comports with the Uniform System of Accounts for the lodging industry ("USALI"). Any exceptions are highlighted in the notes below.

Notes:

1. The 62% Year 1 Annual Occupancy assumes that there is a two-month operating period at the end of 2018, during which there is intense marketing activity heralding the launch of OTBI.

2. ADR increases aggressively over the first three years, reaching stabilization in 2021.

3. Rooms Revenue will be optimized through daily dynamic pricing yield in reaction to demand fluctuations.

4. It is assumed that the morning breakfast offering is included in the room rate. F&B Revenue is generated by afternoon/evening Bar service. Year 1 revenue assumes the annual number of guests equals 1.8 times the number of occupied room, and that the bar spend is $8 per guest per day.
year 2 = $10; Year 3 = $11

5. Valet Parking revenue assumes that all guests will arrive by automobile, and that that 75% of the guests will avail themselves of valet parking @$24 per night.

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6. Rooms Departmental Expenses: Sheet 2 of each Pro Forma provides the staffing plan, payroll calculation, and Other Expense assumptions.

   Note that staffing increases are minimal as occupancy increases. Quite simply, one bellman on the 7AM - 3PM and 3PM - 11PM shifts can handle the variable arrival, departure and parking valet activity. Also, it is assumed that the multi-tasking General Manager, whose salary is carried under A&G, will supplement the Desk Clerks, and even the Bellmen, during peak guest arrivals and departures.

7. F&B Expenses include only the cost of goods sold for wine, beer, and appetizers sold at the Bar. Service is provided by the Desk Clerks and GM. The cost of the complimentary continental breakfast is a Rooms expense.

8. There is a $25,000 annual rent paid for parking spaces at the church across the street from OTBI.

Undistributed Operating Expenses

9. In larger hotels, whether full or limited-service, Administrative and General labor expense typically includes the General Manager, Accounting, Human Resources, and Security. At OTBI, there is simply the multi-tasking General Manager at a starting salary of $65K. Accounting is outsourced to a third party. Security is embedded in the design and the locking system technology; and all staff are trained to be watchful and can communicate directly with the Front Desk. Page 3 of the Pro Forma details the A&G expenses.

10. Credit Card Fees are typically an A&G expense under USALI, but are shown separately in this pro forma. 2.5% is an accepted blend of the various credit and debit card fees.

11. A fee of $5,000 per month will be paid to Hospitality Advisors Associates, which has the responsibility for optimizing Gross Operating Profit, and ultimately selling the property for a price acceptable to the owner.

12. OTBI has a current quote of $15,000 for a WI-FI System There will be additional telecom expenses.

13. Sales and Marketing is the lifeblood of the business, and the expense has been estimated aggressively. A detailed marketing plan will be prepared.

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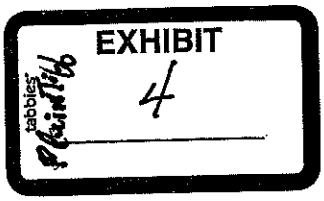
14. Property Ops and Maintenance is low as a percentage of Total Revenues during the first two years since most components are covered by contractor and supplier warrantles. Full Service hotels typically have PO&M expenses at 4.5% of Total Revenues; however, they have much larger Public and BOH areas compared to OTBI.

15. OTBI has minimal Public and BOH areas; therefore, Utility Expense relates predominately to the Guest Rooms. The Year 1 Pro Forma Utility assumption is $1,584 per Available Room.

16. Estimate provided by Larry Leary.

17. Estimate provided by Larry Leary.

18. If OTBI is seen to be on pace for a $700,000 GOP in Year 3, it will command interest in the investment market well before that date.



Subject: OTBI Action List, First Draft

From: Eric Brooks (eric.brooks@earthlink.net)

To: leary4419@gmail.com; zacharyzoul@hospitalityadvisorsgroup.com;

Date: Friday, October 5, 2018 11:56 AM

Larry and Zach,

Attached is a first draft of an Action List to prepare the Inn for opening.

We can review and amend it as necessary when we meet on Monday.

Eric

Attachments

- OTBI Action List.pdf (30.98KB)

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OTBI Action List

as of 10.5.18

1. **Guestrooms**
    - 1.1 TV's, order & install
    - 1.2 Contract with TV service provider
    - 1.3 Clock Radios, install
    - 1.4 Telephone System, consider IP virtual PBX system?
    - 1.5 Mattresses, delivery & installation
    - 1.6 Desk Lamps, purchase & install as needed
    - 1.7 Waste Baskets, order & install
    - 1.8 Room Numbers, delivery & installation
    - 1.9 Bathroom Amenity Trays, purchase
    - 1.10 Clothes Hangers, purchase
    - 1.11 Specify terry, linens, and amenities with Housekeeping contractor
    - 1.12 Pillows, purchase
    - 1.13 Bathroom Under-vanity Baskets, purchase
    - 1.14 Vanity Soap Dish, purchase
    - 1.15 Ice Buckets & Water Glasses, purchase
    - 1.16 Balcony Tables & Chairs, order install
    - 1.17 Specify in-room literature, note pads and pens
    - 1.18 Safes, order & install

2. **Guest Floor Linen Closets**
    - 2.1 Stack Washer/Dryers, order & install

3. **Staff Communication System?**

4. **Lobby Level Coffee/Beverage Alcove**
    - 4.1 Coffee Machine w/ hot water for tea & cocoa, order & install
    - 4.2 Microwave, order & install
    - 4.3 Glassware, Cups & Saucers, and Mugs, purchase

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5. Kitchen

- 5.1 Kitchen Equipment, order & install
- 5.2 Plates, Utensils, Display Platters, Room Service Caddies, purchase

6. Bar

- 6.1 Bar Equipment, order & install
- 6.2 Glassware, purchase

7. Lobby

- 7.1 Decorate Curio Cabinet
- 7.2 Specify Table Top items
- 7.3 Music?
- 7.4 Rugs, delivery & installation
- 7.5 Luggage Carts, order

8. Front Office

- 8.1 Wi-Fi, purchase & install
- 8.2 Booking Engine, purchase & install
- 8.3 Operating System, specify, purchase & install
- 8.4 Uniforms, specify and order

EXHIBIT
Plaintiff
5

OTBI Action List

as of 10.5.18

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1. Guestrooms

- 1.1 TV's, order & install
- 1.2 Contract with TV service provider
- 1.3 Clock Radios, install
- 1.4 Telephone System, consider IP virtual PBX system? Yes on
- 1.5 Mattresses, delivery & installation 1 cycle week.
- 1.6 Desk Lamps, purchase & install as needed
- 1.7 Waste Baskets, order & install
- 1.8 Room Numbers, delivery & installation
- 1.9 Bathroom Amenity Trays, purchase
- 1.10 Clothes Hangers, purchase
- 1.11 Specify terry, linens, and amenities with Housekeeping contractor Niche
- 1.12 Pillows, purchase
- 1.13 Bathroom Under-vanity Baskets, purchase
- 1.14 Vanity Soap Dish, purchase & Shower
- 1.15 Ice Buckets & Water Glasses, purchase
- 1.16 Balcony Tables & Chairs, order install 7 2 DOTS COUNTING Plus 3
- 1.17 Specify in-room literature, note pads and pens
- 1.18 Safes, order & install What Does can not

2. Guest Floor Linen Closets

- 2.1 Stack Washer/Dryers, order & install Not each — Kitchen.

3. Staff Communication System?

Staff communications

4. Lobby Level Coffee/Beverage Alcove

- 4.1 Coffee Machine w/ hot water for tea & cocoa, order & install
- 4.2 Microwave, order & install
- 4.3 Glassware, Cups & Saucers, and Mugs, purchase

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5. Kitchen

5.1 Kitchen Equipment, order & install

5.2 Plates, Utensils, Display Platters, Room Service Caddies, purchase

6. Bar

6.1 Bar Equipment, order & install

6.2 Glassware, purchase Mugs

7. Lobby

7.1 Decorate Curio Cabinet

7.2 Specify Table Top items Flowers

7.3 Music? Sonos

7.4 ~~Rugs, delivery & installation~~ Hayyard

7.5 Luggage Carts, order Bronze

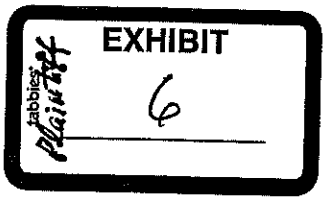
8. Front Office

8.1 Wi-Fi, purchase & install done

8.2 Booking Engine, purchase & install

8.3 Operating System, specify, purchase & install

8.4 Uniforms, specify and order



Re: Fwd: Booking Engine & Meeting

From: Eric Brooks (eric.brooks@earthlink.net)

To: leary4419@gmail.com

Cc: zacharyzoul@hospitalityadvisorsgroup.com

Date: Thursday, October 4, 2018, 11:58 AM CDT

I like the look of both q4Launch and Think Reservations, and look forward to exploring them further.

Eric

-----Original Message-----
From: Larry Leary
Sent: Oct 4, 2018 11:51 AM
To: Eric.brooks@earthlink.net
Subject: Fwd: Booking Engine & Meeting

Sent from my iPhone

Begin forwarded message:

> **From:** Dani Heck <dani@q4launch.com>
> **Date:** October 3, 2018 at 2:13:19 PM EDT
> **To:** leary4419@gmail.com
> **Subject: Booking Engine & Meeting**
>
> Hi Larry!
>
> Matt wanted me to pass along the information that I have on the booking engine. I know that you all had started the process with Think Reservations. Here is their contact: scot@thinkreservations.com. They should be able to let you know where you are in the process and when you are ready to start.
>
> I also hear that you are planning on coming to Mount Pleasant next week. Let me know what time will work for you and I will work on scheduling a meeting with Matt as well.
>
> Please let me know if you have any questions at all.
>
> Thank you!
> Dani
>
> --
> **Dani Heck**
> **Customer Experience Manager**
> Q4Launch
> dani@q4launch.com / (843) 800-0848
> Q4 Core Values / Nominate a Team Member

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rom: "Eric Brooks" <eric.brooks@earthlink.net>

'o: dani@q4launch.com

:C:

late: 10/15/2018 11:03:46 AM

ubject: Re: Contact Us "Test"

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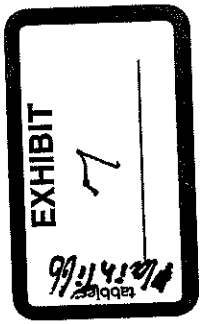
ani,

ne "Test" contact was successfully received.

ric Brooks



—Original Message—
·From: Danielle Heck
·Sent: Oct 15, 2018 10:30 AM
·To: eric.brooks@earthlink.net
·Subject: Contact Us "Test"
·
·From: Danielle Heck
·Subject: Test
·
·Phone: 8438143708
·
·Message Body:
·This is a test message for the Old Town Bluffton Inn contact form.
·
·Please let me know that you received this. The messages will temporarily go to you until we have an email address set up for Old Town Bluffton Inn.
·
·Thanks,
·Dani
·
—
·This e-mail was sent from a contact form on Old Town Bluffton Inn (https://blufftoninn.com)
·

EXHIBIT 8 tabbies Plaintiff

Find messages, documents, photos or people

Compose

Inbox 999+
Unread
Starred
Drafts 1
Sent
Archive
Spam
Trash
^ Less

Views Show
Folders Hide
+ New Folder
AAA - Priority...
AAA. Century...
centurylink
CHTA
Darlene Renn...
Dropbox
Fire Marshal
George Wash...
HAG Logo
House
Island Handy...
Kaskaskia
Lease
Maintenance ...
Maintenance....
misc
NEF
Netflix 2
Okobaji
Pleasant Har...
Pleasant Har...
Restaurant F...
Senate
Silver Beach ...
Terry Mock 1
winter trip

Update time zone

← Back | Archive | Move | Delete | Spam | ...

Interaction with LL for Inn opening and management

Eric Brooks <eric.brooks@earthlink.net>
To: zacharyzoul@hospitalityadvisorsgroup.com
Sep 1

On October 5, 2018, LL and I met on site to draw-up an Action List (attached) of items, organized by area, needed to open and manage the Inn.

On Oct 8, LL forwarded to me contact information on many vendors originally sourced by his daughter, Danielle Harrison, prior to her dismissal by Larry. LL's emails have been forwarded separately to you:

Paradigm Trends	Guestroom miscellany: ice buckets, trays, trash cans, tissue paper cover
Spectrum Enterprises	Phone system, including elevator phone
Safemark Software	Guestroom and Reception Office safes
Hilton Head Exterminators	Pest control contract
Wooden Hangers Direct	Guestroom clothes hangers
Harris Pillow	Guestroom pillows
Assa Abloy	Entrance door and guestroom doors locking system
Sysco	Food vendor to hotels and restaurants

OTBI Acti... .pages
161 KB

Reply, Reply All or Forward

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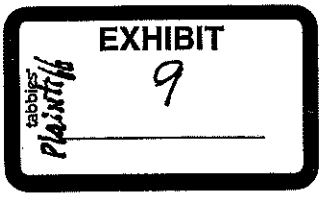

Accounting Service

From: Eric Brooks (eric.brooks@earthlink.net)

To: leary4419@gmail.com

Cc: zacharyzoul@hospitalityadvisorsgroup.com

Date: Saturday, October 6, 2018, 12:54 PM CDT

Take a look at the website linked below:

http://blufftonbookkeeper.com

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Business Entities Online

File, Search, and Retrieve Documents Electronically

EXHIBIT 10 Robbie Roberts

Record 224

OLD TOWN BLUFFTON INN, LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 08/12/2016

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: Lawrence Leary

Address: 63 Honesty Lane
Bluffton, South Carolina 29909

Official Documents On File

Filing Type	Filing Date
Notice of Change of Designated Office, Agent or Address of Registered Agent	08/10/2018
Organization	08/12/2016

Copyright © 2019 State of South Carolina

EXHIBIT
Plaintiff's
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Old Town Bluffton Inn, LLC
Operating Agreement

THIS OPERATING AGREEMENT is effective as of the 12th day of August, 2016 ("Agreement") and is entered into by and between **LARRY LEARY** and **DANIELLE HARRISON** (collectively "Members").

RECITALS

WHEREAS, Old Town Bluffton Inn, LLC is a South Carolina limited liability company formed pursuant to the terms and conditions of the South Carolina Limited Liability Company Act ("Company"); and

WHEREAS, the Members are the only members of the Company; and

WHEREAS, the Members desire to execute this Agreement to govern the conduct of the business and affairs of the Company and to set forth other matters concerning the Company; and

AGREEMENT

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Members intend to be legally bound, do hereby agree to as follows:

Article 1. Definitions

1.1 Defined Terms. Terms defined in the preamble of this Agreement have their assigned meanings, and the following terms have the meanings assigned to them:

"Articles" means the Articles of Organization, and all amendments thereto, executed and filed pursuant to applicable laws and the terms of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended. All references herein to specific sections of the Code shall be deemed to refer to the corresponding provisions of succeeding law.

"Default" means the failure of a Member to pay the required initial capital contribution and/or additional capital contributions when due.

"Default Amount" means the amount of capital a Member has not contributed to the Company within a prescribed amount of time.

"Defaulting Member" means a Member who is deemed by the Manager to be in Default.

"Non-Defaulting Member" means a Member who is not deemed by the Manager to be in Default.

"Disabled" means a Member is unable to render services for the benefit of the Company due to substantial physical or mental impairment, illness, or adjudicated incapacity for a continuous period exceeding ninety (90) days.

"Distributional Interest" means all of a Member's interest in distributions by the Company, but not in management of the Company.

"Major Decision" means a decision with regard to (i) distributions under section 4.2, hereof; (ii) purchasing or selling real property; (iii) incurring debt or refinancing current debt; or (iv) adding members.

"Membership Interest" means all of a Member's interest in the Company, including its Distributional Interest.

"Person" means any individual, limited liability company, limited liability partnership, partnership, corporation, trust or other person or entity.

"Significant Event" means when a Member dies, files for divorce or dissolution, files bankruptcy, or becomes Disable.

EXHIBIT A

Article 2. Organization

2.1 Formation. The Members hereby agree to adopt the Articles which were filed with the South Carolina Secretary of State on August 12, 2016.

2.2 Designated Office. The designated office of the Company shall be located at 82 Heritage Lakes Drive, Bluffton, South Carolina 29910 or such location as may be hereafter determined by the Members.

2.3 Limited Liability Company. The Members intend that the Company be a manager-managed limited liability company and not a partnership (including, without limitation, a limited partnership) or joint venture, and this Agreement may not be construed to suggest otherwise.

2.4 Foreign Qualifications. Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager, with all requirements necessary to qualify the Company as a foreign company in that jurisdiction.

2.5 Purpose of Company. The Company is for the purpose of holding, administering, and managing property located in South Carolina. The Company may engage in any other activities upon the unanimous vote of all Members.

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Article 3. Capital Contributions and Related Matters

3.1 Initial Capital Contributions. The Members shall make initial contributions, either in the form of capital, property, or expertise to the Company.

3.2 Default. In the event a Member is in Default and such Default is not cured within ten (10) days after written notice of Default from the Manager requesting that such Default be cured, the Manager, on behalf of the Company, may commence legal proceedings against the Defaulting Member to collect the Default Amount plus the expenses of collection, including but not limited to court costs and attorneys' fees. The Defaulting Member would remain a Member upon successful enforcement and payment of the Default Amount (and any interest thereon as may be awarded), plus the expenses of collection.

3.3 Additional Capital Contributions. Other than the initial capital contributions made pursuant to Section 3.1, no Member shall be required or allowed to make any additional capital contributions to the Company, except upon unanimous agreement of all Members to the making such additional capital contributions.

3.4 Withdrawal of Capital. The Members shall only be entitled to withdraw or to receive distributions of their capital contributions in accordance with the terms and conditions of this Agreement.

3.5 Interest on Capital Contributions. No interest shall accrue on any capital contributions made by the Members.

3.6 Loans By Members. A Member shall be allowed to make a loan to the Company upon unanimous agreement of all Members to the making of said loan.

3.7 Capital Accounts. The Company shall establish and maintain for each Member a capital account initially reflecting an amount equal to each Member's initial capital contribution. The capital account shall be adjusted from time to time to reflect:

a. Member's additional capital contributions, if any;
b. Allocable shares of net profits or net losses or any items thereof;
c. Distributions made to any Member; and
d. As otherwise required by the provisions of this agreement and the Code and its regulations including, but not limited to, Treasury Regulation 1.704-1(b)(2)(iv).

Article 4. Profits, Losses, Distributions, and Taxable Income

4.1 Allocation of Profit and Loss. Profits shall be apportioned among the Members in accordance to the percentages set forth below after the losses of the Company and items of taxable income, gain, loss, deduction and credit have been accounted for and satisfied:

Larry Leary	51%
Danielle Harrison	49%

EXHIBIT A

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4.2 Ownership Percentages. The ownership of the Company shall be apportioned among the Members in accordance to the percentages set forth below (hereinafter referred to as the "Ownership Percentage"):

Larry Leary	51%
Danielle Harrison	49%

4.3 Distribution to Members. The Company may make distributions of cash or cash equivalents to the Members at least once annually if funds are available. The Members shall unanimously determine the total amount of distribution which may be made to the Members, and each Member shall share in such total distribution in accordance with its Ownership Percentage.

4.4 Distributions In-Kind. Except as provided for in Section 5.4 hereof, no Member may demand or receive distribution from the Company in any form other than cash or cash equivalents.

4.5 Limitations on Distributions. No distribution may be made by the Company if after giving effect to the distribution, (a) the Company would not be able to pay its debts as they become due in the usual course of business, or (b) the assets of the Company would be less than the sum of its liabilities plus the amount that would be needed, if the Company were to be dissolved at the time of distribution, to satisfy the preferential rights of other Members upon dissolution which are superior to the rights of the Member receiving the distribution.

4.6 Financial Distress of Company. If the Company is ever in financial distress or has a limited amount of operating funds, each Member, in accordance with its Ownership Percentage, will contribute monetarily or purchase any needed operating equipment to cover the expenses and needs of the Company.

DRAFT

Article 5. Management of the Company and Deadlock Provision

5.1 Unanimous Consent of All Members. In addition to Sections 2.5, 3.3, 3.6, 4.3. and 6.2 in this Agreement, the following matters, without the requirement of a meeting, also require the unanimous consent of all Members:

a. Amendment to this Agreement;
b. Authorization or ratification of acts or transactions under S.C. Code Section 33-44-103(b)(2)(ii) which would otherwise violate the duty of loyalty;
c. Amendment to the Articles;
d. Compromise of an obligation to make a contribution under S.C. Code Section 33-44-402(b);
e. Compromise, as among Members, of an obligation of a Member to make a contribution or return money or other property paid or distributed in violation of this Agreement;

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f. The making of interim distributions under S.C. Code Section 33-44-405(a), including redemption of an interest;
g. Admission of a new member;
h. Use of the Company's property to redeem an interest subject to a charging order;
i. Consent to dissolve the Company pursuant to S.C. Code Section 33-44-801(2);
j. Waiver of the right to have the Company's business wound up and the Company terminated under S.C. Code Section 33-44-802(b);
k. Consent of Members to merger with another entity under S.C. Code Section 33-44-904(c)(1); and
l. The sale, lease, exchange or other disposal of all, or substantially all, of the Company's property with or without goodwill.

5.2 Majority Consent of Members. Except as otherwise stated in this Article 5, all other decisions of the Company shall be decided by a majority vote of all the Members and such vote shall be evidenced by a written resolution.

5.3 Powers of Manager. Except as otherwise stated in this Article 5, all decisions effecting the day-to-day operations of the Company shall be decided by the Manager. The Manager of the Company, by unanimous consent of all the Members, is Danielle Harrison. Manager shall have all the rights and powers as are necessary, advisable or convenient for the discharge of the duties of the Manager under this Agreement. Without limiting the foregoing, the Manager shall have the powers to perform the following acts on behalf of the Company:

a. Execute and deliver any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the carrying on in the usually way of the business and affairs of the Company;
b. Deposit or invest Company funds in such interest bearing or non-interest bearing investments or bank accounts as they deem advisable to the extent such funds are not then required for the Company operations, and are not required to be distributed, pursuant to this Agreement;
c. Retain or employ and coordinate services of employees, independent contractors, supervisors, accountants, attorneys and other persons necessary or appropriate to carry out the business and purposes of the Company;
d. Engage in any kind of activity and to perform and carry out such contracts of any kind necessary to operate the business and purposes of the Company, in accordance with this Agreement; and
e. Pay all debts and other obligations of the Company, to the extent that funds of the Company are available therefor.

5.4 Deadlock on Major Decision; Occurrence of Significant Event. On the occurrence of a (i) Significant Event; (ii) if the Members do not reach unanimity on a Major Decision; or (iii) pursuant to Section 6.5, hereof, a Member may invoke the procedure set forth below by providing written notice to the other Members, in accordance with Section 11.10:

a. A Member may provide written notice, pursuant to Section 11.10, to the other Members and Manager that States the Major Decision or Significant Event which invokes this Section ("Major Notice");
b. Upon receipt of such Major Notice, the Manager shall commence the voluntary dissolution of the Company and shall divide the Company's assets in the following manner:
   i. The Manager shall sell the real property of the Company in the manner mutually agreed upon by all Members; or
   ii. If the Members cannot reach mutual agreement on the sales price, then the Members shall retain a MAI certified appraiser to determine the fair market value of each unit or parcel of real property owned by the Company. After the appraisal is obtained, the Members shall then agree to a sale of the real property by utilizing the appraised values to sell the real property.
c. Once an agreement has occurred with respect to the division of the real property, pursuant to Section 5.4(b)(1) or (2) within ninety (90) days, the Members shall obtain separate financing for the real property to be distributed, realizing the debt of the Company shall be paid in full during the dissolution process. Once the financing is obtained by all Members, the Company shall cooperate by deeding the real property, to the appropriate Member in accordance with this Section. Members shall use their best efforts to obtain the required financing.

5.5 Conflict of Interest. The pursuit of other ventures and activities by Members, even if directly competitive with the business of the Company is hereby consented to by the Members and shall not be deemed wrongful or improper. No Member shall be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company.

Article 6. Transfers of Interests; Admission of New Member

6.1 Member; Transfer Restrictions. No Member may sell, assign, transfer, pledge, hypothecate or otherwise dispose of its Membership Interest or any portion of its Membership Interest, unless the transfer meets the requirements of Section 6.2. Any transfer of a Member's Membership Interest in violation of this Agreement shall be void and of no effect. All transfers satisfying the requirement of Section 6.2 shall be deemed approved by each Member.

6.2 Permitted Transfers. The gratuitous transfer by a Member of its Distributional Interest to the estate of said Member shall be permitted. No other transfers shall be permitted except by unanimous written consent of all Members.

6.3 Distributions and Allocations in Respect to Transferred Interests. If any Member's interest is sold, assigned or transferred, or any Person is otherwise admitted as a Member during any fiscal year in compliance with the provisions of this Article 6, net profits, net losses, each item thereof, and all other items attributable to such interest for such fiscal year shall be allocated among the Members by taking into account their varying interests during such fiscal year in accordance with Code Section 706(d). Unless otherwise required by the Treasury Regulations, such sale, assignment, transfer or admission shall be deemed to have occurred at the end of the

Record 230

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calendar month during which such event shall have actually occurred, and such allocations shall be determined and made pursuant to a pro forma closing of the books of the Company as of the end of such month. With respect to a transferred Membership Interest or any other portion of such interest, all distributions on or before the deemed date of such transfer shall be made to the transferor and all distributions thereafter shall be made to the transferee. The Company, the Members, and the Manager shall not incur any liability for making such allocation and distribution in accordance with the provisions of this Section.

6.4 Section 754 Election. Upon the transfer of any interest in the Company, the Company may elect, in the sole discretion of the Manager, to make an election under Code Section 754.

6.5 Right of First Refusal; Deadlock Provision. If a Member receives a bona fide offer (hereinafter referred to as "Offer") which the Member (hereinafter referred to as the "Selling Member") proposes to accept, whether or not solicited, to sell or otherwise dispose of all or any portion of its Membership Interest, then the Selling Member shall furnish to the non-selling Members written notice of the receipt of the Offer together with the principal terms and conditions of the sale ("Offer Notice"), including the minimum price (hereinafter referred to as the "Sale Price") at which such Selling Member's Membership Interest (hereinafter referred to as the "Offered Interest") is proposed to be sold, and a statement as to identify the real party in interest making the Offer. The non-selling Members or their designees (which can be any Person) shall then have the right to purchase the Offered Interest proposed to be sold by the Selling Member, upon and subject to the terms and conditions set forth in this Section or, alternatively, the non-selling Members may elect, by providing written notice within thirty (30) days of receipt of the Offer, to invoke Section 5.4. The terms and conditions are as follows:

a. The price and terms at which the Offered Interest may be purchased shall be the price and terms contained in the Offer. If the price contained in the Offer shall consist (in whole or in part) of consideration other than cash, payable at closing thereof or at a later date, the cash equivalent fair market value of such other consideration shall be included in the price at which the Offered Interest may be so purchased.
b. The Members or their designees shall have thirty (30) days after receipt of the Offer Notice to elect to purchase the Offered Interest. The purchase transaction shall be consummated within thirty (30) days following the date of the Member's or its designee's election to purchase the Offered Interest. At the closing, unless otherwise stipulated in the Offer, the Member or its designee shall deliver to the Selling Member the full purchase price, against delivery of an instrument appropriately transferring the Offered Interest sold thereby.

Article 7. Company Purchase of Membership Interest

7.1 Death of a Member. Upon the death of a Member ("Deceased Member"), the Company's worth shall be appraised and the surviving Member(s) may pay the heirs or devisees of the Deceased Member the fair market value of the Deceased Member's Membership Interest in the Company or, the surviving Members can elect to sell the Company and remit the Deceased Member's equal share of the proceeds to its estate.

7.2 Disability or Bankruptcy of a Member. In the event a Member is deemed Disabled or the bankruptcy of a Member (hereinafter referred to as the "Transferring Member"), the Company shall enjoy an option to purchase the Transferring Member's Membership Interest in the Company ("Option"). If the Option is exercised by the Company, the Company shall pay the purchase price in accordance with Section 7.4. If the Company elects to purchase the Membership Interest of a Member under this Article 7, the Company shall provide written notice to the Member's representative or estate ("Notice of Acceptance").

7.3 Purchase Price for Transferring Member's Interest. If the Option is exercised by the Company, the purchase price shall be the fair market value of the Transferring Member's Membership Interest ("Purchase Price"). For purposes of this Agreement, the fair market value of the Transferring Member's Membership Interest shall be as agreed upon by the Company and the Transferring Member's representative or estate. If a valuation cannot be agreed upon, then such fair market value shall be determined by two independent MAI appraisers, one selected by the Company and one selection by the Transferring Member's representative or estate. If the two appraisers set the fair market value at amounts with do not differ by more than thirty percent (30%), then the average of the two values shall be the fair market value of the Transferring Member's Membership Interest. If the differential of the two appraisals is greater than thirty percent (30%), then a third appraiser shall be appointed by mutual agreement of the two appraisers for the purpose of choosing which of the two appraisals more nearly reflects the fair market value of the Transferring Member's Membership Interest. Whichever value the third appraiser chooses shall be the fair market value of the Transferring Member's Membership Interest.

7.4 Terms of Purchase. If the Company elects to purchase the Transferring Member's Membership Interest, then the Company shall have the option of remitting the Purchase Price in a lump sum, or with a down payment equal to fifty percent (50%) of the Purchase Price and a promissory note for the remainder of the Purchase Price. If the Purchase Price is paid in a lump sum, then it shall be made within ninety (90) days of the Notice of Acceptance. If the Company elects to make payment which includes a promissory note, the amount of the note shall be paid in equal consecutive monthly installments over a number of months not exceeding ninety (90) months. The down payment of the Purchase Price shall be made within ninety (90) days of the Notice of Acceptance. Any subsequent payments due thereafter shall commence on the first day of the month following the payment of the down payment. Interest on the promissory note shall be adjusted annually and shall be the prime rate of the bank in which the Company has its primary operating account. The promissory note shall be subject to prepayment, without penalty, in whole or in part, at any time and, provided further, that the amounts due on account of the promissory note shall be accelerated upon default in the payment of principal or interest on said note.

7.5 Transfer of Transferring Member's Membership Interest. Each Transferring Member agrees that upon receipt of cash or cash equivalents, or a promissory note in full payment of the Purchase Price for its Membership Interest in the Company, its legal representative or its estate will execute and deliver to the Company all the documents which are required to transfer the Transferring Member's Membership Interest to the Company.

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EXHIBIT

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Article 8. Dissolution Acts

8.1 Acts of Dissolution. The company shall only be dissolved upon the occurrence of any one or more of the following events:

a. In accordance with the terms and conditions set forth in Section 5.4; or
b. The completion of the term of the Company as set forth in the Articles; or
c. Written consent of all Members.

Article 9. Distribution of Proceeds upon Dissolution

9.1 Distribution. Except as otherwise provided in Section 5.4 hereof, upon the dissolution of the Company, the Members shall proceed with liquidation of the Company, in an orderly and businesslike manner, and the proceeds therefrom and any other funds and assets of the Company shall be applied and distributed, within ninety (90) days, in the following order of priority.

a. First, to the payment of all debts and liabilities of the Company owed to non-Members of the Company;
b. Second, to the payment of all debts owed to a Member on account of a loan made to the Company;
c. Third, to the Members in an amount equal to their positive capital account balances taking into account all adjustments for the year in which the liquidation occurs; and
d. Fourth, to the Members in accordance with their Ownership Percentages.

EXHIBIT

Article 10. Indemnification

10.1 Indemnification. The Company, its successor, receiver or trustee, shall indemnify and hold harmless to the maximum extent permitted by law, and pay all judgments, costs, expenses and claims incurred by the Members and Managers, relating to any act performed or omitted to be performed by the Member or Manager, in connection with or in any manner related to the business of the Company, including, but not limited to, reasonable attorney's fees, incurred by the Members or Managers, in connection with the defense of any action or proceeding brought against the Members or Manager by any Person.

10.2 Willful Misconduct or Fraud. The Members shall not be indemnified from any liability incurred due to willful or fraudulent misconduct.

Article 11. Miscellaneous

11.1 Captions. Section and paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement of the intent of any provisions hereof.

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11.2 Variation in Pronouns. All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. The Members agree that jurisdiction and venue for a dispute between them shall reside in the County of Beaufort in the State of South Carolina.

11.4 Severability. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

11.5 Counterparts. This Agreement may be executed in counterparts, each of which, when executed, shall be deemed an original.

11.6 Benefit. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors and assigns, except this is not intended for the benefit of creditors or anyone else.

11.7 Entire Agreement. It is understood and agreed that all understandings and agreements between the parties hereto are hereby merged in this Agreement which alone fully and completely expresses their agreement and supersedes all prior agreements, both written and express. Further, this Agreement is entered into after full investigation, and no party is relying upon any statements or representations not embodied in this Agreement.

11.8 Amendments and Modifications. This Agreement may only be amended or modified by a written instrument executed by all the Members.

11.9 Authority. Each Member warrants that it has the authority to enter into this Agreement and that the person signing on its behalf, if any, is duly authorized to do so.

11.10 Notices. All notices, consents, approvals and the like required under any of the provisions of this Agreement shall be in writing and shall be deemed to be effective (i) if personally delivered, upon receipt, (ii) if sent by overnight courier (such as Federal Express), upon delivery, (iii) if sent by U.S. Mail registered or certified, return receipt requested, with sufficient postage affixed thereto, upon receipt, addressed as follows:

Larry Leary	Danielle Harrison
63 Honesty Lane	82 Heritage Lakes Drive
Bluffton, SC 29910	Bluffton, SC 29910

Or to such other address as such party shall specify in writing and deliver to the other party.

EXHIBIT

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IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first written above.

WITNESS:

Jacquelyn B. Bowler

MEMBER:

LARRY LEARY

WITNESS:

Jacquelyn B. Bowler

MEMBER:

DANIELLE HARRISON

Exhibit A

EXHIBIT
tabbies
12

RECORDED
2017 Mar -31 10:07 AM
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3558 Pgs 3053-3055
FILE NUM 2017012777
03/14/2017 04:51:14 PM
RCPT# 842707
RECORDING FEES 10.00

ADD DMP Record 3/28/2017 03:38:07 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R614	039	00A	0313	0000	00

CHANGE DMP Record 3/28/2017 03:38:57 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R614	039	00A	0367	0000	00

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

QUIT-CLAIM DEED

NOW THEREFORE, know all men by these presents that Landmark 2 Developers, LLC hereinafter referred to as the "Grantor", in the State aforesaid for consideration of Ten and NO/100 ($10) Dollars, intends to convey its interest to:

Old Town Bluffton Inn, LLC
82 Heritage Lakes Drive
Bluffton, South Carolina 29910

The Grantor have remised, released, and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said Grantee, **Old Town Bluffton Inn, LLC**, its successors and assigns forever, the following described properties, to wit:

TMS #R614 039 00A 0313 0000

ALL that certain piece, parcel or tract of land situate, lying and being in the Calhoun Street Promenade, Bluffton Township, Beaufort County, South Carolina, shown and designated as Lot #1 on a plat entitled "An As-Built Survey and Proposed Subdivision of Parcels 18 at the intersection of Bluffton Road and May River Road, Town of Bluffton, Beaufort County, South Carolina" dated July 12, 2007, and revised July 26, 2007, prepared by T-Square Group, Inc., certified by Forrest F. Baughman, P.L.S. #4922, and recorded in the Beaufort County Records in Plat Book 143 at Page 44.

THE PROPERTY conveyed herein is a portion of the same property conveyed to the within Grantor by deed from OTP Development, LLC dated February 27, 2015 and recorded March 13, 2015 in the Register of Deeds for Beaufort County, South Carolina in Book 3385 at Page 665 and by deed from Calhoun Street Promenade Owner's Association, Inc dated March 3, 2016 and recorded March 15, 2016 in Book 3468 at Page 2160, corrected by corrective deed from Calhoun Street Developers, LLC dated March 9, 2017 and recorded 3/13/2017, in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3558 at Page 462

CERTIFIED TRUE COPY
of the document recorded in the Offices of the Register of Deeds for Beaufort County, S.C., on (date): March 14, 2017
in Book 3558 Page 3053
This document contains 3 pages.
Register of Deeds - Beaufort County, S.C.

AND

TMS: R614 039 00A 0367 0000

ALL that certain piece, parcel, or lot of land, lying and being in Beaufort, State of South Carolina, being shown and designated as "Parcel CA1"on the plat entitled "An As-Built Survey and Proposed Subdivision of Parcel 18 at the Intersection of Bluffton Road and May River Road, Town of Bluffton, Beaufort County, South Carolina" dated July 12, 2007, and revised July 26 2007, prepared by T-Square Surveying, LLC., certified by William J. Smith, P.L.S. #26960, and recorded in the Beaufort County Records in Plat Book 143 at Page 44, on February 26, 2016, reference to said plat being hereby made for a more complete metes and bounds description thereof.

THE PROPERTY conveyed herein is a portion of the same property conveyed to the within Grantor by deed from Calhoun Street Promenade Owner's Association, Inc. dated March 3, 2016 and recorded March 15, 2016 in Book 3468 at Page 2157, corrected by corrective deed from Calhoun Street Developers, LLC dated March 9, 2017 and recorded 3/13/2017, in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3558 at Page 759.

TOGETHER with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining;

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantee, its successors and assigns, forever; subject however to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

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WITNESS Grantor's hand and seal this 9 day of March, 2017

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

GRANTOR:

Landmark 2 Developers, LLC

(2) Jacquelyn B Bowler
WITNESS (Sign Name Above)

Jacquelyn B Bowler
WITNESS (Print Name Above)

(1) _____ {L.S.}
By: Lawrence Leany
Its: Sole Member

(3) _____
NOTARY (Sign Name Above)

Ryan Mitchell
NOTARY (Print Name Above)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 9 day of March, 2017 by ~~Jacquelyn B Bowler~~ Lawrence Leany

(4) _____
Notary Public for SC
Commission Expires: 2/12/23

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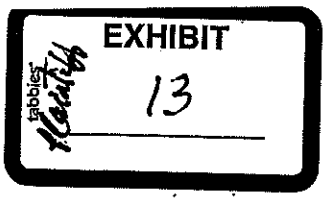

HOSPITALITY
ADVISORS GROUP

STATEMENT

June 27, 2018

Mr. Vincent T. Harrison
Marketing Director
Old Town Bluffton Inn
1321 May River Road
Bluffton, South Carolina 29910
Vincent@blufftoninn.com

Invoice #2018-03109 – Development Services – Old Town Bluffton Inn

Consulting services associated with the site planning and intergovernmental relations associated with Inn loading zone. Project site visits, research, meeting with Town officials, presentation documents, and Town Council meeting preparation. Hourly rate of $150.

Professional Services:

5/16/18: Initial visit including travel and mileage	$300.00
5/25/18: Draft presentation to Town Council	$300.00
5/30/18: Meeting with Vince Harrison and Town officials	$300.00
5/31/18: Meeting minutes recapping discussion	$150.00
6/01/18: Meeting with Vince Harrison and Mayor Sulka	$300.00

Expenses:

No charge

Total $1,350.00

Remittance to:
Hospitality Advisors Group
404 South Webb Road
Grand Island, Nebraska 68803
Or electronically at: Five Points Bank. Account: 10107371; Routing: 104901678

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EXHIBIT
14

LAWRENCE LEARY
63 HONESTY LN
BLUFFTON, SC 29909-7117

1096

9/5/18
Date

Pay to the Order of Hospitality Advisors Group | $1350.00

Fifteen hundred fifty 00/100 Dollars

Wells Fargo Bank, N.A.
South Carolina
wellsfargo.com

For 2018-63109

[redacted]

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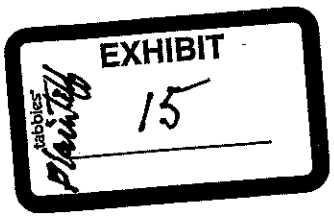

HOSPITALITY
ADVISORS GROUP

September 13, 2018

Mr. Larry Leary
63 Honesty Lane
Bluffton, South Carolina 29909

Dear Larry:

Thank you for your payment of our Statement.

The check was returned to us by our bank because it lacked a signature. They indicated that Wells Fargo is very particular and would kick it back.

I am provided a return envelope for your convenience.

I look forward to hearing back from Eric on your upcoming visit.

Thank you.

Sincerely,

Zachary Z. Zoul
Chairman and CEO

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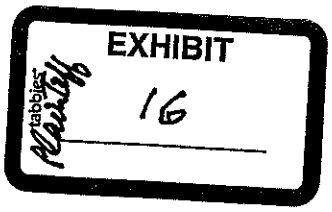

Agreement - Executed

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com

Date: Tuesday, September 18, 2018, 03:56 PM CDT

Larry,

I understand that you and Eric had a good meeting. We have commenced out efforts and we will be in contact.

A copy of the executed agreement is attached.

Best,

Zack

Agreement. Larry Leary. 9.18.18.pdf
392.3kB

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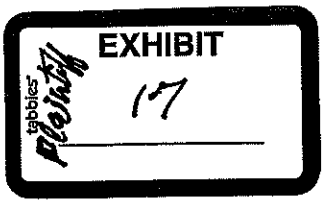

HOSPITALITY
ADVISORS GROUP

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CONSULTING SERVICES AGREEMENT

This Agreement between Hospitality Advisors Group and Larry Leary provides for the following.

Larry Leary engages Hospitality Advisors Group for the purposes of securing a Buyer for the Old Town Bluffton Inn. This shall be handled on a confidential basis and information shall be shared only with a qualified prospective Buyer(s). No information will be shared with any members of the Old Town Bluffton Inn staff or anyone in Bluffton or Beaufort County. Knowledge of this Agreement and the engagement of Hospitality Advisors Group will not be shared with other members of the firm and only Zachary Zoul and Eric Brooks will be aware of it.

Hospitality Advisors Group will be compensated only in the event that a Buyer is found and a sale is consummated. Hospitality Advisors Group will be responsible for all professional services and expenses which it incurs. Larry Leary agrees to pay a consulting fee equivalent to 6% of the sale price at the time of closing in the event that Hospitality Advisors Group secures a Buyer and the sale is substantially effectuated as set forth in any Purchase Agreement.

Hospitality Advisors Group will visit the property with a representative of a qualified investor group to the property as early as September 2018 or in the near term thereafter. The firm will present the property to an already identified investor group(s). In the event that the initial investment group(s) decline to submit a satisfactory offer and perform accordingly, Hospitality Advisors Group with the consent of Larry Leary may engage in limited marketing to select prospective buyers as set forth in a protocol submitted to Larry Leary for approval.

The initial term of this consulting services engagement shall be effective this date and continue through December 31, 2018. The terms of this Agreement shall apply thereafter for any Buyer identified through the services of Hospitality Advisors Group.

Entered into this 17 day of September 2018 by and between the following.

Larry Leary, Owner – Old Town Bluffton Inn

Zachary Z. Zoul, CEO - Hospitality Advisors Group

Subject: Update, Innkeeper, and Draft Management Agreement

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com;

Date: Monday, October 8, 2018 7:56 PM

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Larry,

It was a pleasure meeting with you today. The property is exceptional; very impressive. I believe it will be a strong performer in the market and region.

I had a dinner meeting this evening with an Innkeeper candidate and her husband. She reported to me at Palmetto Bluff and worked with both Mike and I. She has excellent management, organizational, and people skills. She also happens to live in the Old Town area and travels there regularly by golf cart. Her location is an added plus. I would like her to meet with you.

Attached, please find a Draft Agreement for your review. Please let me know if you have any questions or comments.

There is a great deal of pre-opening work to complete from an operational perspective. Please know that Eric, Mike, myself, and our support team are fully committed to making your property our top priority and moving expeditiously to place it in operation.

Eric will plan to be in Charleston on Friday.

We would be proud to manage your property and meet and exceed your standards and expectations.

Best,

Zack

Zachary Z. Zoul
Chairman and CEO

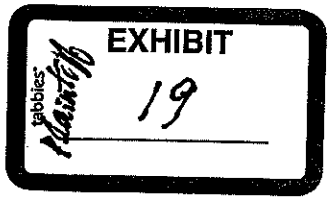
Hospitality Advisors Group

HOSPITALITY ADVISORS GROUP

HOSPITALITY ADVISORS GROUP

888-731-0515 (o)
308-380-2450 (m)

----- Forwarded Message -----
From: Zachary Z. Zoul <zacharyzoul@hospitalityadvisorsgroup.com>
To: Zachary Z. Zoul <zacharyzoul@hospitalityadvisorsgroup.com>



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MANAGEMENT AGREEMENT BETWEEN HOSPITALITY ADVISORS GROUP AND LARRY LEARY

This agreement shall constitute a management services agreement between Hospitality Advisors Group (Operator) and Larry Leary (Owner) for the Old Town Bluffton Inn (Inn) in Bluffton, South Carolina and shall provide for the following.

Management: Owner engages Operator to provide full service management of the Inn effective upon the date of execution. Operator shall be responsible for executing and maintaining the full array of services customarily provided by a boutique hotel and shall operate the Inn in accord with industry standards and – to the extent provided for by Owner in the capital and operating budgets - fulfill a service level approaching, or comparable to, a modified four diamond standard in terms of hospitality services and amenities. Management services shall encompass service standards, maintenance, housekeeping, recruitment, personnel supervision, guest services, marketing, inspections, compliance with applicable laws, ordinances, and industry standards, and general oversight. The Operator's management team principals – Zachary Zoul, Eric, Brooks, and Mike Alsko, among others as may be necessary, will be assigned to the property on either an ongoing or rotating basis to provide general oversight, management, and supervision. Except for Zoul, who is the Owner and CEO, the Operator has the right to substitute other firm associates as personal circumstances change.

Operations Staff: The Operator will be responsible for hiring Inn employees, including an Innkeeper, who will be employees of Owner, but will report to, and be supervised by, the Operator. The Owner shall have sign-off authority on the hiring of the Innkeeper. The Innkeeper will be the sole full time on-site management team member and shall have direct reporting responsibility to the Operator. During the period of pre-opening and transitions, Operator may deploy temporary personnel while recruitment is underway. The staffing level of the Inn, the nature and number of staff positions, and the compensation schedule will be set forth in an annual budget/pro forma which shall be approved by the Owner.

Budget/Pro Forma: Operator has provided a preliminary Operating Pro forma and shall – prior to opening – provide a revised pro forma and operating and capital budget to the Owner for approval. This, and a more detailed operating budget, will be reviewed from time to time and will be submitted to the Owner for approval should revisions be necessary. Operator shall consult with Owner and obtain approval for the rack rate schedule.

Financial, Purchasing, and Accounting: Operator, with the approval of the Owner, shall engage a bookkeeping firm to perform any financial and accounting services which are not part of the Inn's property management system. The contractor will also provide payroll service processing. Operator shall have the right to procure supplies, materials, and services to operate the Inn as provided for in line item budget presented and approved by the Owner. Invoices from vendors and contractors shall be obligations of the Owner and will be submitted to the contract bookkeeper on a weekly basis for payment after approval by the Owner. The Operator shall submit individual purchases to the Owner for approval in advance for any expenditure in excess of $1,000.00 except for those standard and/or reoccurring expenses for items such as laundry, housekeeping, and marketing. The Operator will oversee the development of, and provide the Owner with, monthly financial reports including ADR, occupancy, and occupancy projections. It is recognized that some "counter" checks with limited Innkeeper signing authority may be needed for certain goods such as liquor.

Marketing and Professional Networking: Operator shall present to the Owner for approval a Marketing Plan and budget. Operator shall have comp privileges for the purposes of marketing, public relations, and industry purposes with such extensions to anticipated non-peak occupancy periods.

Pre-Opening Services: This agreement provides for ongoing management and operational services. Separate and distinct from these shall be pre-opening services from the date of execution to 30 days post opening. During this 60-90 day period, it recognized that Operator will be providing specialized pre-opening services primarily through the work and deployment of the three principles – Zoul, Alsko, and Brooks and support staff of the firm. During some portion of this time, there will not be an Innkeeper on staff and the fee schedule for this period shall reflect this. Pre-opening services include: procurement, systems development, systems integration, coordination with installations, vendor and contractor identification and establishment, budget and pro forma development, accounting systems development, staff recruitment, marketing plan development, pre-opening marketing, training, pre-opening events, communications systems, and service standard development. The Pre-opening period commenced with Operator's work beginning October 1, 2018

Sale: The Agreement between the Operator and the owner for the sale of the Inn and the associated fee will continue throughout the term of the agreement.

Fees and Expenses: The Owner will compensate Operator the sum of $5,000 on the first of each month for management services effective 30 days after opening. During the defined pre-opening period, the Owner will compensate the Operator the sum of $10,000 upon the date of execution of this agreement and on the first of any month thereafter during the pre-opening term by electronic bank transmission. The Operator will be entitled to a quarterly bonus of 10% of any excess in the gross operating profit of the Inn based on a rolling twelve month operating pro forma. These management fees are exclusive of expenses. All property related expenses, including travel, materials, and supplies shall be paid by Owner upon presentation of a periodic statement. Standard management fees and expenses shall be paid on the 1st of each month by electronic bank transmission.

Term: The initial term of this agreement shall be one year. It shall continue thereafter unless sixty days advance notice is provided by either party. The Owner shall have the right to cancel the agreement unilaterally at any time with sixty days' notice in the event that the Inn is sold.

Entered into this ____ day of 2018 by and between the following:

_____

Larry Leary, Owner

_____

Zachary Z. Zoul, Managing Member and CEO

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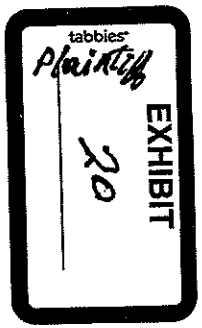
Q4 Core Values | Gnominate a Team Member

On Tue, Oct 9, 2018 at 3:48 PM Dani Heck <dani@q4launch.com> wrote:

> Matt & Amanda,
>
> Larry and Eric (the person who will be running the business side) will be coming to the office on Friday at 11:00 am. I sent you calendar invites.
>
> Please let me know if this doesn't work for you.
>
> Thanks,
> Dani
>
> --
> Dani Heck
> Customer Experience Manager
> Q4Launch
> dani@q4launch.com / (843) 800-0848
> Q4 Core Values / Gnominate a Team Member

--
Amanda Phagan
Content Creator
HubSpot Content Marketing Certified
Q4Launch
amanda@q4launch.com
Q4 Core Values | "Gnominate" a Team Member



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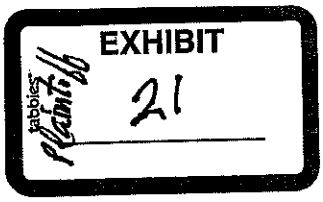

Subject: Schedule Next Week - Innkeeper Prospect(s)

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com;

Date: Thursday, October 11, 2018 4:51 PM

Hi Larry,

It appears that good progress is being made. Eric and I are confering regularly and your visit to Mt. Pleasant tomorrow should be a productive one.

I have had further discussions with one of the two Innkeeper candidates that I met with. I believe that Jolanta is a solid prospect to consider. Please let me know when your schedule would permit a visit next week. I would like to have Mike introduce her to you and acquaint her with the Inn.

Best,

Zack

Zachary Z. Zoul
Chairman and CEO

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308-380-2450 (c)

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Print

Subject: Innkeeper Candidates and Schedule

From: Zachary Z. Zoul (zacharyzoul@hospitalityadvisorsgroup.com)

To: leary4419@gmail.com;

Bcc: eric.brooks@earthlink.net; maalsko@aol.com;

Date: Wednesday, October 17, 2018 12:06 PM

Larry,

I have indentified three prospective Innkeeper candidates. I would like to bring them to visit and tour the property. I am looking at the morning of Friday, October 26, 2018. If I find any other qualified candidates, I will plan to bring them in as well.

Please let me know if this will work with your schedule.

As I noted earlier in the week, I am not able to open your text/emails from Sunday and Monday.

Best,

Zack

Zachary Z. Zoul
Chairman and CEO

Hospitality Advisors Group

www.hospitalityadvisorsgroup.com

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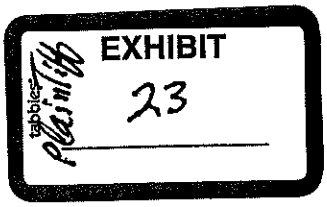

HOSPITALITY
ADVISORS GROUP

STATEMENT

October 29, 2018

Mr. Larry Leary
Old Town Bluffton Inn
Bluffton, South Carolina

Invoice #2018-03110 – Old Town Bluffton Inn

Management services associated with the Old Town Bluffton Inn for the period October 1, 2018 – October 26, 2018 consisting of: October pre-opening management services including financial projections, pro-forma, FFE inventory and procurement, accounting service procurement, staffing matrix, Innkeeper recruitment, marketing, website and social media, booking engine analysis, soft goods procurement, and other pre-opening logistics.

Professional Services:

October 2018 Management Fee: 17 days equivalency @ $1,000 daily rate discounted per agreement to monthly rate of $10,000.00 $10,000.00

Expenses:

October expenses for Zoul travel to, and expenses in, Bluffton, SC consisting of: Delta - $996.40, National Car Rental - $163.80, Hampton Inn - $288.42, Airport parking - $36.50, Gas - $23.34, Gas - $29.29, NE mileage - $140.40, Per diem meals - $75.00. No charge for Innkeeper candidate meeting meal interviews and (6) Brooks trips to Bluffton and (1) trip to Charleston. $1,753.15

Total $11,753.15

Remittance to:
Hospitality Advisors Group
404 South Webb Road
Grand Island, Nebraska 68803
Or electronically at: Five Points Bank. Account: 10107371; Routing: 104901678

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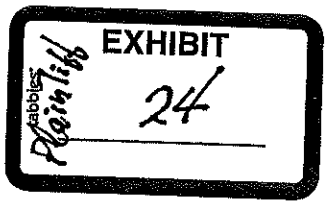

JOHN P. SALAZAR, PH.D., CHE
1111 Christian Lane, Watkinsville, GA
Home Phone 843-757-8926 / Cell Phone 843-290-4781
Email: jsalazar.sc@gmail.com

ACADEMIC EMPLOYMENT HISTORY

May 2019-Current	University of Georgia, Athens, GA • *Founding Program Coordinator, Hospitality and Food Industry Management* • *Associate Professor of Hospitality and Food Industry Management*
August 2005-May 2019	University of South Carolina Beaufort, Bluffton, SC • *Director of the Lowcountry and Resort Islands Tourism Institute* • *Professor of Hospitality Management* • *Associate Professor of Hospitality Management*
August 2002-July 2005	University of Tennessee, Knoxville, TN • *Director of the University of Tennessee Tourism Institute* • *Coordinator, Certified Tennessee Tourism Professional Education Program* • *Assistant Professor of Hotel and Restaurant Administration*
July 2000-July 2002	Southern Illinois University, Carbondale, IL • *Assistant Professor of Hospitality and Tourism*
September 1994-June 2000	University of South Alabama, Mobile, AL • *Instructor of Hospitality and Tourism* • *Graduate Research Assistant/Fellowship Recipient* • *Graduate Student*
September 1998-September 1999	Auburn University, Auburn, AL • *Graduate Teaching Assistant-Hotel and Restaurant Management*
February 1995-September 1998	Faulkner State Community College, Bay Minette, AL • *Adjunct Professor of Hotel and Restaurant Management*

EDUCATION

2000 **Doctor of Philosophy,** Hotel and Restaurant Management, Auburn University, Auburn, AL

1996 **Master of Science**, Recreation Administration, Tourism Specialization, University of South Alabama, Mobile, AL

1990 **Bachelor of Science**, Commercial Recreation Management, Hotel Management Specialization, Northeastern University, Boston, MA

REFEREED JOURNAL PUBLICATIONS

Landry C, Bergstrom J, Salazar J, Turner D. (2021). How has the COVID-19 pandemic affected outdoor recreation in the U.S.? A revealed preference approach. Applied economics perspectives and policy, 43(1), 443-457.

Salazar J, Hritz N, Moorman C, Brunson K, Abraham A. (2020). Frequency and use of online travel sites when planning a leisure vacation. Journal of Tourism Insights, 10, 1-25.

Erul E, Woosnam KM, Ribeiro MA, Salazar J. (2020). Complementing theories to explain emotional solidarity Journal of Sustainable Tourism, 1-16.

Salazar J, Bergstrom J, Poudel D. (2020) Estimating the Economic Impacts of the COVID-19 pandemic on the state of Georgia economy: A quick-response method. Journal of Agribusiness, 38, 105-116.

Salazar, J., Hritz, N., Moorman, C., Brunson, K., & Abraham, A. (2016). Online travel retail site usage and generational differences when using sites to plan a leisure vacation. European scientific journal, special edition, 1, 189-198.

Costen, W., & Salazar, J. (2011). The Impact of training and development on employee job satisfaction, loyalty, and intent to stay in the lodging industry. Journal of hospitality human resources, 10(3), 273-284.

Barth, S., & Salazar, J. (2010). Wine tourism and consumer behaviors related to wine purchases. Journal of tourism insights, 1(1) 2-6.

Calvert, C., Cleavenger, D., Barth, S., & Salazar, J. (2009). The need for culturally sensitive curriculum for Spanish-speaking students at the University of South Carolina Beaufort. Global business languages, 14(1), 73-86.

Ashraf, H., Atwood, S., Bloom, J., Blaise, D., Salazar, J., & Antun, J. (2008). Efficacy of HACCP-based food handling training program for front-line foodservice workers: A report on a collaborative work between regulatory agencies and academia. Journal of culinary science and technology, 6(1), 63-76.

Antun, J., Strick, S., & Salazar, J. (2007). The relationship of multicultural attitudes toward job satisfaction. 2007 national business monograph series in the national association of African American studies. Cultural memory: Ethnicity and multiculturalism in the modern world, 4(1), 65-76.

Costen, W., Salazar, J., & Antun, J. (2006). Who's happy? The relationship between race/ethnicity and job satisfaction in the lodging industry. Journal of diversity in organizations, communities, and nations, 6(2), 15-22.

Salazar, J., Ashraf, H., Tcheng, M., & Antun, J. (2006). Foodservice employee satisfaction and motivation and the relationship with learning food safety. Journal of culinary science and technology, 4(2/3), 93-108.

Salazar, J., Pfaffenberg, C., & Salazar, L. (2006). Locus of control vs. employee empowerment and the relationship with hotel managers' job satisfaction. The journal of human resources in hospitality and tourism, 5(1), 1-15.

Antun, J., & Salazar, J. (2005). The impact of learning transfer outcomes on employed culinary arts graduates' perceptions of career success. Journal of culinary science and technology, 4(1), 75-87.

Davidson-Shivers, G., Salazar, J., & Hamilton, K. (2005). Design of faculty development workshops: Attempting to practice what we preach. College student journal, 39(3), 528-539.

Salazar, J., Hubbard, S., & Salazar, L. (2002). The influence of locus of control on hotel managers' job satisfaction. The journal of human resources in hospitality and tourism, 1(2), 15-26.

Salazar, J. P., Chang, S., & Girard, T.C. (2001). The influence of attraction, convention, and special event attendance on hotel occupancy: A case study of Mobile, Alabama. Journal of hospitality and leisure marketing, 8(1/2), 33-43.

O'Neil, M., Hubbard, S. S., Salazar, J. P., & Kent, W. E. (2000). The impact of tipping on job satisfaction of restaurant servers: A cross-cultural study. Australian journal of hospitality management, 7(2), 51-54.

Salazar, J. P., & Hubbard, S. S. (2000). The relationship between resort employee empowerment and overall job satisfaction. Praxis: The journal of applied hospitality management, 3(1), 112-129.

Butts, F., Salazar, J., Sapio, K., & Thomas, D. (1996). The impact of contextual factors on the spring break travel decisions of college students. Journal of hospitality and leisure marketing, 4(3), 63-70.

REFEREED CONFERENCE PROCEEDINGS

Cui, H. Lee, S., and Salazar, J. (2021). Factors influencing travel intention of post-disaster destinations: The case of 2016 hurricane Matthew. The 26th graduate education and graduate student research conference in hospitality and tourism. University of Houston. January 8-9, 2021.

Salazar, J., Hritz, N., and Abraham, A. (2019). Measuring the impacts of a natural disaster on visitor confidence in travel destinations. 2019 annual proceedings; International CHRIE conference-refereed track. July 25, 2019.

Abraham, A., Hritz, N., & Salazar, J. (2017). Creating a visitor profile using luxury travel and personality: A case study of a national festival. Proceedings from the 2017 Southeast states chapter of travel and tourism research association spring conference & tourism research symposium: Cutting edge research, 4(1), 22-26.

Hinnant, N., Hritz, N., Salazar, J., & Abraham, A. (2017). Perceptions of tourism in the Lowcountry: A case study of Beaufort County, South Carolina. Proceedings from the 2017 Southeast states chapter of travel and tourism research association spring conference & tourism research symposium: Cutting edge research, 4(1), 47-56.

Perez, J., Hritz, N., Abraham, A., & Salazar, J. (2017). The economic power of successful local events. Proceedings from the 2017 Southeast states chapter of travel and tourism research association spring conference & tourism research symposium: Cutting edge research, 4(1), 57-62.

Moorman, C., Brunson, K., Salazar, J. & Hritz, N. (2016). Millennials versus boomers' online behavior: An analysis of the use of online social travel and hotel booking sites. Innovations: Research proceedings of the SESCA federation of the international council of hotel, restaurant, and institutional education, 1(1), 10-12.

Salazar, J., Cosley, B., Ahn, Y., Kim, S, Gunnels, J, & Brookover, R. (2013). The user of social media and local festivals: A case study of local festivals in the Hilton Head Island area. Spring 2013 Southeast travel and tourism research association.

Calvert, C., Barth, S., Hammonds, L, & Salazar, J. (2011). Developing a successful international exchange: A Pilot program. Spring 2011 Southeast council on hotel, restaurant, and institutional education, 15(1), 6-9.

Salazar, J., Barth, S., Brookover, B., & Calvert, C. (2011). Examining travel motivations of visitors attending a professional golf tournament. 2011 annual proceedings; International CHRIE conference-refereed track. July 27, 2011. Available online: http://scholarworks.umass.edu/referreed/ICHRIE_2011/Wednesday/7.

Salazar, J., Barth, S., & Brookover, B. (2010). Multiple attributes in sport tourism trip decisions to a destination island. Fall 2010 Southeast council on hotel, restaurant, and institutional education, 14(2), 1-5.

Salazar, J., Calvert, C., Beasely, F., & Thomas, S. (2010). A vacation paradigm shift – from boomers to generation x and millennials: A case study of Hilton Head Island, South Carolina. Fall 2010 Southeast council on hotel, restaurant, and institutional education, 14(2), 74-77.

Barth, S., & Salazar, J. (2010). A look at satisfaction among private club employees in an exclusive southeastern club. Fall 2010 Southeast council on hotel, restaurant, and institutional education, 14(2), 82-85.

Salazar, J., Barth, S., Calvert, C., & Thomas, S. (2009) Visitor willingness to practice conservation behaviors while on vacation: An exploratory analysis of Hilton Head Island, SC. Fall 2009 Southeast council on hotel, restaurant, and institutional education, 13(2), 38-41.

Salazar, J. (2008). Demand for public transportation in a resort destination. Fall 2008 Southeast council on hotel, restaurant, and institutional education, 12(2), 57-61.

Salazar, J., Barth, S., & Calvert, C. (2008). Lowcountry wine tourism: An exploratory study of consumer behaviors. Fall 2008 Southeast council on hotel, restaurant, and institutional education, 12(2), 62-65.

Salazar, J. (2008). Recycling in an ecologically sensitive resort community: Why don't visitors and residents recycle? Spring 2008 Southeast council on hotel, restaurant, and institutional education, 12(1), 36-41.

Salazar, J, Barth, S, & Calvert, C. (2007). Dining characteristics which influence patron spending in a vacation destination. Fall 2007 Southeast council on hotel, restaurant, and institutional education, 11(1), 35-37.

Costen, W. & Salazar, J. (2007). Why resort employees continue to work: The impact of employee empowerment, customer focus, and job perceptions on job and company satisfaction. Fall 2007 Southeast council on hotel, restaurant, and institutional education, 11(1), 31-34.

Jetter, L., Costen, W., & Salazar, J. (2007). Understanding the impact of organizational communication and human resource practices on hotel employee job satisfaction. Spring 2007 Southeast council on hotel, restaurant, and institutional education, 11(1), 31-34.

Calvert, C., Cleavenger, D, & Salazar, J. (2007). The need to focus on managing a Hispanic workforce in South Carolina and the Lowcountry region. Spring 2007 Southeast council on hotel, restaurant, and institutional education, 11(1), 35-37.

Salazar, J., Calvert, C., & Warren, A. (2006). Service errors that may have health implications: An investigation of decaffeinated coffees purchased from foodservice establishments. Fall 2006 Southeast council on hotel, restaurant, and institutional education, 10(2), 53-57.

Salazar, J., Calvert, C., & Ruetzler, T. (2006) Hospitality core curriculum assessment based on student, faculty, and industry responses: A pilot study. Spring 2006 Southeast council on hotel, restaurant and institutional education, 10(1), 30-33.

Salazar, J., Antun, J., & Jahn, W. (2005). The effects of the early school start dates on the Tennessee tourism industry. Fall 2005 Southeast council on hotel, restaurant and institutional education, 9(1), 8-9.

Salazar, J. (2005). The relationship between Tennessee's early start dates and the tourism industry. Spring 2005 Southeast council on hotel, restaurant and institutional education, 8(2), 65-66.

Salazar, J. (2005). Tourist profile and demands of visitors attending a Smithsonian traveling exhibit. Spring 2005 Southeast council on hotel, restaurant and institutional education, 8(2), 40-44.

Salazar, J., Ashraf, H., & Tcheng, M. (2004). Job satisfaction and its relationship to food safety learning among university food service employees. 2004 Annual proceedings: International council on hotel, restaurant and institutional education, 289-294.

Salazar, J., & Burhmester, B. (2004). The influence of the cellar door experience on wine purchasing behaviors. Spring 2003 Southeast council on hotel, restaurant and institutional education, 7(2), 8-10.

Salazar, J., Apgar, G., & Smith, M. (2003). Illinois wine tourism: A consumer profile of winery visitors. Fall 2003 Southeast council on hotel, restaurant and institutional education, 7(1), 37-40.

Davidson-Shivers, G.V., Salazar, J., & Hamilton, K.M. (2002). Design of faculty development workshops: Attempting to practice what we preach. In Simonson, M. (Ed.) *2002 25th annual proceedings of the association for educational and communications technology national convention,* November 12-17, 2002, Dallas, TX.

Griswold, K., Hastings, D., Jacobson, B., Salazar, J. & Apgar, G. (2002). Effects of rumen degradable protein and fiber quality on microbial growth, digestion, and fermentation in continuous culture. Journal of dairy science, 85(Suppl. 1), 402.

Salazar, J. P., Salazar, L. & Hubbard, S. S. (2001). An analysis of the relationship between locus of control and job satisfaction. Spring 2001 Southeast council on hotel, restaurant and institutional education, 4(1), 38-39.

REFEREED CONFERENCE PRESENTATIONS

Cui, H. Lee, S., and Salazar, J. (2021). Factors influencing travel intention of post-disaster destinations: The case of 2016 hurricane Matthew. The 26th graduate education and graduate student research conference in hospitality and tourism. Virtual conference.

Salazar, J., Hritz, N., and Abraham, A. (2019). Measuring the impacts of a natural disaster on visitor confidence in travel destinations. 2019 annual conference for the council on hotel, restaurant and institutional education, New Orleans, LA.

Abraham, A., Hritz, N., & Salazar, J. (2017). Creating a visitor profile using luxury travel and personality: A case study of a national festival. The 2017 Southeast states chapter of travel and tourism research association spring conference & tourism research symposium: Cutting edge research, Knoxville, TN.

Hinnant, N., Hritz, N., Salazar, J., & Abraham, A. (2017). Perceptions of tourism in the Lowcountry: A case study of Beaufort County, South Carolina (Poster Presentation). The 2017 Southeast states chapter of travel and tourism research association spring conference & tourism research symposium: Cutting edge research, Knoxville, TN.

Perez, J., Hritz, N., Abraham, A., & Salazar, J. (2017). The economic power of successful local Events (Poster Presentation). The 2017 Southeast states chapter of travel and tourism research association spring conference & tourism research symposium: Cutting edge research, Knoxville, TN.

Salazar, J., Hritz, N., Moorman, C., Brunson, K., & Abraham, A. (2016). Online travel retail site usage and generational differences when using sites to plan a leisure vacation. European scientific institute (ESI) 2nd Pan-American interdisciplinary conference, February 24-26, 2016 Buenos Aires, Argentina.

Salazar, J., Cosley, B., Ahn, Y., Kim, S, Gunnels, J, & Brookover, R. (2013). The user of social media and local festivals: A case study of local festivals in the Hilton Head Island area. Spring 2013 Southeast travel and tourism research association, Atlanta, GA.

Calvert, C., Barth, S., Hammonds, L, & Salazar, J. (2011). Developing a successful international exchange: A Pilot program. Spring 2011 Southeast council on hotel, restaurant, and institutional education, Atlanta, GA.

Salazar, J. (2011). Conservation behaviors of visitors to Hilton Head Island, SC. 2011 annual conference for the international ecotourism society, Hilton Head Island, SC.

Salazar, J., Barth, S., Brookover, B., & Calvert, C. (2011). Examining travel motivations of visitors attending a professional golf tournament. 2011 annual conference for the council on hotel, restaurant and institutional education, Denver, CO.

Dennis, B., Salazar, J., & Barth, S. (2010). A revised corporate social performance model: data analysis. American society of business and behavioral sciences annual conference. Las Vegas, NV.

Salazar, J., Barth, S., & Brookover, B. (2010). Multiple attributes in sport tourism trip decisions to a destination island. Fall 2010 Southeast council on hotel, restaurant, and institutional education. Beaufort, SC.

Salazar, J., Calvert, C., Beasely, F., & Thomas, S. (2010). A vacation paradigm shift – from boomers to generation x and millennials: A case study of Hilton Head Island, South Carolina. Fall 2010 Southeast council on hotel, restaurant, and institutional education. Beaufort, SC.

Barth, S., & Salazar, J. (2010). A look at satisfaction among private club employees in an exclusive southeastern club. Fall 2010 Southeast council on hotel, restaurant, and institutional education. Beaufort, SC.

Salazar, J., Barth, S., Calvert, C., & Thomas, S. (2009). Visitor willingness to practice conservation behaviors while on vacation: An exploratory analysis of Hilton Head Island, SC. Fall 2009 Southeast council on hotel, restaurant, and institutional education. Oxford, MS.

Salazar, J. & Barth, S. (2009). Wine tourism and consumer behaviors related to wine purchases. Resort and commercial recreation 29th annual national conference. Kiawah Island, SC.

Salazar, J. & Thomas, S. (2009). Visitor willingness to practice conservation behaviors while on vacation: An exploratory analysis of Hilton Head Island, SC (Poster Presentation). 7th International symposium on tourism and sustainability. University of Brighton, Eastbourne, UK.

Salazar, J. (2008). Demand for public transportation in a resort destination. Fall 2008 Southeast council on hotel, restaurant, and institutional education, Charlotte, NC.

Salazar, J., Barth, S., & Calvert, C. (2008). Lowcountry wine tourism: An exploratory study of consumer behaviors. Fall 2008 Southeast council on hotel, restaurant, and institutional education, Charlotte, NC.

Salazar, J. (2008). Recycling in an ecologically sensitive resort community: Why don't visitors and residents recycle. Spring 2008 Southeast council on hotel, restaurant, and institutional education, Atlanta, GA.

Salazar, J, Barth, S, & Calvert, C. (2007). Dining characteristics which influence patron spending in a vacation destination. Fall 2007 Southeast council on hotel, restaurant, and institutional education, Hilton Head Island, SC.

Costen, W. & Salazar, J. (2007). Why resort employees continue to work: The impact of employee empowerment, customer focus, and job perceptions on job and company satisfaction. Fall 2007 Southeast council on hotel, restaurant, and institutional education, Hilton Head Island, SC.

Jetter, L., Costen, W., & Salazar, J. (2007). Understanding the impact of organizational communication and human resource practices on hotel employee job satisfaction. Spring 2007 Southeast council on hotel, restaurant, and institutional education, Atlanta, GA.

Calvert, C, Cleavenger, D, & Salazar, J. (2007). The need to focus on managing a Hispanic workforce in South Carolina and the Lowcountry region. Spring 2007 Southeast council on hotel, restaurant, and institutional education, Atlanta, GA.

Salazar, J., & Costen, W. (2006). How valuable is human resources? The impact of human resources practices on employee job satisfaction, loyalty, and intent to stay. Fall 2006 International society of business disciplines conference, Las Vegas, NV.

Salazar, J., Calvert, C., & Warren, J. (2006). Service errors that may have health implications: An investigation of decaffeinated coffees purchased from foodservice establishments. Fall 2006 Southeast council on hotel, restaurant, and institutional education, Memphis, TN.

Costen, W., Antun, J., & Salazar, J. (2006). Who's happy? The relationship between race/ethnicity and job satisfaction in the lodging industry. Sixth international conference on diversity in organizations, communities, and nations, New Orleans, LA.

Salazar, J., Calvert, C., & Ruetzler, T. (2006) Hospitality core curriculum assessment based on student, faculty, and industry responses: A pilot study. Spring 2006 Southeast council on hotel, restaurant and institutional education, Atlanta, GA.

Salazar, J., Antun, J., & Jahn, W. (2005). The effects of the early school start dates on the Tennessee tourism industry. Fall 2005 Southeast council on hotel, restaurant and institutional education, Auburn, AL.

Salazar, J. (2005). The relationship between Tennessee's early start dates and the tourism industry. Spring 2005 Southeast council on hotel, restaurant and institutional education, Lexington, KY.

Salazar, J. (2005). Tourist profile and demands of visitors attending a Smithsonian traveling exhibit. Spring 2005 Southeast council on hotel, restaurant and institutional education, Lexington, KY.

Salazar, J., Ashraf, H., & Tcheng, M. (2004). Job satisfaction and its relationship to food safety learning among university food service employees. 2004 annual conference for the Council on hotel, restaurant and institutional education, Philadelphia, PA.

Salazar, J., & Burhmester, B. (2004). The influence of the cellar door experience on wine purchasing behaviors. Spring 2003 Southeast council on hotel, restaurant and institutional education, Atlanta, GA.

Salazar, J., Apgar, G., & Smith, M. (2003). Illinois wine tourism: A consumer profile of winery visitors. Fall 2003 Southeast council on hotel, restaurant and institutional education, Wilmington, NC.

Davidson-Shivers, G.V., & Salazar, J., and Hamilton, K.M. (2002). Design of faculty devclopment workshops: Attempting to practice what we preach. 25th annual proceedings of the association for educational and communications technology national convention, Dallas, TX.

Salazar, J. P., Salazar, L. & Hubbard, S. S. (2001). An analysis of the relationship between locus of control and job satisfaction. Research proceedings: Spring 2001 Southeast council on hotel, restaurant and institutional education, Atlanta, GA.

UNIVERSITY AFFILIATED GRANT AND CONTRACT RESEARCH

PI, Business Needs Assessment and Visitor Profile Study for The Coast Tourism Region, $8,000, 2020.

PI, Georgia Department of Economic Development & Tourism Visitor Information Center (VIC) Survey, $19,830, 2020.

PI, 2019 Savannah Pride Festival Event Research, $2,000, 2019.

PI, Festival attendee research at the 2019 Savannah Food and Wine Festival, $1,000, 2019.

PI, Fripp Island Property Owner's Survey, Fripp Island POA, $9,500, 2018. (Funded)

PI, Sea Pines Community Services Association Survey, Sea Pines CSA, $7,500, 2018. (Funded)

PI, Hilton Head Island Visitor Profile Survey, Hilton Head Island-Bluffton Chamber of Commerce, $7,500, 2018. (Funded)

PI, Lowcountry Visitor Profile Survey, Beaufort County Heritage Tourism Corporation, $7,500, 2018. (Funded)

PI, Savannah Music Festival Attendee Survey, Savannah Music Festival, $6,000, 2018. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2018. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $2,000, 2018. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2018. (Funded)

PI, Hilton Head Island Snow Day Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2018. (Funded)

PI, Hilton Head Island St. Patrick's Day Parade Survey, Hilton Head Island Rotary, $1,000, 2018. (Funded)

PI, Economic Impact of Tourism on Beaufort County, SC, Hilton Head Island-Bluffton Chamber of Commerce, $4,500, 2018. (Funded)

PI, Economic Impact of Tourism on Hilton Head Island, SC, Hilton Head Island-Bluffton Chamber of Commerce, $4,500, 2018. (Funded)

PI, Del Webb Sun City Carolina Lakes Strategic Planning Survey Study, Del Webb Sun City Carolina Lakes, $15,500, 2017. (Funded)

PI, Savannah Food and Wine Festival Survey, Savannah Food and Wine Festival, $750, 2017. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2017. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance and Hilton Head Island-Bluffton Chamber of Commerce, $3,000, 2017. (Funded)

PI, Savannah Pride Festival Survey, Survey Pride Festival, $1,000, 2017. (Funded)

PI, Bluffton Arts and Seafood Festival Survey, Bluffton Arts and Seafood and Hilton Head Island-Bluffton Chamber of Commerce, $2,000, 2017. (Funded)

PI, Beaufort Shrimp Festival Survey, Beaufort Regional Chamber of Commerce, SC, $1,000, 2017. (Funded)

PI, Hilton Head Island Burgers, Bacon, and Brew Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2017. (Funded)

PI, Tybee Island Tourism Economic Impact Analysis and Visitor Profile Study, Visit Tybee Island, GA, $11,930, 2017. (Funded)

PI, Beaufort Water Festival Survey, Beaufort Regional Chamber of Commerce, SC, $2,000, 2017. (Funded)

PI, Taste of Beaufort Festival Survey, Beaufort Regional Chamber of Commerce, SC, $1,000, 2017. (Funded)

PI, Economic Impact of Tourism on Beaufort County, SC, Hilton Head Island-Bluffton Chamber of Commerce, $4,500, 2017. (Funded)

PI, Economic Impact of Golf on Hilton Head Island, SC, Hilton Head Island-Bluffton Chamber of Commerce, $4,500, 2017. (Funded)

PI, Economic Impact of Tourism on Hilton Head Island, SC, Hilton Head Island-Bluffton Chamber of Commerce, $4,500, 2017. (Funded)

PI, Savannah Music Festival Attendee Survey, Savannah Music Festival, $5,000, 2017. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2017. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $2,000, 2017. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2017. (Funded)

PI, Hilton Head Island Snow Day Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2017. (Funded)

PI, Savannah Food and Wine Festival Survey, Savannah Food and Wine Festival, $750, 2016. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $2,000, 2016. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance and Hilton Head Island-Bluffton Chamber of Commerce, $2,250, 2016. (Funded)

PI, Savannah Pride Festival Survey, Survey Pride Festival, $1,000, 2016. (Funded)

PI, Bluffton Arts and Seafood Festival Survey, Bluffton Arts and Seafood and Hilton Head Island-Bluffton Chamber of Commerce, $2,000, 2016. (Funded)

PI, Hilton Head Island Burgers and Brew Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,000, 2016. (Funded)

PI, Beaufort County Disabilities Community Survey, Beaufort County Disabilities Coalition, 5,000, 2016. (Funded)

PI, Beaufort County, SC Residential Demand for a Performing Arts Center on Hilton Head Island, SC, Town of Hilton Head Island, SC, $60,300, 2016. (Funded)

PI, Sea Pines Community Services Association Traffic Flow Survey, Sea Pines CSA, $15,000, 2016. (Funded)

PI, Hilton Head Island-Bluffton Chamber of Commerce Annual Member Survey, Hilton Head Island-Bluffton Chamber of Commerce, SC, $5,000, 2016. (Funded)

PI, Hilton Head Island, SC Boat Show Event Survey, Hilton Head Island Boat Show, SC, $750, 2016. (Funded)

PI, Taste of Beaufort Festival Survey, Beaufort Regional Chamber of Commerce, SC, $750, 2016. (Funded)

PI, Hilton Head Island, SC Underground Railroad Conference, Mitchelville Preservation Project, Inc., $500, 2016. (Funded)

PI, Beaufort County, SC Resident Tourism Sentiment Survey, Hilton Head Island-Bluffton Chamber of Commerce and Beaufort Regional Chamber of Commerce, SC, $15,000, 2016. (Funded)

PI, Windmill Harbour Association Resident Satisfaction Focus Group and Survey, Windmill Harbour Community Association, $9,000, 2016. (Funded)

PI, Sea Pines Resort Strategic Planning Survey, Sea Pines Resort, SC, $6,000, 2016. (Funded)

PI, FirstShore Heritage Attraction Evaluation, FirstShore Tourism and Education Network, $3,000, 2016. (Funded)

PI, Sun City, SC Tomorrow Survey, Sun City Strategic Planning Committee, $6,000, 2016. (Funded).

PI, Savannah Music Festival Attendee Survey, Savannah Music Festival, $5,000, 2016. (Funded)

PI, Economic Impact of Tourism on Hilton Head Island, SC, Hilton Head Island-Bluffton Chamber of Commerce, $2,500, 2016. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2016. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2016. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2016. (Funded)

PI, Hilton Head Island Snow Day Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2016. (Funded)

PI, Beaufort Film Festival Survey, Beaufort Regional Chamber of Commerce, $2,250, 2016. (Funded)

PI, Economic Impact of Tourism on Beaufort County, SC, Hilton Head Island-Bluffton Chamber of Commerce, $2,500, 2016. (Funded)

PI, Sun City Resident Satisfaction Survey, Del Webb Sun City, SC, $6,000, 2016. (Funded)

PI, Town of Hilton Head Island Economic Advisor, Town of Hilton Head Island, SC, $20,000, 2015. (Funded)

PI, Economic Impact of Bicycling on Hilton Head Island, SC, Hilton Head Island-Bluffton Chamber of Commerce, SC, $21,100, 2015. (Funded)

PI, Economic Impact of Tourism on Beaufort County, SC, Hilton Head Island-Bluffton Chamber of Commerce, $2,500, 2015. (Funded)

PI, Economic Impact of Tourism on Hilton Head Island, SC, Hilton Head Island-Bluffton Chamber of Commerce, $2,500, 2015. (Funded)

PI, Savannah Residential Sentiment toward Tourism Development for the City of Savannah, Savannah, GA, $6,000, 2015. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2015. (Funded)

PI, Savannah Food and Wine Festival Survey, Savannah Food and Wine Festival, $750, 2015. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2015. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance and Hilton Head Island-Bluffton Chamber of Commerce, $2,250, 2015. (Funded)

PI, Sea Pines Resort Visitor Activity Survey, Sea Pines Community Service Association, $2,250, 2015. (Funded)

PI, Shelter Cove Harbour Fest Survey, Greenwood Property Management and Hilton Head Island-Bluffton Chamber of Commerce, $3,000, 2015. (Funded)

PI, Beaufort County Infographic, Hilton Head Island Realtors Association, $500, 2015. (Funded)

PI, Hilton Head Island Coligny Parking Survey, Town of Hilton Head Island, SC, $2,250, 2015. (Funded)

PI, Hilton Head Island Burgers and Brew Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2015. (Funded)

PI, Bluffton Arts and Seafood Festival Survey, Bluffton Arts and Seafood and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2015. (Funded)

PI, Hilton Head Island Economic Development Survey, Hilton Head Island Economic Development Corporation, $11,815, 2015. (Funded)

PI, Taste of Beaufort Festival Survey, Beaufort Regional Chamber of Commerce, SC, $750, 2015. (Funded)

PI, Savannah Resident and Business Tourism Sentiment Survey, City of Savannah, GA, $6,000, 2015. (Funded)

PI, Hilton Head Island-Bluffton Chamber of Commerce Annual Member Survey, Hilton Head Island-Bluffton Chamber of Commerce, SC, $5,000, 2015. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2015. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2015. (Funded)

PI, Hilton Head Island Affluent Traveler, Hilton Head Island-Bluffton Chamber of Commerce, $3,000, 2015. (Funded)

PI, Hilton Head Island St. Patrick's Day Parade Survey, Hilton Head Island Rotary, $750, 2015. (Funded)

Co-PI, Together for Beaufort County Community Social Indicator Assessment for Beaufort County, SC, $20,000, 2014. (Funded)

PI, Hilton Head National Feasibility Study and Economic Impact Analysis, Scratch Golf, LLC, $60,000, 2014. (Funded)

PI, Savannah Music Festival Visitor Attendee Assessment, Savannah Music Festival, $1,000, 2 2014. (Funded)

Sub Contract, RBC Heritage PGA Golf Tournament Economic Impact Analysis, $32,500, 2014. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2014. (Funded)

PI, Bluffton Arts and Seafood Festival Survey, Bluffton Arts and Seafood and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2014. (Funded)

PI, Savannah Food and Wine Festival Survey, Savannah Food and Wine Festival, $750, 2014. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2014. (Funded)

PI, Hilton Head Island Burgers and Brew Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2014. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance and Hilton Head Island-Bluffton Chamber of Commerce, $2,250, 2014. (Funded)

PI, Bluffton Arts and Seafood Festival Survey, Bluffton Arts and Seafood and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2014. (Funded)

PI, Hilton Head Island-Bluffton Chamber of Commerce Annual Member Survey, Hilton Head Island-Bluffton Chamber of Commerce, SC, $5,000, 2014. (Funded)

PI, Sea Pines Country Club Facilities Survey, Sea Pines Country Club, $500, 2014. (Funded)

PI, Hilton Head Island Visitor Profile Study, Hilton Head Island-Bluffton Chamber of Commerce, $10,935, 2014. (Funded)

PI, Sun City Hilton Head Home Owner Satisfaction Study and Strategic Planning Assessment, Sun City Strategic Planning Committee, $6,000, 2014. (Funded)

PI, Hilton Head Island Italian Festival Survey, Hilton Head Island Italian Festival, $750, 2013. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance and Hilton Head Island-Bluffton Chamber of Commerce, $2,250, 2013. (Funded)

PI, Beaufort High on the Hog Festival Survey, Beaufort Regional Chamber of Commerce, SC, $750, 2013. (Funded)

PI, Hilton Head Island Snow Day Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2013. (Funded)

PI, Beaufort Shrimp Festival Survey, Beaufort Regional Chamber of Commerce, SC, $750, 2013. (Funded)

PI, Savannah Food and Wine Festival Survey, Savannah Food and Wine Festival, $750, 2013. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2013. (Funded)

PI, Bluffton Arts and Seafood Festival Survey, Bluffton Arts and Seafood and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2013. (Funded)

PI, Hilton Head Island Burgers and Brew Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2013. (Funded)

PI, Beaufort Water Festival Survey, Beaufort Regional Chamber of Commerce, SC, $1,500, 2013. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2013. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2013. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2013. (Funded)

PI, Sea Pines Property Owner Survey, Sea Pines Country Club, $6,000, 2013. (Funded)

PI, Beaufort Film Festival Survey, Beaufort Regional Chamber of Commerce, $1,500, 2013. (Funded)

PI, Hilton Head Island Visitor Profile Study for the Hilton Head Island-Bluffton Chamber of Commerce, $30,000, 2013. (Funded)

Co-PI, Brand Assessment and Development Project 2013 for the Hilton Head Island-Bluffton Chamber of Commerce, $32,600, 2013. (Funded)

PI, Economic Impact Analysis of a Newly Proposed Performing Arts Center for Hilton Head Island, SC, Community Vision of Hilton Head Island, $10,000, 2013. (Funded)

PI, Hilton Head Island-Bluffton Chamber of Commerce Member Satisfaction Survey, Hilton Head Island-Bluffton Chamber of Commerce, $5,000, 2013. (Funded)

PI, Economic Impact of Property Tax Act 388 on Beaufort County Schools, Hilton Head Island Realtors Association, $10,000, 2013. (Funded)

PI, Establishment of the Hilton Head Island/Bluffton Chamber of Commerce Business Barometer, Hilton Head Island-Bluffton Chamber of Commerce, $5,000, 2013. (Funded)

PI, Hilton Head Island Day Tripper Analyses and Visitor Estimate Study, Hilton Head Island-Bluffton Chamber of Commerce, $38,173, 2012. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2012. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2012. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2012. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance and Hilton Head Island-Bluffton Chamber of Commerce, $2,250, 2012. (Funded)

PI, Hilton Head Island-Bluffton Chamber of Commerce Member Satisfaction Survey, Hilton Head Island-Bluffton Chamber of Commerce, $5,000, 2012. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2012. (Funded)

PI, Hilton Head Island Italian Festival Survey, Hilton Head Island Italian Festival, $750, 2012. (Funded)

PI, Economic Impact of the USCB NAIA Regional Baseball Tournament, University of South Carolina Beaufort, $1,000, 2012. (Funded)

PI, Taste of Beaufort Festival Survey, Beaufort Regional Chamber of Commerce, SC, $750, 2012. (Funded)

PI, Hilton Head Island St. Patrick's Day Parade Survey, Hilton Head Island Rotary, $750, 2012. (Funded)

Co-PI, Statistical Analysis of Body Mass Index (BMI) Data on 3rd -, 5th - and 8th -Grade Students in the Beaufort and Jasper County School Districts, SC Department of Health & Environmental Control (DHEC), $4,000, 2012. (Funded)

PI, Hilton Head Island Snow Day Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2012. (Funded)

Sub Contract, Hilton Head Island Red Fields to Green Fields Analyses, Georgia Tech Institute of Technology, $5,000, 2011. (Funded)

PI, Hilton Head Island Italian Festival Survey, Hilton Head Island Italian Festival, $750, 2011. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2011. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance and Hilton Head Island-Bluffton Chamber of Commerce, $2,250, 2011. (Funded)

PI, Hilton Head Island Cajun Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2011. (Funded)

PI, Beaufort Shrimp Festival Survey, Beaufort Regional Chamber of Commerce, SC, $750, 2011. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2011. (Funded)

PI, Hilton Head Island Wingfest Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2011. (Funded)

PI, Sweet Tea Tourism Region Advertising Conversion Study, Hilton Head Island-Bluffton Chamber of Commerce, Savannah Convention and Visitor Bureau, Amelia Island Chamber of Commerce, and Charleston Area Convention and Visitors Bureau, $8,000, 2011. (Funded)

PI, MCAS Beaufort Air Show Survey, MCAS Air Show, $1,500, 2011. (Funded)

Co-PI, Together for Beaufort County Social Indicator Assessment, Beaufort County Human Services Alliance, $10,000, 2011. (Funded)

Sub Contract, Hispanic Health Care, Language and Cultural Needs in the Lowcountry, University of South Carolina Beaufort Sea Islands Institute Grant Program, $5,000, 2011. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance, $1,125, 2011. (Funded)

PI, Hilton Head Island Italian Festival Survey, Italian Club of Hilton Head Island, $750, 2011. (Funded)

Co-PI, Statistical Analysis of Body Mass Index (BMI) Data on 3rd -, 5th - and 8th -Grade Students in the Beaufort and Jasper County School Districts, SC Department of Health & Environmental Control (DHEC), $4,000, 2011. (Funded)

PI, Hilton Head Island Economic Impact of Second Homes Study, Hilton Head Island-Bluffton Chamber of Commerce, $23,949, 2011. (Funded)

PI, Hilton Head Island Quality of Life Residential Survey, Town of Hilton Head Island, SC, $3,652, 2010. (Funded)

PI, Hilton Head Island Seafood Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2010. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2010. (Funded)

PI, Hilton Head Island Cajun Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2010. (Funded)

PI, Beaufort Shrimp Festival Survey, Beaufort Regional Chamber of Commerce, SC, $750, 2010. (Funded)

PI, Concours d'Elegance and Motoring Festival Survey, Hilton Head Island Concours d'Elegance, $1,125, 2010. (Funded)

Co-PI, Statistical Analysis of Body Mass Index (BMI) Data on 3rd -, 5th - and 8th -Grade Students in the Beaufort and Jasper County School Districts, SC Department of Health & Environmental Control (DHEC), $4,000, 2010. (Funded)

PI, Sea Island Ecotourism and Sustainability, Beaufort County Workforce Investment Act Incumbent Worker Training Program, $10,205, 2009 (Funded)

PI, Assessing Potential Riders for Proposed Northern Beaufort County Bus System, Lowcountry Council of Governments, $21,468, 2009 (Funded)

PI, Jasper County Port Labor Analyses, Beaufort County SC, $15,390, 2009. (Funded)

Co-PI, Statistical Analysis of Body Mass Index (BMI) Data on 3rd -, 5th - and 8th -Grade Students in the Beaufort and Jasper County School Districts, SC Department of Health & Environmental Control (DHEC), $4,000, 2009. (Funded)

PI, Hilton Head Island Oyster Festival Survey, Island Rec Association and Hilton Head Island-Bluffton Chamber of Commerce, $1,500, 2009. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival and Hilton Head Island-Bluffton Chamber of Commerce, $750, 2009. (Funded)

Co-PI, Statistical Analysis of Body Mass Index (BMI) Data on 3rd -, 5th - and 8th -Grade Students in the Beaufort and Jasper County School Districts, SC Department of Health & Environmental Control (DHEC), $4,000, 2008. (Funded)

PI, Investigating Potential Ridership, Marketing, and Promotional Strategies for the Proposed US 278 Bus System, Lowcountry Council of Governments, $18,636, 2008. (Funded)

PI, Colleton River Plantation Club Member Satisfaction Assessment, Colleton River Plantation, $10,000, 2008. (Funded)

PI, Hilton Head Island Hospitality Association Customer Service Training, Hilton Head Island Hospitality Association, $1,750, 2008. (Funded)

PI, Hilton Head Island Annual Visitor Demand and Profile Research, Hilton Head Island Chamber of Commerce, $12,700, 2008. (Funded)

PI, Hilton Head Island 2007 Food Festival Visitor Analyses, Hilton Head Island Hospitality Association, $750, 2007. (Funded)

PI, Hilton Head Island 2007 Wine Festival Visitor Analyses, Hilton Head Island Hospitality Association, $750, 2007. (Funded)

PI, Hilton Head Island Wine Festival Survey, Hilton Head Island Wine Festival, $750, 2007. (Funded)

PI, Hilton Head Island Shelter Cove Harbour Fest Survey, Hilton Head Island Hospitality Association, $10,000, 2007. (Funded)

PI, Hilton Head Island 2006 Food Festival Visitor Analyses, Hilton Head Island Hospitality Association, $750, 2006. (Funded)

PI, Job Satisfaction of Hotel and Resort Employees, Point Clear Holdings Hotels and Resorts, $6,500, 2004. (Funded)

Co-PI, Measurement of the Effect of Tennessee Agritourism Training and Promotion Programs: Tennessee Department of Agriculture, $15,025, 2004. (Funded)

PI, Effects of the Early School Start Dates on the Tennessee Tourism Industry: Tennessee Department of Tourist Development, $4,000, 2004. (Funded)

Co-PI, Sustainable Tourism Development Strategies for Rural Areas Near a Gateway Community, University of Tennessee Professional Development Program, $5,000, 2004. (Funded)

PI, Job Satisfaction of Hotel and Resort Employees, Point Clear Holdings Hotels and Resorts, $3,000, 2003. (Funded)

PI, Job Satisfaction of Hotel and Resort Employees, Point Clear Holdings Hotels and Resorts, $3,000, 2002. (Funded)

PI, Relationships Among Tourist Venues within Knoxville and Knox County: University of Tennessee Small Grant Fund Program, $26,913, 2002-2005. (Funded)

PI, Wines, Grapes, Tourism, and Rural Economic Development: Lessons Learned from the Shawnee Hills Wine Trail, Illinois Council on Food and Agricultural Research, $54,957, 2001-2003. (Funded)

PI, Residential Perception of Economic Development within Federally Qualified Empowerment Zones, Pope-Harden County Shawnee Hills Empowerment Zone Initiative, $650, 2001. (Funded)

Co-PI, Marketing and Processing Feasibility Studies for Prawn Production in Southern Illinois: Investigating Mobile Processing for Local Festivals, Illinois AgriFIRST, $22,000, 2002. (Funded)

PI, Mobile Hotel and Motel Association Wage and Benefits Assessment, $500, 2002. (Funded)

PI, Hospitality Training Program for Illinois National Scenic Byways, Illinois Department of Commerce and Community Affairs, Bureau of Tourism and the Federal Highway Administration, $49,985, 2001-2002. (Funded)

PI, Mobile Hotel and Motel Association Wage and Benefits Assessment, $500, 2000-01. (Funded)

PI, Proposal to Establish the Coastal Sustainable Economic Advancement Center at University of South Carolina Beaufort, US Economic Development Administration, $785,245. (Not Funded)

Co-PI, The Lowcountry Ecotourism and Sustainability Certificate Training, US Environmental Protection Agency, $47,029, 2010. (Not Funded)

Co-PI, Informal environmental education for the business community: Developing tools for environmental interpretation of the Southeastern Atlantic Coastal Plain, National Science Foundation, $260,780, 2009. (Not Funded)

PI, Creation of an EDA University Center at the University of South Carolina – Beaufort: US Economic Development Administration, $144,209, 2006. (Not Funded)

Co-PI, Tourism Development Strategies for Rural Communities Near Gateway Cities in Southern Appalachia: US Department of Agriculture, $497,135. (Not Funded)

PI, Utilizing New Technologies to Develop a Real-Time Methodology for Tourist Data Collection and Analyses Serving Tennessee Communities: US Department of Commerce, $1,087,904, 2004. (Not Funded)

PI, A Comprehensive Marketing Study: Tourism Segments in Knoxville and Knox County, Knoxville Tourism and Sports Corporation, $56,500, 2003. (Not Funded)

PI, Data Collection for Analyzing Visitor Profiles and Tourist Attraction Demand for the Cherohala Skyway and the Ocoee Byway: US Department of Transportation, $139,365, 2003. (Not Funded)

PI, Investigating Employee Job Satisfaction and Commitment within Hospitality and Tourism Organizations, University of Tennessee Professional Development Awards Program, $2,700, 2002. (Not Funded)

PI, Turnover within the Hospitality Sales and Marketing Profession, Hospitality Sales and Marketing Association International Foundation, $30,000. (Not Funded)

PI, Investigating the Relationship between Byway Attractions and Other Tourism Indicators for the Ohio River Scenic Route: US Department of Transportation, $87,726, 2000. (Not Funded)

PI, Market Research for the Shawnee Hills Wine Trail, Illinois Council on Food and Agriculture Research, $80,000, 2000. (Not Funded)

TEXTBOOK CHAPTER

Salazar, J. (2014). Planning and designing the environment for meetings, events, and conventions. In G. Fenich, Planning and management of meetings, expositions, events and conventions, Columbus, OH; Pearson/Prentice Hall.

EDITED VOLUMES

Costen, W.M., Salazar, J., & Antun, J. (2011). Who's happy? The relationship between race and job satisfaction in the lodging industry. In J. H. Westover (Ed.) Examining job satisfaction: Causes, outcomes, and comparative differences. Champaign, IL: Common Ground Publishing.

TEXTBOOKS REVIEWED

Mill, R. (2006). Managing the lodging operation. Upper Saddle River, NJ: Pearson Prentice Hall.

Kotler, P., Bowen, J, Makens, J. (2003). Marketing for hospitality and tourism, 4th edition. Upper Saddle River, NJ: Pearson Prentice Hall.

INVITED PRESENTATIONS AND COMMUNITY SERVICE

- 2016-Synovous Executive Leadership Meeting, "Affordable Housing Analysis for Beaufort County, SC (Speaker)," Hilton Head Island, SC.
- 2014-Colleton River Plantation Executive Committee, "A Profile of Hilton Head Island Visitors with Incomes Over $150,000" (Speaker), Bluffton, SC
- 2014-Hilton Head Island Visitor and Convention Bureau National Tourism Week Summit, "Our Hilton Head Island Visitors" (Speaker), Hilton Head Island, SC
- 2014-Annual Meeting of the RBC Heritage PGA Golf Tournament Board of Directors, "RBC Heritage PGA Golf Tournament Economic Impact Report" (Speaker), Hilton Head Island, SC
- 2013-Annual Meeting of the American Association of Retirement Communities, "The 3 R's of Hilton Head Island Tourism: Resorts, Recreation, and Retirees" (Speaker), Hilton Head Island, SC
- 2013- Hilton Head Institute Fall Calibogue Series, "An Island Apart" (Panel Speaker), Hilton Head Island, SC
- 2013- REALTORS Commercial Alliance of Savannah/Hilton Head Membership Meeting, "How important is tourism to the Georgia Coastal Empire and South Carolina Lowcountry?" (Presenter), Savannah, GA
- 2013-The Carolinas Chapter of Club Managers Association of America, "For employee satisfaction, what matters is..." (Presenter), Hilton Head Island, SC
- 2012-Present Tourism Industry Blog Writer, Bluffton Today, Bluffton, SC
- 2012 Hilton Head Island Tourism Marketing Council, 2011-12 Hilton Head Island Festival/Event Survey Results and Comparisons, Hilton Head Island, SC
- 2011 Red Fields to Green Fields National Meeting, Hilton Head Island Case Study (Co-Presenter), US Capitol Building Congressional Auditorium, Washington, DC
- 2009 Hilton Head Island, SC Accommodations Tax Committee Presentation, Hilton Head Island, SC
- 2009 USCB Faculty Development Committee Meeting Presentation (Co-Presenter) Litzky, B., Godshalk, V.M., Beasley, F. & Salazar, J. "A Service Learning Model for Higher Education: Lessons from the Field," Bluffton, SC
- 2007 Multicultural Foodservice and Hospitality Alliance. What matters: Organizational and job attributes that influence employee job satisfaction in lodging (Co-Presenter), San Francisco, CA
- 2002-2004 Certified Tennessee Tourism Professional Seminars (Presenter), Knoxville, TN
- 2004 Giles County Economic Development Institute, Economic Development Commission Pulaski – Giles County, Tourism in Rural Economic Development (Presenter), Pulaski, TN
- 2004 Marketplace for Ideas in Agriculture and Rural Communities Conference and Trade Show (Presenter), University of Tennessee - Martin, Martin, TN
- 2003 Employee Satisfaction, Point Clear Holdings Hotels and Resorts (Presenter), Point Clear, AL
- 2003 Knoxville Tourism Alliance: February Guest Speaker, Knoxville, TN
- 2002 Agricultural Tourism (Presenter): Illinois Association of Community College Agriculture Instructors Annual Fall Conference, John Wood Community College, Quincy, IL
- 1998-2002 Employee Satisfaction Assessment (Presenter and Consultant): Marriott's Grand Hotel, Point Clear, AL

- 2001 Tools for the Trade-Hospitality Training (Panel Speaker): Illinois Governor's Conference on Tourism, Springfield, IL
- 2001 Rend Lake Resort Hospitality Training (Presenter), Rend Lake, IL
- 2001 Agritourism Presenter: Value Added and New Technologies for Agriculture, Southern Illinois University, Carbondale, IL
- 2000 Managing Customer Service within Tourist Destinations (Luncheon Speaker): Eastern Shore Tourism Summit, Daphne, AL
- 1998-2000 Using PowerPoint in the Classroom (Seminar Co-Leader): University of South Alabama, Mobile, AL

INDUSTRY CONSULTING SERVICES

- 2016 Philadelphia Country Club Employee Satisfaction Survey, Gladwyne, PA
- 2013 Beaufort Regional Chamber of Commerce Strategic Planning Facilitator, Beaufort, SC
- 2011 The Economic Impact of Mitchelville Freedom Park on Beaufort County, South Carolina, Hilton Head, SC
- 2011 Philadelphia Country Club Employee Satisfaction Survey, Gladwyne, PA
- 2011 Lowcountry Regional Transportation Association Strategic Planning Facilitator, Bluffton, SC
- 2011 City of Beaufort Customer Service Training, Beaufort, SC
- 2010 Economic Impact of the Verizon Heritage PGA Golf Tournament, Hilton Head Island, SC
- 2011 Belfair Plantation Club Strategic Planning Facilitator, Bluffton, SC
- 2010 Callawassie Island Club Member Satisfaction Survey, Okatie, SC
- 2010 Lowcountry Regional Transportation Association Strategic Planning Facilitator, Bluffton, SC
- 2010 Brays Island Plantation Club Member Satisfaction Survey, Sheldon, SC
- 2010 Brays Island Plantation Club Employee Satisfaction Survey, Sheldon, SC
- 2009 Expert Witness: Dry Creek, LLC Plaintiff v. Peckerhead Pub, Inc. and Dr. Jay M. Kalan, Defendants, County of Beaufort, Beaufort, SC
- 2009 Belfair Plantation Club Strategic Planning Facilitator, Bluffton, SC
- 2009 Philadelphia Country Club Employee Satisfaction Survey, Gladwyne, PA
- 2008 Country Club of Detroit Employee Satisfaction Survey, Grosse Pointe Farms, MI
- 2007 Denver Adam's Mark Hotel Employee Satisfaction Survey, Denver, CO
- 1999-2004 Marriott's Grand Hotel Employee Satisfaction Survey, Point Clear, AL
- 1999 Adam's Mark Hotel Employee Satisfaction Survey, Mobile, AL
- 1999 Holiday Inn Historic District Hotel Employee Satisfaction Survey, Mobile, AL
- 1999 Radisson Admiral Semmes Hotel Employee Satisfaction Survey, Mobile, AL

NON FUNDED TECHNICAL REPORTS

- 2012 Hilton Head Island 2007-2010 Top 10 NAICs Assessment, Hilton Head Island, SC
- 2009 Professional Tennis Registry Conference Economic Impact Analyses, Professional Tennis Registry, Hilton Head Island, SC
- 2008 USTA South Carolina Senior Tennis Championships, Prepared for Sea Pines Resort, Hilton Head Island, SC

- 2006 Hilton Head Island Visitors and Convention Bureau Welcome Center Visitor Profile, Hilton Head Island, SC
- 2004 "Key Ingredients: America by Food" Smithsonian Exhibit: Ramsey House Plantation, Knoxville, TN
- 2004 "September 11: Bearing Witness to History" Smithsonian Exhibit: East Tennessee Historical Society Museum, Knoxville, TN

PROFESSIONAL AND ACADEMIC SERVICE AND RECOGNITION

- 2010-Current Member of Destination Marketing Association International
- 1996-Current Member of the Council for Hotel, Restaurant, and Institutional Education
- 1996-Current Member of the Travel and Tourism Research Association
- 2013 Tourism Cares Professional Development Scholarship Review Committee
- 2012-2013 Advisor to the Lowcountry Regional Transportation Coordination Action Plan Development Committee
- 2010-2013 Director of Research: Council of Hotel, Restaurant, and Institutional Educators Southeast Federation
- 2012-Advisor to the Hilton Head Island, SC Economic Development Advisory Board
- 2012-Focus Group Member Day Labor for Economic Development
- 2005-2007 Board of Directors and 2007 Chapter President: Southeast Travel and Tourism Research Association
- Member of the 2004 Knoxville Tourism and Sports Corporation Tourism Task Force
- 2001-2002 Rural Tourism Advisor: Rural Development Opportunities, Illinois Council on Food and Agricultural Research Rural Development Strategic Initiative, Southern Illinois University-Carbondale, Carbondale, IL
- 2001-2002 Board of Directors, Carbondale Convention and Tourism Bureau, Carbondale, IL
- 2001-2002 Advisor to the Shawnee Hills Empowerment Zone Initiative Steering Committee, Golconda, IL
- 2000-2002 Steering Committee Member: Ohio River Scenic Route-National Scenic Byway, Golconda, IL
- Member of Eta Sigma Delta-Hotel and Restaurant Management International Honor Society
- Member of Kappa Delta Pi-International Honor Society in Education
- 1999-2000 Member of the Eastern Shore Chamber of Commerce Tourism Committee
- 1996-2000 Member of the Tourism Works for Mobile Committee
- 1998 Joseph S. Bruno Scholarship: Doctoral Student Recipient, Auburn University
- 1996 Education Honors Award: Graduate Student Recipient, University of South Alabama

PROFESSIONAL MEETINGS AND CONFERENCES ATTENDED

- 2014/2011/2010/2004/2002 International Council for Hotel, Restaurant, and Institutional Educators Conference, Orlando, FL, Philadelphia, PA, San Juan, PR, Denver, CO, and San Diego, CA
- 2014 Inaugural Charles E. Fraser Sustainable Resort Development Conference, Hilton Head Island, SC
- 2010 International Ecotourism Society Annual Meeting, Portland, OR
- 1997-2010 Southeast Council for Hotel, Restaurant, and Institutional Educators Conference: Atlanta, GA, Hilton Head, SC, Wilmington, NC, Auburn, AL, and Charlotte, NC

- 2009 7th International Symposium on Tourism and Sustainability: Travel and Tourism in the Age of Climate Change Robust Findings, Key Uncertainties, Eastbourne, UK
- 2006 Southeast Tourism Society, Sarasota, FL
- 2005 International Hotel, Motel, and Restaurant Show, New York, NY
- 2002-2004 Tennessee Governor's Conference on Tourism, Nashville, TN
- 1998-2003 National Restaurant Association's-International Hotel and Restaurant Show: Chicago, IL
- 2002 Illinois Governor's Conference on Tourism, Chicago, IL
- 2000 Southern Illinois Region Trace of Ages Heritage Tourism Project Meeting: Chester, IL
- 2000 Mississippi Delta Regional Tourism Development Initiative Meeting hosted by the US Department of Transportation: Memphis, TN
- 2000 Fall Meeting of the South Central States Chapter of the Travel Tourism Research Association: Hattiesburg, MS
- 1996-1999 Tourism Works for Mobile Conference-Mobile Convention and Visitors Corporation: Mobile, AL

UNIVERSITY COMMITTEE AND SERVICE ASSIGNMENTS

- Faculty Co-Director of the University of South Carolina Beaufort Southern Association of Colleges and Schools (SACS) Quality Enhancement Program, 2017-Present
- Strategic Planning Committee Member, University of South Carolina Beaufort, 2016-Present
- Strategic Planning Community Partnership Sub Committee Chair, University of South Carolina Beaufort, 2016-Present
- Charles E. Fraser Sustainable Resort Development Conference Steering Committee Member, 2014-Present
- University of South Carolina Beaufort Lowcountry and Resort Islands Tourism Institute Website Developer and Content Manager, University of South Carolina Beaufort, 2007-Present
- Member, Faculty Development Committee, University of South Carolina Beaufort, 2012-2017
- Member, Faculty Welfare Committee, University of South Carolina Beaufort, 2007-2017
- Member, Post Tenure Review Committee, University of South Carolina Beaufort, 2012-2016
- Chair, Faculty Senate, University of South Carolina Beaufort, 2013-2015
- Chair Elect, Faculty Senate, University of South Carolina Beaufort, 2011-2012
- Chair, Promotion and Tenure Committee, University of South Carolina Beaufort, 2011-2012
- Chair, Pre-Tenure Review Committee, University of South Carolina Beaufort, 2011-2012
- Member, University Curriculum Committee, University of South Carolina Beaufort, 2011-2012
- Member Faculty Grievance Committee, University of South Carolina Beaufort, 2010-2012
- Co-Chair, Faculty Development Committee, University of South Carolina Beaufort, 2010-2012
- Chair, University Curriculum Committee, University of South Carolina Beaufort, Spring 2010
- EVCAA Search Committee, University of South Carolina Beaufort, Spring 2010
- University Marketing Review Committee, University of South Carolina Beaufort, 2008-2009
- Chair, University Scholarship Committee, University of South Carolina Beaufort, 2007-2009
- Physics Search Committee, University of South Carolina Beaufort, 2009

- Secretary, Faculty Senate, University of South Carolina Beaufort, 2006-2008
- Marketing Search Committee, University of South Carolina Beaufort, 2008
- Member, University Curriculum Committee, University of South Carolina Beaufort, 2007
- Hospitality Management Search Committee, University of South Carolina Beaufort, 2006
- Member, University Scholarship Committee, University of South Carolina Beaufort, 2006
- Faculty Development Committee, University of South Carolina Beaufort, 2006
- Alternate Member, University Honor Court, University of South Carolina Beaufort, 2006
- Faculty Advisor, Hospitality and Tourism Student Association Southern Illinois University, 2000-2002
- Faculty Advisor, Hospitality and Tourism Student Association University of South Alabama, 1996-2000

GRADUATE DEGREE STUDENTS SUPERVISED

- Andy Park (2004-2005) Ph.D. Consumer Services Management, College of Education, Health and Human Sciences, University of Tennessee, Research Supervisor
- Beth Buhrmester (2003-2004) MS Consumer Services Management, College of Education, Health and Human Sciences, University of Tennessee, Committee Member Advisee
- Miriam Tcheng (2002-2003) MS Food and Nutrition, College of Agriculture, Southern Illinois University-Carbondale, Supervisor/Committee Member Advisee
- Amber McLellan (2002-2003) MS Consumer Services Management, College of Education, Health and Human Sciences, University of Tennessee, Committee Member Advisee
- Eva Marcus (2002-2003) MS Consumer Services Management, College of Education, Health and Human Sciences, University of Tennessee, Committee Member Advisee
- Jennifer Feldmeier (2001-2002) MS Food and Nutrition, College of Agriculture, Southern Illinois University-Carbondale, Committee Member Advisee
- Nam Yun Kil (2001-2002) MS Recreation Administration, College of Educations, Southern Illinois University-Carbondale, Supervisor/Committee Member Advisee
- Pat York (2001-2002) MS Forestry/Outdoor Recreation, College of Agriculture, Southern Illinois University-Carbondale, Committee Member Advisee
- Jaclyn Howard (2000-2001) MS Food and Nutrition, College of Agriculture, Southern Illinois University-Carbondale, Committee Member Advisee
- Paula Most (2000-2001) MS Food and Nutrition, College of Agriculture, Southern Illinois University-Carbondale, Committee Member Advisee
- Jennifer Prish (2000-2001) MS Food and Nutrition, College of Agriculture, Southern Illinois University-Carbondale, Committee Member Advisee

UNDERGRADUATE STUDENT RESEARCH ASSISTANTS SUPERVISED

- Carolina Larimore (2017-Present) BS Psychology, University of South Carolina Beaufort
- Amber Hartley (2017-Present) BS Hospitality Management, University of South Carolina Beaufort
- Christian Dammel (2017-Present) BS Psychology, University of South Carolina Beaufort
- Alexis Lawson (2017-Present) BS Hospitality Management, University of South Carolina Beaufort
- Matt McCoy (2017-Present) BS Hospitality Management, University of South Carolina Beaufort

- Ariadna Ramirez (2017-Present) BS Hospitality Management, University of South Carolina Beaufort
- Myckenzie Horton (2017-Present) BS Hospitality Management, University of South Carolina Beaufort
- Kristen Robello (2017-Present) BS Hospitality Management, University of South Carolina Beaufort
- Cameron Maze (2017-Present) BS Hospitality Management, University of South Carolina Beaufort
- Angela Puleo (2016-Present) BS Hospitality Management, University of South Carolina Beaufort
- Nicole Hinnant (2016-Present) BS Hospitality Management, University of South Carolina Beaufort
- Sarah Dawkins (2016-Present) BS Hospitality Management, University of South Carolina Beaufort
- Alison Estle (2016-Present) BS Hospitality Management, University of South Carolina Beaufort
- Parrish Brown (2016-Present) BS Hospitality Management, University of South Carolina Beaufort
- Ariel Knight (2014-Present) BS Hospitality Management, University of South Carolina Beaufort
- Carrie Myers (2014-Present) BS Hospitality Management, University of South Carolina Beaufort
- Tanner Chadwick (2016) BS Hospitality Management, University of South Carolina Beaufort
- Allison Fasset (2016) BS Hospitality Management, University of South Carolina Beaufort
- Drew O'Brien (2016) BS Hospitality Management, University of South Carolina Beaufort
- Bailey Quick (2016) BS Hospitality Management, University of South Carolina Beaufort
- Jasmine Perez (2015-2016) BS Hospitality Management, University of South Carolina Beaufort
- Mohammed Sohait Nejjar (2015-2016) BS Hospitality Management, University of South Carolina Beaufort
- Caleb Thompson (2015-2016) BS Hospitality Management, University of South Carolina Beaufort
- Margaret Creeden (2015-2016) BS Hospitality Management, University of South Carolina Beaufort
- Ashley Russell (2016-2016) BS Psychology, University of South Carolina Beaufort
- Kelli Brunson (2012-2016) BS Hospitality Management, University of South Carolina Beaufort
- Catherine Moorman (2012-2016) BS Hospitality Management, University of South Carolina Beaufort
- Kenzie Rathe (2014-15) BS Hospitality Management, University of South Carolina Beaufort

UNIVERSITY OF SOUTH CAROLINA BEAUFORT UNDERGRADUATE COURSES TAUGHT: FOUR COURSES PER SEMESTER

- Hospitality Management
- Hospitality Finance
- Hospitality Management Strategies
- Hospitality Marketing

- Service Management for Hospitality
- Destination Marketing
- Resort and Condominium Management
- Ecotourism
- Special Topics in Tourism Research
- University 101

UNIVERSITY OF TENNESSEE KNOXVILLE UNDERGRADUATE AND GRADUATE COURSES TAUGHT: TWO COURSES PER SEMESTER

- Introduction to Lodging Operations
- Advanced Lodging Management
- Developing a Service Workforce
- Leadership in the Service Marketplace
- Advanced Human Resource Management
- Issues and Trends in Consumer Services Management

SOUTHERN ILLINOIS UNIVERSITY CARBONDALE UNDERGRADUATE COURSES TAUGHT: TWO COURSES PER SEMESTER

- Introduction to Hospitality
- Hospitality Marketing
- Front Office Management
- Hospitality Development

UNIVERSITY OF SOUTH ALABAMA UNDERGRADUATE AND GRADUATE COURSES TAUGHT: FOUR COURSES PER SEMESTER

- Introduction to Hospitality
- Hospitality Sales and Marketing
- Resort and Club Management
- Hotel and Restaurant Management
- Convention Management and Service
- Tourism Development
- Foundations of Programming
- Leadership in Leisure Studies
- Administration of Leisure Studies
- Fiscal Administration and Grantsmanship
- Internship in Leisure Studies

AUBURN UNIVERSITY UNDERGRADUATE COURSES TAUGHT: ONE COURSE PER SEMESTER

- Introduction to Hospitality Management
- Hospitality Marketing

FAULKNER STATE COMMUNITY COLLEGE UNDERGRADUATE COURSES TAUGHT: TWO COURSES PER SEMESTER

- Front Office Management
- Housekeeping Administration
- Principles of Hospitality Management
- Food and Beverage Cost Control
- Orientation to the Culinary Arts
- Sanitation and Safety

INDUSTRY DEVELOPMENT AND RECOGNITION

- Certified Hotel Industry Analytics Training, Smith Travel Research, San Diego, CA
- IMPLAN Economic Impact Analysis Training, MIG Incorporated, Minneapolis, MN
- Certified Hospitality Educator, American Hotel and Motel Association
- Certified Hospitality Housekeeping Executive, American Hotel and Motel Association

- Certified Hospitality Supervisor, American Hotel and Motel Association
- Manager of the Quarter, Adam's Mark Hotels
- Management Development Series, Keystone Resort

INDUSTRY RELATED NON ACADEMIC EMPLOYMENT

August 2005-Present: Principal Consultant, Effective Measures Group, Watkinsville, GA
April 1994-August 1995: *Executive Housekeeper,* Adam's Mark Hotel (AAA Four Diamond Hotel), Mobile, AL
August 1991-August 1993: Keystone Resort (AAA Four Diamond Hotel), Keystone, CO

- *Property Manager,* Keystone Gulch/Flying Dutchman Condominiums
- *Assistant Property Manager,* The Pines Condominiums
- *Operations Supervisor,* Sts. John Condominiums

October 1990-July 1991: *Sales Manager,* Holiday Inn-Hillside, Hillside, IL
March 1990- September 1990: *FD Associate/Team Leader,* Keystone Resort, Keystone, CO

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS NONJURY
COUNTY OF BEAUFORT)

ZACHARY Z. ZOUL, AND ZOUL HOSPITALITY, LLC D/B/A HOSPITALITY ADVISORS GROUPS,

PLAINTIFFS,

vs.

LAWRENCE LEARY, LANDMARK 2 DEVELOPERS, LLC, OLD TOWN BLUFFTON INN, LLC, BLUFFTON INN SC, LLC, AND BLUFFTON INN MANAGEMENT, LLC,

DEFENDANTS.

TRANSCRIPT OF RECORD

2019-CP-07-117

May 18th, 2021
Beaufort, South Carolina

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, Judge.

A P P E A R A N C E S:

WARD BORDEN
ESQ.
Attorney for the Plaintiff

GREGORY M GALVIN
ESQ.
Attorney for the Defendant

Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

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P R O C E E D I N G S

THE COURT: As I told the attorneys back in chambers, and I say this for everyone else, obviously I've got plexiglass around me. I have been vaccinated. So, I am not going to wear a mask as long as everyone is fine with that. If you do need to approach me, this is the attorneys, certainly if you want me to put a mask on, I'm happy to do that and it is up to you-all.

The one thing I do echo and just will tell you, I've tried now, since we've been back, three jury trials and it's really hard to hear through the plexiglass. So, if I ask you to speak up, please don't be offended.

Most importantly, and what I'm most concerned about, is our court reporter is taking everything down by audio. So, it has to get on the record. So, if it's not loud enough she's gonna tell me. So that's just to let you-all know that that's what we expect.

So, again, don't be offended if I ask you to speak up, either the attorneys or the witnesses. I just have got to be able to hear you.

All right. I will also tell you, because this is a bench trial, it won't be quite as formal as it normally would be if we had a jury. I'm certainly sitting as both the fact finder and the judge of the law. We can be a

little more relaxed in how we're handling this.

All right. But it is a Court of record. Everything is being written down. I told the attorneys, if you need a break or you need anything, just go ahead and just ask your lawyer to take a break, okay, and we're certainly happy to do that.

All right. So, with that said, I have told the attorneys that we are not doing opening arguments. I will tell you that I have read all the filed discovery in this case as well as the Summons and Complaint, the Answers. So, I am well versed on the issue in this case.

I also, of course, read Judge Dukes Order where he dismissed the two claims, the fraud claim, breach of contract accompanied by fraud, and also the SCUTPA claim of Unfair Trade Practices Act. So obviously those are not in this case more.

So, we're gonna go on and go forward just with the witnesses to begin.

So, yes, Mr. Galvin.

MR. GALVIN: I, I just wanted to put two things on the record. One I---

THE COURT: Yes, sir.

MR. GALVIN: ---have a transcript of Mr. Leary and his testimony, and I submitted that up to the Court. I think we're, we're probably gonna use that in lieu of his

testimony today. I think we got to call him after, after the plaintiff finished their case.

The second thing is, is that---

THE COURT: You just need to go ahead and put on the record that Mr. Leary, the defendant in this case, is not here.

MR. GALVIN: Correct.

THE COURT: For the record, we had a discussion about this on a conference call last week. It was my understanding that Mr. Borden agreed that he could just come by his transcript and didn't want to require him to be here in person and I understand that was the agreement to be made.

Is that correct?

MR. GALVIN: Well, I think what I, what I stated is that Mr. Borden was gonna -- I was planning to just use the transcript but I thought the, the possible ability to have him call in may -- he might, he might have that ability but---

THE COURT: So which one do you want to choose to do because we're not doing both?

He's not both calling in and giving his statement. So, you need to---

MR. GALVIN: We're gonna use the transcript, Your Honor.

THE COURT: ---tell me which one it is.
Okay. Thank you.
MR. GALVIN: And the---
THE COURT: Okay.
MR. GALVIN: The second thing was---
THE COURT: Is that correct, Mr.---
MR. BORDEN: That's, that's fine.
THE COURT: ---Borden? Thank you.
Okay. And go ahead. Next.
MR. GALVIN: The second thing is, is that I filed a motion in limine---
THE COURT: Okay.
MR. GALVIN: ---with regards to Mr. Salazar being named as an expert. He, he was named very, very late in the trial and I filed that with, with all of my exhibits and everything. I think the Court probably reviewed that. I'm happy to argue it but I think my, my motion speaks for itself.
THE COURT: Okay.
MR. GALVIN: And --.
THE COURT: Give me -- I just need to look here. Sorry.
(Pause.)
THE COURT: All right. Well, what we can do as far as that is concerned, as I told you, because this is a bench

trial, obviously we would normally have to do a proffer of that witness' testimony. However, what we can do is I can just hear it, and once I -- once I've heard it, I can decide whether or not it's appropriate to consider in any way.

As far as the lateness though, I can tell you it's my understanding that, and correct me if I'm wrong, Mr. Borden, that plaintiff's counsel had a previous expert to testify as to hospitality standards and reasonableness on charges, and that that expert then subsequently declined to go forward. And so you hired a new expert.

I don't think there's any surprise for Mr. Galvin. It's my understanding and what's going to be testified to, I think what you stated was pretty much -- his opinions remain the same as the previous one.

MR. BORDEN: That, that -- that's correct, Your Honor.

THE COURT: Am I correct in saying that?

MR. BORDEN: That, that is correct, Your Honor, and, in fact, the roster announcement for this weeks trials --

THE COURT: Uh-huh. (Affirmative).

MR. BORDEN: -- I would -- I received on April 16th. So, so, so, in other words, you know, based, based upon going forward now with the trial, which I, I wanted to do --

THE COURT: Uh-huh. (Affirmative).

MR. BORDEN: -- the -- in other words, even then, based on the announcement of when this was going to come up --

THE COURT: Uh-huh. (Affirmative).

MR. BORDEN: -- that was only seven days ahead. So, I mean I, I -- and to, to really be on the ball, I needed to have been, you know, seeking somebody weeks and weeks before that.

THE COURT: Uh-huh. (Affirmative).

MR. BORDEN: So -- at which, which I, I had not. But, but the person who is scheduled to be here today fits the same description --

THE COURT: Uh-huh. (Affirmative).

MR. BORDEN: -- the same expertise and the same direct area as was identified before.

THE COURT: Okay.

MR. GALVIN: And---

THE COURT: And is giving the same opinion, correct?

MR. BORDEN: I beg your pardon?

THE COURT: And is giving the same opinion, correct?

MR. BORDEN: Yes, Your Honor.

THE COURT: Okay.

MR. GALVIN: Just for the record --

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: -- I was not able to depose the first expert, and with regard to the first expert, I didn't get a written report or anything.

THE COURT: Right.

Well, you could of deposed this new expert.

MR. GALVIN: I -- he was provided five days before the trial, Your Honor.

THE COURT: But you could have deposed him. All you had to do was call and ask and you could of deposed him.

MR. GALVIN: Well, I couldn't of obtained a, a expert to review what he had said.

THE COURT: Again though, nothing prohibited you -- we take depositions all the time during the middle of trials, two days before trial. Again, it's within my discretion whether or not to allow this expert to testify. I don't even know if I will need his testimony.

MR. GALVIN: Thank you.

THE COURT: So, with that said, from what I understand, and, and correct me if I'm wrong, I think the plaintiff himself, Mr. Zoul, can probably testify as to reasonableness, and industry standards, and hostility of the charges that were incurred -- allegedly incurred. So, I think, I think even, Mr. Borden, your client can testify to that.

So, anyway, we ready to go?

MR. BORDEN: I am, Your Honor.

THE COURT: Who's your first witness for this morning, Mr. Borden?

MR. BORDEN: My, my, my first witness --

THE COURT: Yes.

MR. BORDEN: -- I'm, I'm Ward Borden. I'm representing the plaintiffs in the case.

Our first witness is Eric A. Brooks.

THE COURT: All right. Mr. Brooks, come on up if you don't mind.

Will you swear him?

Is that okay?

Mr. Brooks, if you just stand right there. She is going to -- is the Bible over there?

THE CLERK: Excuse me?

THE COURT: Is there a Bible over there?

THE CLERK: Yes.

THE COURT: Okay. Perfect.

THE CLERK: And if you'd raise your right-hand?

ERIC A. BROOKS, being first duly sworn, testified as follows:

THE CLERK: State your name and spell it for the court reporter please.

THE WITNESS: Yes, ma'am. My name is Eric, E-R-I-C, middle initial A, last name Brooks, B-R-O-O-K-S.

THE COURT: All right. Mr. Brooks, come on around right here if you would. Take a seat. Your microphone is on and you may need to adjust it a little bit. I see you have two microphone. So I guess we're really worried about

being able to hear you this morning. I'm sorry. On that seat it does not move.

All right. Can you get in there?

Is there a reason, Rick, why we have two microphones or is it just so we can hear better?

UNIDENTIFIED PERSON: One is only electronic.

THE COURT: Perfect.

UNIDENTIFIED PERSON: And the---

THE COURT: Okay.

THE WITNESS: Is this working okay?

THE COURT: Yeah, it's good.

All right, sir.

MR. BORDEN: Judge, if you can give me just one second?

THE COURT: Yes, sir.

(Pause.)

THE COURT: All right. Mr. Borden, whenever you'd like to begin, sir.

MR. BORDEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BORDEN:

Q Mr. Brooks, I know it's a little bit repetitive but could you please state your full name for the record?

A Eric A. Brooks.

Q Where do you live?

A I live in the historic district of Savannah, Georgia.

Q How long have you lived there?
A I guess approximately 35, 36 years.
Q If you would, since we're here about your profession, would you provide a brief summary of your educational background?
A Education?
Q Yes.
A First two years of -- well, after graduating high school, my first two years of University was at the European campus of the University of Maryland in Munich, Germany. I also audited classes at the local german university. I took a year and a half break after my second year and worked in, in Germany, and then transferred to Auburn University in Auburn, Alabama and graduated in 1969, degree in languages.
Q Okay. Are you engaged in a trade or business for compensation presently?
A I consider myself semiretired. I did that in 2010, and then going forward, I worked on -- as a consultant on various development projects in the hospitality industry both foreign and domestic.
Q Is there any particular business with whom or for whom you do more work than as to others, the primary source of your consulting work?
A It, it, it tends to focus on marketing and feasibility studies for hospitality development projects.

Q And do you have any relationship at all with a, a company that goes by the name of Hospitality Advisors Group?
A Yes, I do. That's headed by Zachary Zoul who's in the courtroom, and I've known Mr. Zoul for quite a few years and after -- again, after I retired in 2010, he asked if I would be available as a consultant to his clients and I said yes. So, he considers me a senior associate of Hospitality Associates Advisors Group.
Q What is tasked -- what, what does Hospitality Advisors Group do to your understanding?
A I'm sorry. I didn't hear the question.
Q What, what does the organization Hospitality Advisors Group do?
A Well---
Q What, what, what, what is your exact (indiscernible)?
A Well, you know, much like I described my consultancy work, it -- that's pretty much the profile also of Hospitality Advisors Group. They take on clients who are developing and -- hospitality projects both foreign and domestic and provide the services that will guide them, that will provide documentation that they can use for financing and negotiations with investment partners.
Q Prior to working with Hospitality Advisors Group or prior to your retirement, semiretirement, and your making arrangements with Hospitality Advisors Group, what did you

do before -- during and prior time?

A Okay. Well, my, my very first job in hospitality was in, was in Germany where I was going to uni -- University and I, I worked at a resort south of, of Munich. And then, as I mentioned, I took a year and a half off between my second and third year of University and I worked for the German railroad, their dining car company, and I was a silver service waiter on the Trans-European Express.

So, I was starting to get some fundamental experience and, and attraction to the hospitality business, and then, when I graduated from Auburn University, I went to work for Hyatt Corporation in Atlanta for 10 years. And after three, those -- after three of those 10 years, they sent me to Charleston, South Carolina to be the resident manager of The Mills House. That's the, that's the second position in, in management. And then, after a year and a half, they promoted me to general manager and I was there until 1979.

And from that point on I focused on independent properties, not chain properties, and I ran independent properties in Chicago. And then, then my interest began to shift from operations to development, and I did that going forward with one exception. I went to the island of Bermuda and ran a resort for just a little under five years. But, since then, my focus has been exclusively on development.

Q Tell me please if you recall what, what was the

organization in Bermuda that you were operating.
A I was in Bermuda twice and the first time I, I was managing director of the 600, 600 room resort and then I went back years later to develop the Tucker's Point Resort.
Q All right. At the -- have you ever met or spoken with Defendant Lawrence Leary?
A I couldn't understand the question.
What?
Q Have you ever met or spoken with the Defendant Lawrence Leary?
A Yes, I have. Through Mr. Zoul we had an engagement to assist with the property that was under development, not yet opened in Bluffton, the Old Town Bluffton Inn, and they needed to secure two curbside parking spaces in front of the Inn for the arrival and departure of the guests, and that was going to entail negotiations with the powers to be in, in the Bluffton government and the owners, including Mr. Leary, wanted somebody with a hospitality background that could speak knowledgably to the Town Council.
Q Okay. When do you recall first communicating with Mr. Leary?
A Well, I met him the, the, the first day I went to the Inn. It was not yet opened. His daughter and son-in-law were also involved in, in the business. I met all three of them. Really worked more with the son-in-law as far as the

curbside parking issue.

Understood that Mr. Leary had focused on construction because that was his background. But I had a couple conversations with him. I wound up giving a tour of the Inn to the, the city manager and one of the council members and the director of planning and Mr. Leary was there. I introduced them.

And so I had some, some, but not in-depth, interaction with Mr. Leary at that time.

Q Are, are -- you made reference to the activities looking for parking drop-off spots.

Is, is that the -- is, is that the particular issue for which we're here today?

A No, the, the, the parking issue was in May of 2018, and, as I said, I, I met with members of the town government in, in Bluffton to make the argument. I also had lunch with the mayor at one point and I was trying to explain that it's highly typical for hospitality properties to have this type of accommodation from the munici -- municipality.

And I was making the argument that -- oh, because their concern was if they granted this to the Old Town Bluffton Inn, they were gonna have opposition from nearby businesses that didn't enjoy the, the same benefit, and I argued -- I was arguing that well, the hospitality product was a little -- was unique in that it -- there was a hospitality

tax that the other businesses didn't have to, to pay, and, in return for that, it was very reasonable for the City to grant the two parking spaces, and I had quite a few comparables to show them, both in Charleston and, and Savannah, were typically sized, sized properties to Old Town Bluffton Inn.

So, I thought I was making progress but I received a phone call one afternoon from Mr. Leary and he said he didn't want to fool around with the Town Council anymore. He didn't care for them. And so he wanted me to drop my effort and that he would just have guests be directed to the rear of the hotel and enter that way. So that was the end of that first engagement.

Q From the period early September, 2018 through October of 2018, during that period of time, did you have any communications with Lawrence Leary?

A Yes, sir, there was, there was no communication with any of the principals at the Inn through that summer after, after my aborted May engagement. But then Mr. Leary reached out to Mr. Zoul at the beginning of September to ask if we could assist.

(Pause.)

THE WITNESS: I'm sorry.

THE COURT: Okay. Thank you.

Go ahead. Just go ahead.

A To ask if we could assist with finding a buyer for the Inn. He informed us that he had parted company with his daughter and, and son-in-law and he was now in charge of everything, and he would be the point of contact going forward. And Mr. Zoul agreed and contacted me.

So I went over and began my meetings with Mr. Leary and, and doing the, the background work necessary for putting together a, a good marketing piece for the Inn.

Q Is there any significance or relation to those conversations and --?

A Were there any what?

I'm sorry.

Q Is there any relation to the discussions that you just referenced and Thanksgiving, 2018?

A Yes. As I said, we, we were initially engaged to find a buyer for the Inn. And as I began my, my meetings with Mr., Mr. Leary, the scope of that engagement grew in that he -- we both agreed that it -- the, the property would be much more marketable if it was completed, and it was a turn -- it would be a turnkey sale. So, the focus was on getting the, the property completed and then actually opened by Thanksgiving of, of 20 -- 2018.

The rationale for that was you'd be going into the holiday season. It would be a good time to launch the, the property.

Q All right, sir.
A That was a -- that would---
Q If you could---
A That was a very aggressive schedule but it was one we were working towards.
THE COURT: Mr. Brooks, let me ask you a question and I hope your lawyer's told you that this is a bench trial. I'm permitted to ask you questions as well.
You said that Mr. Leary had background in construction was my understanding.
Is that correct?
THE WITNESS: That's what he, that's what he told me, yes.
THE COURT: Do you know if he ever had operated or run a hotel before?
THE WITNESS: No.
THE COURT: Do you -- is it you don't know or he had not?
THE WITNESS: I, I, I recall him saying that he didn't have any hospitality experience.
THE COURT: Okay. Thank you, sir.
Go ahead.
Q The -- when you, when you -- did there come a time when you began performing services for the benefit of the Old Town Bluffton Inn, LLC, Mr. Leary?

A Yes. You know, once, once we were engaged in September, my first step was to understand the market, understand the amenities that surrounded the Inn, what would be attractive to potential guests, and, you know, I saw that the Inn itself was -- had been done in a very high quality -- as a very high quality product.

So, using those factors as a basis, I created a, a, a conservative, since it was a just opening property, a conservative proforma, three year proforma, for the operation of, of the Inn. And that, that becomes the touchstone going forward because, in order to do the, the proforma, and I used the uniform system of accounts for the lodging industry, which is a universe -- a, a standard system, you know, you have to think through what the staffing will be. You have to have a very good understanding of the market so that you can estimate what your occupant -- annual occupancy and your average rate is going to be. And since this was an opening property, it would step up over three years.

And so that was my, that was my first step.

Q And, to your knowledge, was, was Mr. Leary cognizant of the things that you were doing?

A Yes. Because in each case, as I produced my product, and he was my point of contact, we would sit down and, and have a review meeting because the next step, after the

proforma, was to create what turned out to be a 35-point action list, what action items had to be completed in order to, to open the Inn, as, as we had said, by Thanksgiving. And there were a lot of things that had not been addressed that needed to be. And I included those in the action list.

And so, again, Mr. Leary and I sat down and we had a, a pretty detailed meeting to go over that list so that he would understand what I was doing and he would also understand what I needed because I understood that his, his daughter, Daniella, had done a, a -- most of the work regarding supply vendors and so forth. And Mr. Leary would have to get me the, the documentation that she had created so that I could move forward on those, on those items.

So, there was some coordination between us, my needing certain points of information that he would have access to.

Q Did you create documents?

A I'm sorry?

Q Did you create documents?

A Yes, I mean the --.

Q Did you deliver those documents to anyone?

A Well, I deliver, I deliver them to Mr. Leary. I, I gave him a copy of the proforma, which had several pages of notes and detailed schedules attached to it, and, and then, of course, the, the action list, I provided that to, to him as well.

Q Were you ever on -- were you ever on site at the Old Town Bluffton Inn?

A Well, quite a bit because I -- I mean that's where the product was and I also had to meet with various service vendors like the company, the company that was based on Hilton Head that was going to provide the housekeeping and as, as the scope of their engagement would also include providing the, the linen for the guest rooms, and the washing of the, of the linen as well as the staffing, staffing of the housekeepers.

And so there were numerous Bluffton based vendors that I needed to meet with in, in the lobby of the Old Edwards, I mean excuse me, of the Old Town Bluffton Inn was where those meetings took place.

Q Do you know who Q4Launch is?

A Yes, shortly after I got started Mr. Leary said that we needed to meet with a company called Q4Launch, which is based in Mount, Mount Pleasant, South Carolina, which is an adjunct to Charleston, and they had the contract for managing the website, and they created a lot of the content that went on the, the website. You know, both the, the visual items and, and the, the narrative.

So, Mr. Leary and I drove one afternoon up to Mount Pleasant and had that meeting. And at the end of the meeting, you know, since we were, you know, about 60 days

away from the targeted opening, and they would start drawing reservations, and I was designated as the individual that would receive those reservations prior to the Inn opening.

So, they had my email address and would forward them to me.

THE COURT: Let me ask you a question, sir.

Just what does it mean receive reservations?

I mean I understand what a reservation is but is it just you were keeping track of them?

THE WITNESS: Yeah, let me explain.

THE COURT: Please.

THE WITNESS: When I'm talking about Q4Launch, as I said, they were managing the website --

THE COURT: Right.

THE WITNESS: -- for the Inn.

THE COURT: Right.

THE WITNESS: So, if -- let's say you wanted to visit Bluffton, South Carolina --

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: -- and you want on -- you went in there and you put in hotels, Bluffton, South Carolina, bed and breakfast, you know, the Old Town Bluffton Inn would be found on that search and it would come up. And on the website would be a place where you could make your reservation---

THE COURT: Okay.

THE WITNESS: ---electronically.

THE COURT: Okay.

THE WITNESS: And that's what I mean.

THE COURT: Okay.

THE WITNESS: So -- and those -- excuse me.

Before the Inn was opened, and there was, there was no staff there, that information was going to Q4Launch.

THE COURT: Okay.

THE WITNESS: And so Q4Launch needed somebody that they could then forward the reservation information to --

THE COURT: Okay.

THE WITNESS: -- you know, so we could keep track of the amount of business that was coming our way.

THE COURT: Okay.

THE WITNESS: Does that answer your question?

THE COURT: Yes.

THE WITNESS: Yeah.

THE COURT: Thank you.

Okay.

Q You were living in Savannah at the time?

A Yes, sir.

Q About how frequently did you come up to Old Town Bluffton Inn?

A I, I guess it was at least a, a weekly event. It's

only about 35 minutes door-to-door from my house to the Inn. And, you know, depending again on the appointments I may have with vendors or following up on the action list, it would require my being on site. So I could be there at least once a week if not twice a week.

Q You, you, you ever meet a man named John Sulka?

A John Sulka?

Q Yes, sir.

A Yes. Mr. Sulka was a loan officer with I believe it's Coastal States Bank and they had the development loan on the Old Town Bluffton Inn. And as I mentioned, I would quite often go over to the Inn and meet with supply vendors and I was doing exactly that when Mr. Leary encountered Mr. Sulka outside the, the Inn on, on the -- walking around this, this -- the town, they ran into each other. And Mr. Sulka asked Mr. Leary about the progress at the Inn and when was it going to open.

And Mr. Leary explained that he had engaged Hospitality Advisors Group to make that happen and their representative just happened to be at the Inn that day. And Mr. Leary said that Mr. Sulka could come over and introduce himself to me, which is exactly what he did.

There was no advance appointment but I was more than happy to sit down with him, spent about an hour telling him our background and the steps that we were taking to get the

Inn opened. I also provided him a copy of the proforma and told him that I would also provide him, prior to opening, the first year operating plan by month and I gave him a tour of the, the Inn. It was, it was pretty close to being complete. It showed very well. So, all in all, it was a good meeting.

Q And, and you indicated that Mr. Sulka came over to see you because Mr. Leary had, had represented that, that you-all had been retained.

Was that your belief and did you have that belief?

A Yes.

MR. GALVIN: Just for the record I object. Hearsay.

THE COURT: Okay. It's not a hearsay objection. He just said it's you are -- assumed a belief. So, it wasn't that he necessarily said it. It was just what occurred. So --.

MR. GALVIN: Thank you, Your Honor.

THE COURT: Overruled.

Q Do you have any idea of how many hours you spent working for Old Town Bluffton Inn, LLC?

A I would, I would say, you know, between the beginning of September and, and our termination at the end of October, you know, probably 80 very specific hours, not necessarily travel time, but actually sitting down and focusing on, on the project. It, it could of been closer to a hundred but

that was the range.

MR. BORDEN: Your Honor, I would like to show the witness---

THE COURT: Certainly. Go ahead.

A ---show him a number of these. This is, for defense purposes, what I've got here is Plaintiff's Exhibits 1 through 9.

MR. GALVIN: Okay.

THE COURT: One through nine you said?

MR. BORDEN: One through, one through nine.

THE COURT: Thank you.

Q These aren't stapled but I'm going to hand this to you and ask if you can identify that document there, sir.

THE COURT: That's No. 1?

MR. BORDEN: That's No. 1.

THE COURT: Okay.

MR. BORDEN: And, in fact, the intent is to go through one through nine if we're able to---

THE COURT: Absolutely.

MR. BORDEN: ---do that.

THE COURT: Okay.

A Yes, this was the -- I believe this was the initial proforma that I prepared. It's -- you know, the notes aren't attached but there's -- there were also several pages of, of notes to the proforma. On the, on the first page

you've got the financial -- projected financial statement for yearend, 2019, 2020, 2021, and then on the, the second page was backup that gave the staffing plan, hours to be worked, number of employees per position.

It also indicated what the, the non, non, non-wage -- the cost would be for employment, payroll taxes, employee benefits. I also detailed the travel agent commissions and there's a category under the uniform system of accounts for administrative in, in general and, and, you know, people that haven't spent any time in the hotel business, they typically don't understand what that is.

So, I prepared a detailed schedule of that as well.

Q Thank you, sir.

Did -- does Hospitality Advisors Group maintain a copy of that document in its normal course and records?

A I believe so. Again, as I mentioned at the very beginning, my work product that I gave to Mr. Leary I also made sure that Mr. Zoul had copies as well.

Q So, a copy of that, just if I handed you as Exhibit 1, was given to Mr. Leary?

A Yes.

MR. BORDEN: Your Honor, I would like to move that in as Plaintiff's Exhibit 1.

THE COURT: Any objection?

MR. GALVIN: Without objection.

THE COURT: It's in evidence without objection.

(WHEREUPON, Plaintiff's Exhibit No. 1 was received into evidence at this time.)

THE COURT: Are you gonna object to any 1 through 9? Have you seen them all?

MR. GALVIN: Give me a second. I --.

THE COURT: Okay. Why don't you look through them? We can move this along a little faster.

MR. GALVIN: Yeah, I --.

MR. BORDEN: And, Your Honor, as far as the issue we discussed (indiscernible), where do you want me to deposit?

THE COURT: We usually have a basket nowadays for our -- we would---

MR. BORDEN: This would be a really good spot.

THE COURT: You've got it. Right there. We can put them right there if you'd like.

MR. BORDEN: I'm sorry.

THE WITNESS: Do you want this back?

THE COURT: And, Mr. Galvin, have you been able to go through --?

MR. GALVIN: Yeah, I've, I've --.

THE COURT: Is there any objection?

MR. GALVIN: Let me make sure that I have. I don't think I'm gonna have any objections, Your Honor.

THE COURT: Okay. So let's just go through, and I'm

assuming you can lay a foundation for all of these. I think you-all agree that they're relevant.

Is that correct, Mr. Galvin?

MR. GALVIN: Yeah, I would, I would agree that, that they are probably relevant, Your Honor.

THE COURT: Okay. So, is there any objection then to any of them being admitted cause we really can move this along?

If you-all've just exchanged the discovery---

MR. GALVIN: We did.

THE COURT: ---and they have been in this case, let's just go ahead and we're gonna, Mr. Borden, we're gonna go ahead and just move all of these in evidence. You can just give him the exhibit. Literally, you know, identify it by number. Tell us what it is and ask questions. If, if you want to, you can hand him the whole thing.

MR. BORDEN: All right. All right.

THE COURT: It's up to you.

(WHEREUPON, Plaintiff's Exhibit Nos. 2 through 9 were received into evidence at this time.)

MR. BORDEN: All right.

Well, let me, let me hand you Plaintiff's Exhibit 2 and then I have two questions.

Who, who prepared that and are you familiar with that?

THE COURT: And what is it?

THE WITNESS: Okay.

Q What is it?

A Exhibit 2 is another proforma which I prepared and this was a best case proforma as I saw it. Mr. Leary asked if I would prepare that for him, which I did, and it shows better occupancy and better average rate. It was what I thought the most the market would, would bear. Most of the, most of the expenses stayed the same. Even though the revenue was, was rising, it didn't create a proportional increase in expenses. So the bottom line looked better.

MR. BORDEN: Your Honor, I'm moving that in---

THE COURT: Okay.

MR. BORDEN: ---Exhibit 2.

THE COURT: I've, I've already moved them all into evidence.

MR. BORDEN: Oh, all right.

THE COURT: So they are already all in evidence.

MR. BORDEN: Okay.

THE COURT: Yes.

Q Can you -- was a copy of that document given to Mr. Leary that was---

A Oh, yes. Yeah. And -- no, everything was given to Mr. Leary. This Exhibit 3, the -- these are my notes to the proforma. So they're actually -- it all goes together.

Q Okay. Those are your notes to the proforma?

A Yes, the first page is my general assumptions and, and my format and --.

THE COURT: Now, just a second.

Your notes are here for the proforma.

Is that correct?

THE WITNESS: I'm sorry?

THE COURT: These are the notes to your second proforma the best case scenario?

THE WITNESS: I, I have notes to both of them, yes, ma'am.

THE COURT: Okay. But what you're referring to as 3.

Which one is it?

THE WITNESS: Yeah, this is No. 3.

THE COURT: Got it.

Move on.

MR. BORDEN: All right. Okay. Thank you, Your Honor. Thank you. Thank you.

Mr. Brooks, I appreciate those are your notes to the second proforma.

Now, that Exhibit 4, it -- could you please identify what that document is?

A Yes, this is the action list. It was addressed to most -- both Mr. Leary and, and Mr. Zoul and it says attached is my first draft of an action list to prepare the Inn for opening, and I think we had -- Mr. Leary and I had

set up a, a, a meeting to take place a couple days later to go over the action list in detail.

There's 34 -- 35 points. I divided it down by areas of the Inn such as guest rooms, guest room linen closets, lobby level coffee and beverage, kitchen, bar, general lobby, and front office.

Q All right. And was a copy of that given to Mr. Leary?

A Yes.

Q This has been labeled Plaintiff's 5.

Can you, can you just tell me what that is?

A Well, it's the same thing. This is the action list and I don't know who did---

Q The one -- the write---

A I don't know who did the markup. That's not my writing.

Q Okay.

A But, as I said, Mr. Leary and I sat down and, and went over it. You know, under guest rooms, the TVs still needed to be ordered and installed. The telephone system needed to be installed. Linens needed to be ordered. Washer and dryers needed to be ordered and items for the kitchen. And so it's those type of things.

Q Okay. This has been labeled 6 and can you please identify what it is?

I think that number will be (indiscernible).

A Exhibit 6, this had to do with preparation for our meeting with Q4Launch, which was the website management company in -- near Charleston that Mr. Leary and I drove up to. So, it was really the background for that, that meeting, and Exhibit 7 -- oh, as I mentioned, I was going to be the initial contact for the reservations that were produced through the, the website.

And so No. 7 was a test that we, we ran to make sure that they could forward the information to my own email address, and that it would be properly received, and it was a confirmation that that test was successful.

Q Thank you.

And Mr. Leary was aware of these?

A He -- well, he was aware of the first one. In the preparation for the meeting I don't know if he was aware of the, the, the test we subsequently did. That was just a quick procedural effort.

Q Plaintiff's Exhibit 8, can you identify what that is please?

A Yes, it was, it was, excuse me, my memorandum to Mr. Zoul giving a summary of the vendor contact information that Mr. Leary had forwarded to me, and, in this particular memo, there were a total of eight different vendors, supply vendors, you know, for the phone system, for the guest room safes, the pest control contract, as I said, ordering the

pillows, the locking -- and the door looking system, and the, the food vendor for the, the hotel.

Q All right, sir. And the last one, No. 9, can you tell me what that is please?

A Oh, yes. I had recommended that they engage a local accounting firm, bookkeeper, to do the, the bookkeeping for the Inn. It would be more economical that way. You wouldn't have a -- anybody on the payroll doing it since it could be handled easily on a day-to-day, week-to-week basis and, and could produce the month end operating report, and I had sent to Mr. Leary -- this is a copy of an email that I sent him giving him the, the website of blufftonbookkeeper.com.

Q I just have a few questions on that.

Did you, did you expect payment for what you've provided that you'd looked at today?

A Well yes. I mean that's typically what Mr. Zoul and I do. We, we take on consultancy engagements and for which we're compensated.

Q Were you involved in the actual preparation or execution of a contract for this work that you've described?

A I was not. That is Mr. Zoul's domain and he handled that.

Q Thank you.

I have no further questions for the witness.

THE COURT: Okay. Mr. Galvin.

MR. GALVIN: Yes.

THE COURT: And actually can I have all of those documents?

I appreciate it.

Whenever you're ready, Mr. Galvin.

MR. GALVIN: Okay.

CROSS-EXAMINATION

BY MR. GALVIN:

Q All right. Hello, Mr. Brooks.

How are you doing today?

A Fine. Thank you.

Q What's (indiscernible) --?

A Sir, I have to tell you I'm, I'm hard of hearing --

Q Okay.

A -- and I read lips. So, if I can look right at you I'll be okay.

Q Okay. Please tell me if you don't hear my question.

A Yes, sir.

Q Would you agree that the work that you did was for the benefit of the Old Town Bluffton Inn?

A Absolutely.

Q So, it wasn't for Mr. Leary personally, correct?

A Well, he, he represented himself as owning the Inn. So yes.

Q (Indiscernible) benefited the Old Town Inn?
A Absolutely.
Q All right. And Mr. Borden talked to you a little bit.
You, you -- Hospitalities Advisors Group was, was hired to attempt to sell the Inn, correct?
A Yes, as, as I mentioned, there were actually two engagements. The first one was on the curbside parking and that was in May of 2018. That was aborted by Mr. Leary and then -- but he came back to us in September to find a purchaser for the Inn. That's typically done within the, the industry, you know, people who are familiar with that type of product and, and we have a lot of contacts in, in the, in the industry and, and could of assisted in that area.
Q And under the -- there was a -- this work that you did, I don't remember, did Mr. Borden provide you with a copy of the, the agreement for the sale of the property?
A I did see the agreement, the executed agreement for the sale of the property, yes.
Q Okay. And was that one of the work that you were describing and stuff?
A That was the very beginning. That was, that was what we, we were engaged to do. But almost immediately Mr. Leary asked that we would be involved in getting the, the Inn opened, getting everything complete. He'd be, he'd be

responsible for any outstanding construction items and, and there weren't many at that time.

But as I had mentioned, there were a lot of organizational issues that needed to be resolved. There were a lot of items that still needed to be obtained and installed in the, the Inn.

So he asked -- almost immediately we went from charged with finding a, a buyer to getting the Inn opened and then he went even further than that and said would -- he wanted us to, to handle the management of the Inn pre and post-opening until a general manager was installed and even then be a, a -- an oversight group going forward.

Q Okay. Let me start with one thing. The---

A I'm sorry.

Q With the consolidated agreement for the sale, I see one that's dated September 17th, 2018.

A That sounds correct.

Q Okay. And, under that agreement, you're to be paid six percent if the property sold, correct?

A I believe that's correct.

Q Okay. Were you selling the---

A I'm sorry?

Q I'm sorry. I can---

A I'm -- okay.

Q I'll try to keep to (indiscernible).

A Okay. Thank you.
Q You were -- the agreement was you would get six percent of the sale price if the, the property sold?
A That's my recollection, yes.
MR. BORDEN: Your Honor?
THE COURT: Basis?
MR. BORDEN: Your Honor, the only, the only -- my objection is based on clearly Mr. Galvin wants to differentiate Mr. Leary from Old Town Bluffton Inn, LLC --
THE COURT: Uh-huh. (Affirmative).
MR. BORDEN: -- for, for, for liability purposes. But he keeps saying to Mr. Brooks you're going to get six percent, aren't you. You're going to get six percent. That's, that's not what the contract shows. It doesn't show Mr. Brooks getting any -- anything like that.
So, if we're gonna do that -- now maybe the company is. But, again, he's not the company.
THE WITNESS: Oh, personally, yeah, no, I would---
THE COURT: (Indiscernible) would be better, correct?
MR. GALVIN: Yeah.
THE COURT: Okay.
Q All right.
A I'm sorry. When you said---
Q You got to, you got to watch the glass.
A Yeah. When you said---

Q The plexiglass.
A When you said you, I just took that as an umbrella for---
Q Yes.
A ---Hospitality Advisors Group.
Q I think you and I were having the same conversation. So --.
A All right.
THE COURT: Okay. Go ahead.
Q Hospitality Advisors Group was gonna get six percent of the sale for the Old Town Bluffton Inn?
A That was my understanding.
Q Okay. Under that contract, you have to do certain things to get a business to sell, correct?
A Yes.
Q And one of the things that potential buyers look for is what the profitability of the company is, correct?
A Yes, I created the, the proforma and you could then capitalize the, the bottom line profit as a value of the, of the Inn. That was, that was a first step.
Q Okay. So, the proforma was, was prepared for the potential buyers of the property?
A Well, it was prepared for the edification of, of Mr. Leary so he would, he would know where we were heading on making a, a proposal on the, the, the, the, the, the price

of the sale. But, as I mentioned to you, there was a lot of detail that goes into the proforma, staffing plans, and so forth.

So, when he asked us to assist in getting the, the property open, we would have to go back and, and use a lot of that detail to make the decisions necessary to, to get the, the Inn opened.

Q How about if you were just to sell the property, that was the only thing you were hired to do, you would have to prepare a proforma, correct?

A That would be part of the process, yes.

Q So, that proforma was needed?

A I'm sorry?

Q I'll keep on moving on. I'm sorry.

And the, the marketing, you would -- if you were gonna sell the property, would you be required to perform certain marketing work for the Inn?

A Yeah, we would, we would create the, the, the marketing collateral that would include a full description of, of the Inn with a focus on its quality level. But also we would include information on the market, why would people be coming to Bluffton, South Carolina, where they would be coming from, what would be the, the primary season or seasons, you know, what are the, what are the buy decisions and what's the profile of the, of the visitor so that the

prospective purchaser knew what they were getting into.
Q And, and am I correct that on a few occasions you tried to pick up the signed written I'll call it the management agreement with Mr. Leary?
A I tried to what?
I'm sorry.
Q Oh, I'm sorry.
I said that on a few occasions there was a management agreement for the management of the property, correct?
A As I said, almost from the outset Mr. Leary started to expand what he wanted our, our services to be, and it went from simply preparing, preparing documentation that we could use to solicit a buyer to actually getting the, the Inn completed and opened and then operating the, the Inn until a general manager was appointed, and then, thereafter, providing oversight management.
Q But with regard to the management, are you familiar with the written contract that was, was sent to Mr. Leary?
A No, I understand that one was done but that, that was handled by Mr. Zoul, not by me.
Q Okay. But you did try to go there and pick it up?
A I tried to pick up an executed copy of the agreement---
Q Right.
A ---several times and I was told that he was looking at it, he was having his attorney review it, he was dealing

with Mr. Zoul on it, and I, I generally kept myself out of that area.

Q Well you never received a written --

A I did not.

Q -- signed copy?

Is that correct?

With regard to the action list---

A But he did -- all along he said, you know, please keep, keep working, keep getting things done, and I'll, I'll take care of the contract with Mr. Zoul. So, I kept at it.

Q But with regards to the -- with regard to the work, would a -- Mr. Leary was gonna have to -- he was gonna have to pay your management fee?

A He---

Q Is that correct?

A My understanding, yes.

Q And then, on top of that, he was gonna have to pay an innkeeper, correct?

A That's correct.

Q Okay. And---

A Well, Mr. Leary said that, you know, he did not have a background in, in hospitality. He didn't know the right questions to ask and didn't know if he was getting the right answers. So, even though we were gonna help him find a, a general manager, he stole -- he said he still wanted us to

be involved to handle an oversight -- in an oversight capacity.

Q Right.

But with regard to the written agreement, he, he wouldn't of known the terms of the written agreement until it was provided to him, correct?

A Until it was provided to him, I would imagine so, yeah.

Q You didn't have any discussions that you're gonna pay me X or Y --

A Yeah.

Q -- things like -- let me rephrase that.

You didn't have any discussions with Mr. Leary that he's gonna pay X dollars a month to Hospitality Advisors Group?

A No, sir, I had, I had no discussion with Mr. Leary that pertained to any of the engagement terms. That was strictly between Mr. Leary and Mr. Zoul.

THE COURT: Mr. Brooks, I need to ask you a quick question just so I understand.

The two proformas that are Exhibits 1 and 2, which one came first, just the general operating proforma or was it the best case scenario?

THE WITNESS: The first one was the conservative --

THE COURT: Okay.

THE WITNESS: -- proforma.

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: And it's specifically conservative because the, the property's just opening --

THE COURT: Right.

THE WITNESS: -- hasn't proven itself. The market hasn't proven itself. So, it tends to be conservative and then Mr. Leary asked if I would create a best case scenario.

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: And that's the second proforma. As I mentioned, the major changes there is in the assumption of annual occupancy and the assumption of average rate.

THE COURT: My question to you though is, is, in the management agreement that was proposed and never signed between Leary and HAG, one of the items says is that, prior to opening, HAG will provide a revised proforma and operating and capital budget to the other for approval.

Did you do that?

THE WITNESS: What was the second point?

THE COURT: Provide a revised proforma and operating and capital budget.

So, did you do a revised proforma?

THE WITNESS: That's No. 2.

THE COURT: That is the No. 2.

Okay. Okay.

Q And you would agree that the date on -- I'm sorry.

THE COURT: That's all right.

Q You would agree the ext -- the date on Exhibit 1 was September 28th, 2018?

A My understanding, yes. It's, it's dated in the upper right-hand corner.

Q The date on the second was October 2nd, 2018?

A Right.

Q Is that correct?

And you would agree that the date of the executed contract for the sale was September 18th, 2018?

A That's my recollection.

Q Okay. And would you agree that the -- and if you don't know this, you can answer, but that the date of the proposed contract for the management was set October 8th, 2018?

A I don't, I don't know that.

Q But you would agree, if I'm correct, October 8th would be after October 2nd, correct?

A It is, yes.

Q Okay.

A Unless they changed the rules.

THE COURT: I think the consulting services agreement was signed on the 7th---

MR. GALVIN: Oh, I'm sorry.

THE WITNESS: Okay.

THE COURT: ---2018. It says 17th -- in September of

2018.

MR. GALVIN: I'm lucky I know my math this year.

THE COURT: Okay.

MR. GALVIN: All right.

And you don't have any written time record, correct, where you kept track of your time on this project?

A No, my, my records, if you will, would be email exchange -- dates of email exchanges and, and that type of thing that would allow me to pretty much reconstruct what my steps were, and the time taken, and when I did it.

Q And the only thing that Mr. Borden submitted to the Court for your emails was in Exhibits 1 through 9?

A That could of been, yeah.

Q And you've -- you stated that you spent a hundred hours of work?

A That's, that's just an estimate. I, I know that, you know, from, I guess it was the 5th of September through the 25th of October, there was a ramp up time at the, at the beginning but then I got pretty involved. As I said, I would go to the -- I would go to Bluffton, you know, once, some cases twice a week, and not counting for travel time. It was my estimate that there was probably 80 to 100 hours where I actually focused on the work and produced product.

Q And that product, that was for the -- a lot of that work was done for the potential sale of the property,

correct?

A No, actually the, the -- well, the initial work was the creation of the proforma, which I would of done, you know, for any scope of, of engagement. That -- that's really a, a first step cause you get your arms around what the, what the business is gonna be.

But a lot of the, a lot of the work, subsequent to creating the, the proforma, as I said, was creating the action list and what, what would -- what needed to happen to get the, the Inn opened. There were just initially 35-points identified and then I had to get to it and undertake those 35-points.

Q So, with regard to the action list you talk about, did you happen to have a standard action list that you used for, for the --?

A Well, I've done many, many, many development projects and it, it, it depends on at what point in the development process are you engaged, you know, what are you focusing on. The action list, you know, for the last couple months of, of the development process would, would be a lot different then the day before the, the ground was broken.

So, there's a general standard of what you look for. But each list tends to be unique to the product and the point in the development process.

Does that answer your question?

Q Well, my question is so you're, you're stating that you did every one of these items on the action list?
A I, I didn't, didn't get to them. I, I started but, you know, my, my effort was canceled on the, the 25th of November. So not everything had been accomplished. Things had been put in process but not finished.
Q But do you have a list of what you, what you completed?
A Oh, I'd have to go through the list and make notes but --.
Q But have you presented it?
A But, like I said, I initiated a lot of things, had meetings with vendors so that we could get the points done. But everything was pretty much in process when our engagement was, was terminated at the end of October. So, a few points, a few things, things on the action list had actually been accomplished but most were still in process.
Q Could you tell me what you accomplished on this action list?
A I'd have to look at it.
Q Okay. I can hand this to you if you want.
If you will take a look at that for me?
Do you have those exhibits in front of you?
THE COURT: Actually I'm gonna give it right back to him. Here they are.
MR. GALVIN: I apologize. I, I have marks on that but

--.

THE COURT: Okay. Here.

Are you referring to No. 4 or No. 5?

MR. GALVIN: Correct, Your Honor.

THE COURT: Which one?

THE WITNESS: They're, they're the same thing. They're just marked differently.

THE COURT: And this one have notes. So I gave you both of them. I gave you four and five.

THE WITNESS: Okay.

Q Are you more comfortable working off the one with your notes?

Let me pass this up to you---

THE COURT: Thank you.

MR. GALVIN: ---so we can at least all have an idea---

THE COURT: Thank you.

MR. GALVIN: ---of what we're talking about.

A Okay. Of, of the items on the, the action list, things that were I think actually completed, we had ordered and TVs were being installed. Mattresses were delivered and installed. The Item Number 1.11, we'd specified the terry, the linens, and the amenities with our housekeeping contractor. That had been done. I believe we had purchased the pillows.

The stack washer and dryers had been ordered and

installed. Coffee machine had been installed. It was a fairly sophisticated piece of equipment. Microwave had been installed. Most of the kitchen equipment had been installed. The bar equipment was in the process of being installed. Luggage carts had been ordered.

On the last category, front office, the Wifi contract had been initiated. The booking engine, which that's the -- that's the software app that sits on the website that allows people to make their reservations, that had been purchased and installed. Uniforms I believe had been specified.

So, you know, of the 35 items, probably 10 or 12 had been totally completed and the rest were in process.

Q Is it your testimony today that you, like for the TVs, did you order those TVs yourself?

A As I mentioned earlier, a lot of the, a lot of these items had actually first been initiated by Mr. Leary's daughter, Daniella, and I think in the, in the case of the TVs, they had specified or decided on the brand and the vendor but they hadn't ordered it. And so I took over and made, made that off -- made that order and they were being installed when, when I was terminated.

Q Okay. And the mattresses?

A Pardon me?

Q Oh, I'm sorry.

The mattresses, did you order the mattresses?

A The -- what number is that?

Oh, I see, 1.5.

Q 1.5.

A In all fairness, I, I can't remember if I actually placed the order. I, I got the impression that they had been ordered but not yet delivered. And so I worked with the vendor to make sure they, they were and the, the guest rooms were ready to receive the mattresses. The case goods, the FF&E, furniture fixtures, had pretty much been a hundred percent in -- installed. So, the, the bedframes and all were there to receive the mattresses and, and we oversaw that.

Q Okay. And did you order or pick out the linens and amenities?

A Yes, and, and they had, they being Daniella, the daughter of Mr. Leary, and, and her husband, Vince, they had negotiated a contract with a housekeeping contractor based on Hilton Head where you -- where, as you know, they have a lot of hotels and resorts. And so this was a very robust contractor that provided not only the, the manpower for, for housekeeping but also would provide the, the terry and the linens and some of the guest room amenities, consumables likes soaps and so forth, as part of their contract.

And I'd had a, a, a meeting with their representative and we -- they, they brought several samples of different

quality levels and we identified -- I identified which one would be most appropriate to go with the, with the Inn and, and that would become part of their contract going forward.

That answer your question?

Q Yeah, thank you.

And, the pillows, did you pick those out as well and purchase that?

A I -- yeah, I can recall looking at several different samples and making those -- a decision.

Q What about the washers and dryers?

A I'm sorry?

Q Washers and dryers.

A I believe they had been specified but not ordered or installed, and the idea was that there would be a stack washer and dryer on each of the guest room floors, and I think, I think they had been specified but not ordered and I did that.

Q And coffee machine, 4.1?

A Yeah, the coffee machine had been specified but not ordered. So, I did that and I was there for the installation.

Q How about the microwave?

A Same thing.

Q And the kitchen equipment?

A I'm sorry?

Q The kitchen equipment.
A The what equipment?
Q The kitchen equipment. Kitchen equipment.
A Kitchen equipment.
Q 5.1.
A Yeah, yeah.
Q I think the --.
A Again, most of the items had been specified by Vince and Daniella Harrison, and -- but not -- the final order hadn't been executed and, and they weren't installed. And so I was overseeing that as well.
Q Okay. What about 6.1?
A Sorry?
Q 6.1?
A Yeah.
Q (Indiscernible).
A Same -- yeah, almost the same thing as, as kitchen. In fact, it could of well of been the same vendor for equipment.
Q So those were already picked out?
A Yes. And the, the kitchen area had been specifically designed and, and the case, case work had been designed and built to accommodate the equipment that had been specified.
Q Okay. Luggage carts, 7.5?
A Sorry.

Q 7.5, the luggage cart.
A I, I issued -- initiated that order and, in fact, I remember specifying that they should be bronze because that would go best with the interior design.
Q Okay. And 8.1, the Wifi purchase and install?
A That was interesting. That had -- again, that had been specified. The ven -- the vendor had been identified but the final purchase order had not been initiated and I did that, and they were in the process of completing the installation.

It was gonna be a fairly sophisticated system for a 14 room inn, and one thing I was working on with them is that the Inn had not been wired for guest room telephones, and I imagine that the rationale was well, everybody travels with a -- their own little cell phone and they don't need a, a telephone in their room.

But when you stop and think about it, if you're staying in a hotel or an inn and you need to call down to the front desk, how do you reach the front desk?

Do you dial an outside number and, and, you know, and call them?

So, I was negotiating with the Wifi company because they had a Wifi based telephone system. So, without any additional wiring, it looked like we were gonna be able to, to have individual phones in the guest rooms.

Q Okay. The booking engine, had the---
A Yeah, that -- the, the, the company had been specified already. It had a lot of experience with Q4Launch and the booking engine, as I mentioned earlier, is really a, a software amp -- application that goes on the, on the website for the, for the property so that people desiring to make reservations can do so electronically and that, that is called a booking engine.
Q And 8.4, the uniforms?
A I don't think, I don't think we'd gotten to that point yet. The, the housekeeping company that I mentioned provided uniforms for their -- the, the people that would be working at the Inn, and I don't think a decision had been made as to whether there would be a specific uniform for a, a desk clerk or whether it would be their own personal wear but, you know, specified as to generally what the look should be. So, that was, that was still outstanding.
Q And what's this list -- this list was, was dated 10/5/2018?
A Well, it's the same list, and---
Q I got, I got---
A ---and some notations made on it. And, as I said, that's not my, that's not my handwriting. So I can't tell you.
Q Okay. Can you tell me, was this list brought to the

meeting for 10/7?

Is that when it was prepared?

A I'm sorry?

Q You, you had an on site meeting with Mr. Leary on October 7th, is that correct, with Mr. Zoul?

A Oh, with Mr. Zoul there, yes. Yes. He made a, he made a trip to, to Bluffton and Old Town Bluffton Inn to become personally aware of the, the status of getting the room -- the, the Inn ready for, for opening. So the, the three of us sat down and, and we took that opportunity to go over the, the action list to, to get Mr. Zoul up to speed and, and, you know, see where we were on the action list.

Q I gave the judge one other copy. So that I might be incorrect but was this presented to Mr.---

A Was this what?

Q I don't know if there's an email or anything. So I'm not trying to mislead anybody.

Was this pre -- action list presented to Mr. Leary at the 10/7 meeting, the October 7th meeting?

A Yes, I would imagine it was presented to him as soon as I created it because he and I went through the Inn together in advance of my making the list. We, we went through the guest rooms. We looked in the back of the house.

So, it was a, it was kind of a, a joint tour of the, the property because, as, as I saw things in, incomplete,

I'd have to ask Mr. Leary if he knew the status and quite often he said that that was something his daughter was handling, and there was some, some documentation that he would forward to me. So, we were kind of hand in hand on that.

THE COURT: Let me ask you a question.

Did you work with Daniella and Vincent Harrison?

THE WITNESS: Did I what?

THE COURT: Did you work with Daniella and Vincent Harrison, the daughter I guess and son-in-law?

THE WITNESS: I -- yes, Your Honor. I, I dealt with them almost exclusively in the first engagement when we were trying to get the two parking spaces.

THE COURT: Okay.

THE WITNESS: Okay. And they, they were involved in a day -- day-to-day basis. I think Daniella had a 49 percent interest in the---

THE COURT: Right.

THE WITNESS: ---Inn and Mr. Leary had a 51 percent.

THE COURT: But when you started first with the consulting agreement, which was the September 17th of 2018 agreement, at that point when you started from there and then it looks, looks like then was proposed, you know, the, the proposed management and operation agreement, were you dealing with them then?

THE WITNESS: No, because---

THE COURT: So, September through October, were you dealing with them or Mr. Leary directly?

THE WITNESS: No.

THE COURT: Do you understand?

THE WITNESS: No, very, very good question.

When Mr. Leary reached out to us in September to, to find a buyer and then got us involved in other things, at the very beginning he said that he had parted company with his daughter and, and his son-in-law, and that it was -- he was totally in charge and they weren't involved at all and I never saw them again.

THE COURT: Okay. And you didn't have any conversations with them by phone---

THE WITNESS: No.

THE COURT: ---after September?

THE WITNESS: No.

THE COURT: Okay.

THE WITNESS: No, no. Now they -- I understand they, they eventually got control of the Inn. I don't know how all that worked out but it was months later. I got an email and they -- Mr. Harrison asked me a, a question on how to determine pricing at the bar, and, you know, I wasn't in -- I wasn't providing information for, for compensation. I just gave him a two sentence answer and sent it back to him.

That's been the only interchange since going back to May of '18.

THE COURT: Okay. Thank you.

THE WITNESS: Does that answer your question?

THE COURT: Yes, it does.

THE WITNESS: Okay.

Q And with, with regard to the Bluffton, you recommended some, some service providers to the Old Town Bluffton Inn that -- yes or no. I'm just gonna go through them.

A Yeah, I, I think the answer is no, I did not recommend any service providers. A lot of that had been put in process by the, by the daughter and son-in-law, and they'd, they'd, they'd done some good work. And so I picked up on that and just made sure that we could follow through on having those services provided. But I, I don't recall recommending any service provider that hadn't already been identified.

Q And with regard to the innkeeper that, that Old Town Bluffton Inn hired afterwards, Mr. Leary found that innkeeper, correct?

A As I -- yes, the answer -- the specific answer to your question is yes. Mr. Zoul and I had---

THE COURT: He can explain his answer all he wants. Go ahead.

A We had begin our -- began our -- a search for an

experienced general manager. Mr. Zoul had been in the market, in that market place himself at Palmetto Bluff. I, I knew the market place pretty well from Savannah to Charleston.

So, we were, we were looking at candidates and -- but I understand that there was a lady named Margaret Johnson who had been "a friend of the family" and I don't know exactly what that meant. But had been known to Mr. Leary for quite some time, and without any consultation with Mr. Zoul or myself, he reached out to her and he hired her.

MR. GALVIN: Beg, beg the Court's indulgence.

THE COURT: All right.

(Pause.)

MR. GALVIN: That's all the questions I have, Your Honor. Thank you.

THE COURT: Okay. Any redirect for him?

MR. BORDEN: I have a few more, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. BORDEN:

Q Mr. Brooks, when going through the action list and the activities that were gonna take place there, was it your knowledge or your understanding that you were likely to be terminated at the end -- at or near the end of October, 2018, and your work would be analyzed up to that time -- up

to that cutoff time?

A No, sir, that came as a total surprise. As, as we had said earlier in testimony, the opening date for the Inn had been targeted for Thanksgiving, which was the 25th of November, and then, as I also said, Mr. Leary wanted us to provide oversight to the Inn management even after opening. So, there was no expectation that we would be cut short as we were.

MR. BORDEN: That's all I have, Your Honor.

THE COURT: Mr. Brooks, is there a -- was there a point where you feel like you went from consulting services agreement to providing operations management?

Is there some specific, in your head, change based on what you do?

THE WITNESS: We were on the cusp of that, and as I mentioned, Mr. Zoul and I were sourcing and, and, in some cases, interviewing management candidates.

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: If we had gotten to the point where one of those individuals had been hired, then our, our focus would of shifted more from simply getting the Inn opened---

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: ---to operational issues and, and making sure that the Inn was gonna be managed correctly and so forth.

THE COURT: Okay.

THE WITNESS: So we're really -- we were really on the cusp of that.

THE COURT: Okay.

THE WITNESS: Does that answer your question?

THE COURT: I guess so. I'm kind of looking for roughly when, when that, that occurred based on the documentation. It might be a better question for Mr. Zoul but -- and, and the reason why I asked this is one of the things you, you just testified to was that you would of done a proforma regardless. You would of done it, you know---

THE WITNESS: That's---

THE COURT: ---you know---

THE WITNESS: That's really step one.

THE COURT: Right.

THE WITNESS: That's how you get your arms around the, the project.

THE COURT: Yes.

THE WITNESS: You know, another thing that needed to be initiated but we hadn't quite gotten to that point yet---

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: ---was the marketing of the---

THE COURT: Right.

THE WITNESS: ---Inn, advertising of the Inn --

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: -- seeing if we could attract notable travel writers---

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: ---to come to, to Bluffton to say good things about not just the Inn but the setting, the historic district, and all the amenities that went with it---

THE COURT: Right.

THE WITNESS: ---and create a rationale for people to want to go there.

THE COURT: All right. Anything further from this witness?

MR. GALVIN: No, Your Honor. Thank you.

THE COURT: Any objection to Mr. Brooks being excused from anyone?

MR. BORDEN: None, Your Honor.

THE COURT: All right. Okay. He's under subpoena or not?

Just -- no.

Okay. You're excused, sir. Thank you.

THE WITNESS: Thank you very much.

THE COURT: May I have those two exhibits, if you don't mind, back and what I'm gonna do is we're gonna take just five minutes and I mean a real five minutes. Not a -- what we call the (indiscernible) five minutes. A real five minute break and we'll be back. Please refresh

yourselves---

MR. GALVIN: Thank you.

THE COURT: ---and --.

(WHEREUPON, a short recess was taken at this time.)

MR. BORDEN: I, I am ready with my next witness, Your Honor. Hopefully go quickly.

Your Honor, I'd like to call Mr. John Sulka.

THE COURT: Come forward, Mr. Sulka.

THE CLERK: Raise your right-hand.

JOHN SULKA, being first duly sworn, testified as follows:

THE CLERK: State and spell your name please.

THE WITNESS: John Sulka. J-O-H-N. S-U-L-K-A.

THE COURT: Come around, sir. He does not need to repeat his name. You can sit down.

DIRECT EXAMINATION

BY MR. BORDEN:

Q Mr. Sulka, the, the name that you just gave, that's your correct full name for purposes of the Court record?

A It is.

Q Where do you live?

A In Bluffton, South Carolina.

Q How long have you lived there?

A Twenty-eight years.

Q Are you engaged in a trade or business for

compensation?
A I am.
Q And what is that business?
A I'm a commercial lender.
Q I wish to ask you specifically about certain activities just to -- if you could look back twenty -- in the September to October, 2018 time period.
Where were you employed in September or October time -- the timeframe of 2018?
A I was employed with Coastal States Bank.
Q At that time did you have any familiarity with the opening of or the efforts to open Old Town Bluffton Inn?
A Yes, I was the loan officer that originated the loan for the bank, the construction development loan.
Q And so your, your company at that time, Coastals State Bank, had the relationship with the owner of the Inn of -- and have the construction loan?
A Correct.
Q Was your -- was, was your office at, at Coastal States Bank near downtown Bluffton?
A The Coastal States branch I worked at is at 7 Thurmond Way, which is approximately six blocks from the four way stop where the Old Town Bluffton Inn is located. So yes.
Q Did you ever encounter Mr. Lawrence Leary when you were out in Bluffton during that September/October, 2018 period?

A I did.
Q Did you speak with him?
A I spoke with him many times. I mean the Inn was nearing completion. As the loan officer, I periodically popped in to check progress.
Q Okay. And as far as the progress, did you get a chance to meet anyone else that's presently in the courtroom to discuss the progress of, of the Inn at around that time period?
A Yeah, met Mr. Brooks.
Q Okay. And you and Mr. Brooks spoke.
What, what was, what was the subject that, that, that you-all were covering?
A Just the preopening operations. When we arrived, I obtained -- I brought with me our branch manager, Tom -- Lotoya Salters, came down just to meet to see when the opening date was and he was in a meeting with Hospitality Associates who we all know as a vendor for maid services. And we sat down and chatted for a period of time just to see what they were doing.
Q Did you just pretty much have one physical encounter, one physical meeting with Mr. Brooks?
A Correct.
Q What did you understand -- based upon your communicating with Mr. Leary, what did you understand

Mr. Brooks' relationship to be with the Old Town Bluffton Inn?

A In communicating with Mr. Leary?

Q When you spoke with Mr. Leary---

A I, I---

Q ---did, did he direct you to---

A That he was -- he was talking to a consultant to help him get from his current status to the opening of the Inn.

Q Okay. To the best of your recollection, recollection, excuse me, did you and Mr. Brooks ever interact concerning Old Town Bluffton Inn's proforma?

A We spoke about it and I don't know whether he gave me a copy physically at the time or whether he emailed me. But I did eventually receive one.

Q And your -- when you had your encounter or your face-to-face encounter with Mr. Brooks, it was where?

A It was at the Old Town Bluffton Inn.

MR. BORDEN: Those are the only questions I have for Mr. Sulka.

THE COURT: Thank you, sir.

Any cross?

CROSS-EXAMINATION

BY MR. GALVIN:

Q Mr. Sulka, do you know what date that was?

A I signed a affidavit stating it was in -- some time in

October of 2018. But I can't tell you the exact date or time. I know it was a morning when --.

Q And did you have any dealings with Vince and Danielle Harrison?

A I did.

Q Okay. Tell me about those meetings.

A Well, they were -- well, Danielle was a partner and a guarantor on the note for the Old Town Bluffton Inn.

THE COURT: And she's the daughter of Larry Leary. Is that correct?

THE WITNESS: Yes.

THE COURT: She's the daughter.

Okay.

MR. GALVIN: That -- that's all the questions I have, Your Honor.

THE COURT: Anything else, Mr. Borden?

MR. BORDEN: No redirect.

THE COURT: Okay. Any objection to Mr. Sulka being excused from anyone?

MR. GALVIN: Please get back to work.

THE COURT: You're excused, sir. Thank you.

THE WITNESS: Thank you. I got people needing money.

THE COURT: Call your next witness, Mr. Borden.

MR. BORDEN: Thank you.

The next witness will be Zachary Zoul, Your Honor.

THE COURT: Come forward, sir.

THE CLERK: Raise your right-hand.

ZACHARY ZOUL, being first duly sworn, testified as follows:

THE CLERK: And will you please state your full name and spell it please?

THE WITNESS: Zachary Z. Zoul. Z-A-C-H-A-R-Y, Z, then Z-O-U-L.

THE COURT: All right, sir. Come around.

DIRECT EXAMINATION

BY MR. BORDEN:

Q Mr. Zoul, is the name that you just stated for the Court, is that your correct name of record?

A It is.

Q Is there, is there any other name that has some variation of Zoul that has shown up, to your knowledge, on Internet or anything of that nature?

A Only with a Senior behind it.

Q Oh, okay. Where do you live?

A Grand Island, Nebraska.

Q Okay. How long have you lived there?

A Roughly 11 years.

Q Could you please provide for the Court a brief summary of your educational background?

A I have a Bachelor of Arts Degree in Business and Public

Administration from Graves University. I have a planning degree -- a Masters of Arts Degree in Planning from Minnesota State University.

Q Are you engaged in a trade or business for compensation?

A Yes.

Q What is that business?

A I'm the managing member of two businesses, Zoul Hospitality, LLC doing business as Hospitality Advisors Group, and Zoul Properties, LLC involved in property management.

Q Would, would it be -- would it be fair to -- for me to say that the different companies are real estate -- are each real estate related but in different ways?

A Hospitality -- Hospitality Advisors Group provides hotel and resort consulting and, and, and generally that would not relate particularly to real estate other than consulting with development projects.

Q If -- the question that has, that has come up before, what is the scope of work that Hospitality Advisors Group actually performs?

What, what do you do?

What, what is -- what is entailed in that business?

A We, we provide consulting services almost entirely to independent luxury boutique or full service hotels, resorts,

and inns in, in many cases in the preopening or post-opening modes involved in developing business plans, marketing studies, proformas, and management consulting services associated with the operation of generally small independent boutique hotels, resorts, and inns.

Q Okay. Well, how long have you operated Hospitality Advisors Group?

A I formed that company in 2009.

Q And am I correct that it is a Nebraska limited liability company?

A It is.

Q Are you a member of that company?

A Yes.

Q Are you the managing member?

A I am.

Q And prior to working with or in Hospitality Advisors Group, what did you do for a living?

A I was in the hotel business beginning in 1997 when I assumed the position of general manager for the Greyfield Inn on Cumberland Island, Georgia on the coast of Georgia. Greyfield is a 17 room luxury boutique inn. I managed that property on a full-time basis for six and a half years.

Thereafter I became the general manager of the Hampton Island Preserve on the coast of Georgia. Following that, I took a position with Palmetto Bluff in Bluffton where I

served as operations manager for the development company, which included responsibility for the hotel and I served in that capacity for three and a half years.

Following that I assumed the position of president and CEO of the Cote Family Companies headquartered in Minnesota and that company owns and operates the Grand View Lodge in Minnesota, the Tanque Verde Ranch in Tucson, Arizona, and a number of other small hotel and ancillary facilities, and I, I served in that position until -- in some capacity until the end of 2010, and, and then I started Hospitality Advisors Group full-time at that point.

Q Going back to your original -- I believe you referenced the Greyfield Inn as, as, as your initial -- how, how long have you been in the hospitality business taking all of those different jobs into account?

A Well, from 1997 to the present. Roughly 24, 24 years.

Q Do you know what a boutique hotel or inn is?

A I do.

Q And, if so, how do you define it?

A A boutique inn, as, as we often describe it, would be the property that provides a distinctive level of superb hospitality service that is a cut above a, a conventional hotel or resort. It often times would be characterized as a four diamond or five diamond property.

Q I know that questions have been raised previously.

Are any of the, any of the establishments for which -- that employed you from the Greyfield Inn forward, did, did -- do any of them fall into the, the class of a boutique hotel as you defined it?

A Yes.

Q Which ones?

A Well, the Greyfield Inn would, would certainly be that and Palmetto Bluff would as well. Some of the others were a bit larger scale. They wouldn't be a boutique but they would be considered luxury.

Q Have you ever met or spoken with defendant, Lawrence Leary?

A I have.

Q When do you recall first communicating with Mr. Leary?

A The first communication I had with Mr. Leary -- well, let me -- in May or June of 2018 I, I believe I had some sort of a, a -- written correspondents with Mr. Leary cause he had sent a check for payment for our initial engagement but he had neglected to sign it. So, that was a rather superficial communication. I don't think I talked to him, at least I don't recall that, but I, I---

THE COURT: Forgot to sign the letter or the check?

THE WITNESS: The check was unsigned.

So I, I, I believe I sent a letter to him returning the check, and that was the sum total of my communication until

September 5th, and, on September 5th, Mr. Leary called and expressed interest in engaging the services of Hospitality Advisors Group to assist with the further development of the, the Inn.

Q Are you familiar with any tasks performed by Hospitality Advisors Group relating to the Old Town Bluffton Inn, and, if, if so, could you tell us chronologically how, how that occurred?

A Initially, in my September 5th call and subsequent communications with Mr. Leary, most of which were by telephone, he expressed interest in retaining our services to help identify a prospective buyer, a number of prospective buyers, given his interest at the time in trying to sell the property. I entered into an agreement with Mr. Leary to that end dated September 18th.

On September 20th Mr. Leary called me and said essentially we're gonna put that aside. He wanted to shift gears and, and proceed entirely with a focus on opening the Inn because he concluded that the Inn would be more valuable as an up and running enterprise than as a completed building with -- without a business structure in place. So, almost immediately that effort to try to attract or find a buyer was aborted and we moved entirely to providing consulting services associated with preopening functions because Mr. Leary, I knew, and -- had no experience in operating an inn

or a hotel or any sort of, of, of hospitality function.

It was presented to me that he was a construction guy and, and he wanted expertise to help him bring the Inn into an operational mode and we commenced on, on that path very aggressively beginning about the 20th of September.

Q Okay. So, September 5th you indicated you spoke -- that you and he spoke. He contacted you.

Is there any significance to the date Thanksgiving 2018?

A Yes.

Q What was the significance of that?

A As we started our initial conversations in late September Mr. Leary gave us a deadline. He wanted to open the Inn by Thanksgiving, which was a very aggressive schedule to complete all the preopening measures that needed to be done.

Q Did, did, did Mr. Leary indicate to you a -- an, an insistence on having a detailed written and fully executed agreement in place before you engaged in any of the activities that would culminate on Thanksgiving?

A No, we had worked there previously with the initial engagement on a verbal agreement. That, that was never codified in writing with the initial engagement. He didn't want to take the time to stop. He wanted us to move full speed ahead to meet this Thanksgiving deadline, and, and,

and we certainly were supportive of the effort to open by Thanksgiving because we understood that high season for a property such as this was going to be the holiday season, Thanksgiving, Christmas, New Year's, and, and the winter trade to the Lowcountry.

So, we just basically dropped everything else and commit ourself entirely to that task.

Q Did you literally have any other jobs on, on the company plate when you escalated your work for Mr. Leary and Old Town Bluffton Inn?

A We did and we took them off the plate.

Q Okay. And the purpose for that was?

A Well, we understood that, you know, Mr. Leary told us often -- over and over, more times than I can count, that you guys, and that was his vernacular, you guys were going to do this and do that, you guys are gonna run this Inn, you guys are gonna get it opened. He relied on us to, to do everything in terms of all of the moving parts associated with getting it operational.

He was the construction guy, and, and in anticipation of a very sizable long term contract, we, we were willing to respond to his needs to immediately start providing preopening services, consulting services associated with -- not the management. The management starts when the Inn opens up. But preopening precedes that, and, and our

efforts were all associated with the preopening consulting function.

Q Did, did you, at some time, inform Mr. Leary or anyone else at the managerial level of the Old Town Bluffton Inn that you had no expectation of being paid for preopening work that you were being asked to do?

A No.

MR. BORDEN: Your Honor, I'd like to share with you a document.

I, I think you have them all.

MR. GALVIN: I think, I think I do. I think you're missing one.

MR. BORDEN: There, there were copies.

MR. GALVIN: Okay.

THE COURT: Let me ask you.

Is there any objection to any of these being introduced into evidence, Mr. Galvin?

MR. GALVIN: I -- tell me what you're trying to introduce.

Are you trying to do 10 through --?

MR. BORDEN: I'm sorry?

MR. GALVIN: Are you trying to introduce 10 through the end or -- one through nine's in, right?

THE COURT: Pardon -- yes.

MR. GALVIN: Yeah.

MR. BORDEN: Your Honor, I'm -- the one on the end, no, I'm not going to---

MR. GALVIN: All right. That one's out.

MR. BORDEN: ---and---

MR. GALVIN: Okay.

THE COURT: So what numbers, 10 through what?

MR. BORDEN: All right. And, in fact, I -- let -- Mr. Salazar, I, I won't, I won't -- probably won't be putting him in.

MR. GALVIN: Okay. So 10 through 23?

MR. BORDEN: Yeah.

MR. GALVIN: Okay.

THE COURT: Any objections to 10 through 23?

MR. GALVIN: Give me just one second --

THE COURT: Okay.

MR. GALVIN: -- and we can continue on. I don't think I'll have any objections.

(Pause.)

MR. GALVIN: I think you -- No. 20 I don't. It just might be cut off. He may testify that that went to him but I just don't know who the email was sent to. No objections to any other of them --

THE COURT: All right.

MR. GALVIN: -- and he may lay the foundation.

MR. BORDEN: That -- for the Court, I'll hand these up.

On No. 20, that's the best I've ever had.

MR. GALVIN: Okay.

THE COURT: Okay.

MR. BORDEN: In, in other words, that---

MR. GALVIN: I got you.

MR. BORDEN: ---it's a little bit closer up, the email that I had.

THE COURT: Okay.

MR. GALVIN: Oh.

THE COURT: All right. So 10 through 23 are in without objection. Obviously he's gonna lay the foundation but you don't object to them.

MR. GALVIN: And I'm not accusing --

THE COURT: Okay.

MR. GALVIN: -- Ward of cutting anything off or anything.

THE COURT: Okay.

MR. GALVIN: I want to make that clear. I think he got a bad copy.

(WHEREUPON, Plaintiff's Exhibit Nos. 10 through 23 were received into evidence at this time.)

Q This is identified as Exhibit 10 on here, Plaintiff's Exhibit 10.

Do you have any idea what that is?

A From looking at it, it's a online entry from the South

Carolina Secretary of State setting forth the corporate liability plan -- filing and agent registrations for Larry Leary.

Q Now, it was mentioned earlier that, for Hospitality Advisors Group, you were the person in charge of contracts.

A Yes.

Q Would, would -- is this the document you would of consulted in preparation for a contract?

A Yes.

Q That -- that's all I have on that one.

On this next one (indiscernible).

Looking at No. 11, can you identify what that document is?

A This is the operating agreement for the Old Town Bluffton Inn, LLC.

Q And who does it, who does it identify in this particular document identified as numbers, plans their ownership interest as opposed to distribution.

Does, does it give other percentages?

How many members are there?

A Two members.

Q Okay. What's -- two members and who are those members?

A Larry Leary and Danielle Harrison.

Q And does it reflect, at that time, an, an ownership percentage for either of them?

A It does.
Q And, and what are those percentages?
A Well, Larry Leary has 51 percent ownership. Danielle Harrison has 49 percent ownership.
Q All right. Would this document or this information be, be helpful to you in preparing a contract?
A Yes.
Q This is Plaintiff's 12.
Can you identify that?
A Well, this is a Quitclaim Deed for the Old Town Bluffton Inn.
Q Okay. And can you, for the Court, describe who the grantor and who the grantees are.
A The grantor is Landmark 2 Developers and the grantee is the Old Town Bluffton Inn, LLC.
Q Okay. Thank you.
All right. I'm going to let you look at three of these in respect to the -- in the interest of time, this is Exhibits 13, 14, and 15, Plaintiff's.
Can you please tell me what No. 13 is?
A Thirteen is a statement to the Old Town Bluffton Inn for the initial services associated with the -- working with the Town on the loading zone issue.
Q Okay. And, and as head of the -- as, as managing member of Hospitality Advisors Group, are we here today

suing over that agreement?
A No.
Q Okay. And now No. 14, what, what is No. 14?
A That's the---
Q Please identify it.
A That's the payment of the statement represented by Exhibit 13 and it's a copy of the check, the unsigned check.
Q I see.
And then No. 15, what is that?
A This is my letter to Mr. Leary which now refreshes my or confirms my recollection that I communicated to him by letter returning the check to him indicating it was unsigned.
Q Okay. Did you ever get that signed check?
A Yes.
Q About when did that occur --
A The letter stated---
Q -- if you know?
A After September 13th. That's all I know.
Q Okay. I'm just -- I'm going to present to you Exhibit 16 and Exhibit 17 together as they appear to be a, a communication with, with a -- and I'll pass this to you and ask if you could identify each of them separately.
A Exhibit 16 is an email from myself to Mr. Leary following up, following up on a meeting we had with

Mr. Brooks and setting forth a copy of an executed agreement, the initial agreement for the work associated with the sale of the Inn. And Exhibit 17 is the actual agreement.

Q And, and what's the name -- what -- is there a title to that agreement?

A It's headed with the title consulting services agreement.

Q And what is it dated?

A September 17th, 2018.

Q All right, sir. And with, with respect to this agreement, did, did this agreement, in and of itself, come into the -- did you draft the agreement --

A I did.

Q -- that, that, that is identified as Exhibit 17?

A Yes.

Q When you drafted the agreement, what -- was, was it your contemplation as the drafter that man -- the opening and management of the Old Town Bluffton Inn was being encompassed by the terms that the consulting services agreement set forth?

A No.

Q So, if I were to review Exhibit 17 closely, I, I, I would not find the description that, that you would consider acceptable for the work going forward at that place?

A That's correct.

THE COURT: The agreement says what it says.

THE WITNESS: Yeah.

THE COURT: Okay.

Q All right. This is Exhibit 18. Can you just identify it please?

A This is an email from me to Mr. Leary dated October 8th giving him an update on a number of issues relating to the preopening work including the interview process that had been commenced for the position of innkeeper, which was to be an employee of Hospitality Advisors Group, and it also conveys a draft agreement for his review and questions and comments.

Q All right. Exhibit 19, can you identify that and, and, if you, if you can, describe who drafted this and how it came into being?

A Exhibit 19 is a, a management agreement between Hospitality Advisors Group and Mr. Leary. I drafted the agreement and it speaks to the provision of management services associated with the long term operation of the Inn initially for a one year period with a, a cancellation clause with 60 days notice and -- by either party.

Q Did, did you ever sign that document?

A I, I don't -- I don't know. I, I know I forwarded it to Mr. Leary by email, and I, I don't believe it was

executed, but I, I can't speak to that with, with complete certainty.

Q Have you ever seen a, a copy of that document bearing the signature of Mr. Leary?

A No.

Q In, in shorthand version, can you describe what was said of -- or if it is that, that is, is called upon in that document?

A This agreement provided for Hospitality Advisors Group to provide two forms of services, the initial preopening services to get the Inn running and then the actual operation of the facility as a, as a management company. The, the Hospitality Advisors Group was going to be the operating entity.

So, in other words, all of the moving parts, including the employees, were going to be employees of Hospitality Advisors Group. This anticipated a structure whereby our personnel, myself and, and principally Mr. Brooks being that he was just 30 minutes away, would function in a general management capacity and we would have a second tier supervisory individual that we were gonna call the innkeeper that was more the hands-on person to check people into the Inn and do the on the ground day-to-day operations in conjunction with a, a staff that we would employ to serve the front desk and, and perform housekeeping and do a -- all

of the other functions associated with operating the Inn.

It was designed to be a turnkey, all encompassing service recognizing that Mr. Leary was not planning to run the Inn himself and he wanted professional expertise to, to do that. And, and in -- initially, initially that took the form of on the ground preopening services and then initially we would have guests and we would have staff and we'd be operating the Inn.

Q Were you told, when that was being prepared, that document, that, that, that the services that were contemplated in that document or were described -- that were to be described in that document were going to conclude on October 31 or somewhere thereabouts?

A No, they were to continue.

Q And does the fact -- does, does the circumstance of inclusion of a, a contract as of October 31 in any way affect how you would write that agreement and, and what you were promised as Hospitality Advisors Group?

MR. GALVIN: I'm just gonna object. I don't understand the question. That's gonna be hard to keep on track.

Q How, how would you write an agreement now and what, what---

MR. GALVIN: Object to speculation, Your Honor.

Q ---took place with the Old Town Bluffton Inn?

MR. GALVIN: Object to speculation, Your Honor.

THE COURT: It may -- it calls for speculation but go ahead and answer it.

A Well, I, I, I certainly would include some provisions that spoke to unilateral termination with respect to responsibility for expenses and, and fees. You know, we, we had proceeded, beginning in May of '18, based on an agreement that was verbal and we continued thereafter on that same basis and I haven't had a situation that -- with any of my previous clients where it was a breach of contract. So, certainly things are learned from, from that process but in, in -- perhaps in our hospitality business we're a little too hospitable.

Q Could you describe just very, very briefly everything that you recall yourself doing on, on behalf of Old Town Bluffton Inn?

A Well, I was -- Mr. Brooks and myself were the primary contacts with Mr. Leary, and, and, and because we were served with a interrogatory to address certain issues such as this, I provided records indicating that I had 26 phone conversations with Mr. Leary during the months of September and October and we furnished those records. So, I, I had extensive communication with Mr. Leary electronically and, and obviously the emails as well.

So, he and I were not in daily contact but certainly in regular contact given that there were 26 telephone

communications from September through October.

Mr. Brooks and I had 68 telephone communications during the months of September and October. Every work product that Mr. Brooks provided -- prepared he provided to me. Everything that was provided to Mr. Leary was provided to me. We were essentially approaching this function on not a full-time basis but it was certainly first and foremost in our workday because there were several factors that were quite pressing.

The -- first the schedule of, of opening the facility by November, and, secondarily, this is a project that we were very interested in because it was in our wheelhouse for one, and it was in our back-door so to speak as well.

I mean Eric being in, in Savannah, one of my associates being in Hilton Head, and me having worked in Bluffton for the better part of four years, so, you know, it was something we were actively working on and trying to be responsive to Mr. Leary, and, and every time he asked us to jump we asked how high and, and we worked hard to get the job done for him.

Q How many times in the September through October time period did you travel to Old Town Bluffton Inn?

A Just one time.

Q Why did -- why, why that trip?

A It was a meeting where I was gonna bring my two key

people with me together with Mr. Leary. So, Mike Alsko from Hilton Head and Mr. Brooks and myself spent the better part of a day with, with Mr. Leary including lunch and, and I call it kind of a, a macro planning and coordination meeting to just review the action plan that Mr. Brooks had been working on since, since late September.

I was also interviewing candidates for the innkeeper position. I interviewed three during my visit. I also made connections with other people trying to recruit not only an innkeeper but possibly front desk personnel.

We, we had a -- I actually made some calls upon people that I had known at Palmetto Bluff to kind of let them know that we were gonna be opening the Inn and trying to get word of mouth to generate some buzz as far as what we, we felt was a very exciting new lodging property for the region that was really without parallel in the immediate area on a smaller scale.

So, I think that was just kind of immersing me, in particular, along with everybody else in the work that had been going on and, and proceeding aggressively toward a November opening.

Q Okay. Do you have any idea just roughly of how many hours that you spent working for Old Town Bluffton Inn, LLC and for Mr. Lawrence Leary?

A Well, it had to be at least comparable to Mr. Brooks

and I think his estimate of 100 hours would be reflective of my work because I considered us to be dividing the, the, the work equally. He was the guy on the ground and, and I was dealing with it on a more of a macro level. But every act that he was taking was something that I was cognizant of. We were consulting on, on every step of the way. Like I said, I had 68 phone calls with Mr. Brooks, 26 with Mr. Leary, 15 with Mr. Alsko, and, and all of the communications with candidates for positions.

So, I, I think that would be a fair, if not an understated estimate, of my time not to mention that -- just traveling from Nebraska to here is a day long undertaking. And, and, and so you've got a couple days just doing that.

Q In the period from September 17th, 2018, until you were notified of termination of services for Old Town Bluffton Inn, were you informed by anyone, including Mr. Leary, of dissatisfactions with your company's product?

A No.

Q Do you know why Mr. Leary did not pay the company's fees?

A No.

Q And after, after, after you were -- after your company was terminated, what, excuse me, what, what steps did you take, if any, and what occurred immediately thereafter with the Old Town Bluffton Inn?

A Mr. Leary had called me to indicate he was not going to continue with our services, that he had engaged Margaret Johnson to be the general manager, and, and she was someone he had previously referred to me to set up an interview. I accepted Mr. Leary's decision because I -- you know, he obviously had the right to do whatever he wanted to do whether it was contrary to our agreement or not.

I, I did bring the subject up of our fees, how he expected to take care of our time and expenses, and his response was to send him a bill, which I, I did.

Q I'm, I'm handing the witness a copy of, of Plaintiff's Exhibits 20 through 23 and I would simply ask can you identify what they are?

A Exhibit 20 is an email from Q4Launch which states that Leary, Larry Leary and Eric Brooks, and Eric is defined as "the person who will be running the business side" was going to meet with them in their office in, in Mount Pleasant to provide for the handover of the, the reservations function.

Exhibit 21 is an email from Mr. Leary from myself addressing Eric and I conferring regularly and looking forward to the visit in Mount Pleasant with the reservations and marketing function. I also gave them an update on my interviews with innkeeper candidates and indicated that there was one that I wanted him to meet.

Exhibit 22 is a follow-up with regard to the innkeeper

candidates and their schedules and I asked Mr. Leary if he could meet with me and the candidates on October 26th. I wanted to give him, partly as a courtesy and partly because it's a good protocol, the opportunity to meet our final candidates for the innkeeper position. He wasn't expecting the -- I wasn't expecting him to make the decision but I, I wanted him to meet the people that we considered the top picks.

And Exhibit 23 was, was an invoice, a statement that I sent to Mr. Leary, setting forth a basis, a fee schedule for payment for our preopening work.

Q And since the, the document, and it is Exhibit 19, Plaintiff's Exhibit 19, hasn't been signed, have -- is, is, is there any relationship between provisions in Exhibit 19 and the calculation that is in Exhibit 23?

A The Exhibit 19, again, is what document?

Q It's the, it's the management agreement.

A There, there, there really isn't because the, the management agreement was structured as a long term, initially a 12 month agreement, with an initial monthly fee for the first two months that decrease after the first two months to a, a different fee, and the, the total agreement was not effectuated. I mean we didn't obviously serve for one year in a, in a management capacity.

Q So, how, how, how would you best describe what you came

up with and, and, and why it was sent to Old Town Bluffton Inn and Larry Leary?

A What I did then, since we, we weren't continuing with the one year management agreement, I took our fee schedule, our standard fee schedule, if we were serving all other clients not under a, a umbrella agreement but working either by the hour or the day, and I calculated it based on kind of a standard fee schedule. And I said well, you know, though it was hard to define with precision, I felt certainly the, the very most minimal expectation of time spent would be 17 full days between Eric and myself, which I think was a gross understatement, but, at the time, I -- you know, we hadn't developed all the records and all the logs and all the phone conversations and it was an effort to just resolve this in an amicable way.

So, I set forth 17 days and at a daily rate of $1,000. That was $17,000. I had roughly $2,000 in out-of-pocket expenses. So that was $19,000 roughly. And then I just extended a courtesy discount and, and sent him an invoice for $11,700.

Q Okay. Is, is that what you're seeking from the Court today in compensation for the work that was performed for Lawrence Leary and Old Town Bluffton Inn, LLC?

A No. You know, the, the fees that I had set forth presumed payment. I mean the discount that I set forth

presumed payment timely, not having to go through this process over a two and a half year plus period. I mean the -- my consideration of a, a client discount would not pertain to a circumstance where payment was not made.

Furthermore, after our services were terminated, Mr. Brooks had to transition with the staff that Mr. Leary had hired all of the documents and all of the relationships and all of the communications, including reservations that he had taken, because he had negotiated a -- two group bookings for April of 2019. And, and, in that capacity, he was functioning really in a fiduciary role. But he had to turn over all that data to the, to the, the new team, and, and I put that value at $2,000. So, we are roughly, at, at that time, seeking $20,000.

THE COURT: Okay. So, I didn't hear the breakdown on it.

MR. BORDEN: I, I---

THE COURT: I need to understand the breakdown.

Did you do any kind of expenses damage sheet or how did you work it out?

MR. BORDEN: I believe he does --

THE COURT: Okay.

MR. BORDEN: -- and---

THE COURT: Can I see a copy of it?

MR. BORDEN: -- he also now --

THE WITNESS: All right.

MR. BORDEN: That was before.

THE COURT: Oh, no, I have this one. Yeah, I've got that. I'm talking about what he's testifying to right now. So, you need to specifically ask him what his damages are.

Q Let me see. Let me go through your damages here.

A Well, the damages would be set forth in this invoice at the non-discounted rate plus the $2,000 in services provided after this date because we, we had to transition after that date. So, the -- it, it rounds out to just shy of $20,000.

The, the other issue that wasn't envisioned in this invoice, this statement, was damages that would be associated with breach of contract or terminating unilaterally what had been designed to be a one year management agreement, and I, I feel if those damages were accounted for there, that would be a, a vastly greater sum.

Q Which is?

A Well, I, I -- any topic of mediation I guess can't come into this.

Q Um.

A But $50,000 is what I feel are our effective damages, expenses, and time spent are.

Q Well, have you been paid any?

A No.

Q Okay. I don't have any further questions.

A Oh. Oh.

MR. BORDEN: Your Honor, I'm not sure if there are other questions.

MR. GALVIN: You need a second or are you done with the witness?

(Pause.)

MR. BORDEN: I'm done.

MR. GALVIN: Okay.

THE COURT: Okay.

MR. BORDEN: The, the exhibits are on the table.

MR. GALVIN: Okay.

THE COURT: Okay.

MR. BORDEN: And I'm just gonna put these over here.

CROSS-EXAMINATION

BY MR. GALVIN:

Q Mr. Zoul, I'm gonna start with Exhibit No., Exhibit No. 11.

Do you have that in front of you?

A I don't.

Q Okay. It's a---

THE COURT: Why don't you hand him back the exhibits? I'm assuming Mr. Borden put them down there.

So, why don't you hand them back to him?

MR. GALVIN: I'm --.

THE COURT: You, you need 11 through 23 again?

MR. GALVIN: I'm probably gonna work -- walk through some of these.

THE COURT: Why don't you give him 11 through 23?

MR. GALVIN: I just want to start off with 11.

THE COURT: Okay.

MR. GALVIN: I know -- yeah.

Mr. Zoul, this operating agreement identified as Exhibit 11, you don't have any personal knowledge with regard to this operating agreement, do you?

A Just having reviewed it.

Q Okay. But I've seen a time stamp on here on the side. Looks like you pulled it from another case.

Is that correct?

A I don't recall --

Q That's it.

A -- where it came from.

Q Okay. If I represent to you -- and, Your Honor, I have the information here. I didn't think it would come up.

But if I represented to you that on -- looks like on October or April 3rd, 2017, that Lawrence Leary and Danielle Leary transferred memberships interest into their -- their membership interest in the Old Town Bluffton Inn is in there, correct, would you have any reason to dispute that?

A No, I don't.

Q Okay. I can show the document to Ward. But I can tell you that -- I can tell the Court that I've had other litigation and I've dealt with this -- the ownership structure is Larry Leary owns one percent personally.

THE COURT: Okay.

MR. GALVIN: The remainder of his interest is in a trust---

THE COURT: Okay.

MR. GALVIN: ---and Danielle Harrison is -- so, so, I'm gonna use that or I can show---

THE WITNESS: That's a---

THE COURT: That was subsequent to their alleged---

MR. GALVIN: Prior.

THE COURT: ---work performed, correct?

It's prior?

MR. GALVIN: Prior.

THE COURT: Okay.

MR. GALVIN: I can show you the document, Your Honor, as an officer of the Court.

THE COURT: Okay.

MR. GALVIN: But I just wanted to do that and the clerk can hand it up.

All right. One through -- you're -- is it your testimony that you had a written contract with the Old Town Bluffton Inn in Exhibit 17, correct?

A Yes.
Q Okay. And under that agreement, is it -- am I correct that the Hospitalities Advisors Group were only gonna be paid six percent from the Old Town Bluffton Inn if it was sold before December 31st, 2018?
A Yes.
Q Okay. And is there a paragraph in here, Hospitality Advisors Group will be compensated only in the event that a buyer's found and the sale is consummated with regard to the third paragraph there?
You agree with that?
A Yes.
Q Okay. That was, in fact, the agreement and, and it also says that, after that, Hospitality Advisors Group will be responsible for all professional services and the expenses in which, in which it incurs?
A Yes.
Q And this contract was not -- was this -- do you believe that this contract was terminated on October 24th or do you believe it remained?
A I believe this was terminated on September 20th.
Q Do you have any documentation showing it was terminated?
A I do not.
Q You do not.

Do you have any -- you, you testified earlier that you spent a hundred hours on this file, correct?

A At least, yes.

Q Okay. And you were in Nebraska, right?

A Yes.

Q Okay. And you can document that you had how many -- you -- exhibit number of telephone calls.

You had how many telephone calls from Mr. Leary?

A Well, I provided to you my telephone records---

Q I understand that you---

A ---in response to your interrogatories.

Q Right.

But you, you testified earlier. I'm just trying to make---

A Yes.

Q ---it clear if I can.

A Yes.

Q You testified that you had how many calls with Mr. Leary?

A Twenty-six.

Q Twenty-six.

And how many calls with Mr. Brooks?

A Sixty-eight.

Q Sixty-eight.

And then a few additional calls?

A Yes.
Q Is that correct?
Now, you pro -- produced some emails in this case but you did not produce the, the -- I don't -- I've not been provided with a large number of emails.
Is that correct?
A That's correct.
Q And I've not been provided with a large amount of or with notes or any other documentation.
Is that correct?
A That's correct.
Q Okay. So, you were in Nebraska and you communicated with Mr. Brooks through telephone and through email, correct?
A Correct.
Q And I'm just trying to figure out. You don't have any documentation of your time records.
Correct?
A Well, I have the phone logs which were provided.
Q Yeah.
Okay. But you don't have any documentation where you say that two hours reviewing those?
A That's correct. I do not.
Q Okay. And were you still looking for buyers after the -- September 20th?

A No.
Q You were not?
A Correct.
Q You were you -- you were not having any discussions with any potential buyer?
A I continued discussions, which I do all the time in, in my business, with investors that might have a possible interest in buying or selling properties. I mean that's a continuing conversation I have whether I have clients or not. So, I, I would of had those kind of communications.

In this instance, I was prohibited by Mr. Leary, as this agreement states, from identifying the geographic location of the Inn. I could not specify either the city or the state. So the discussions were very general and they spoke to properties in the Lowcountry or Georgia or South Carolina.

Q Okay. And were you, were you -- did you -- if I told you that you had a communication where you told them that you were still looking at prospective buyers for such after the September 20th date, would that surprise you?
A No, that's correct. I, I continued to have this conceptual discussions, which I always have including to this day, with investors that are interested in properties and, and I let Mr. Leary know that I had my ear to the ground. I was, you know, interested in anybody whose

interest might be peaked in the property because it, it -- it still was up in the air as to whether this property was something that Mr. Leary wanted to sell at some point.

The direction was get it up and running but that left open the possibility that a year down the road or two years from then he might want to sell. So, we kept that work ongoing in what I would call a slow, slow mode.

Q Did you -- you, you testified that you thought that contract was, was no longer in operation after September 20th?

A Well, I -- we put all our emphasis substantially in the preopening mode. So, this really went to the side.

So, was it terminated?

My answer is no, it was not terminated.

Did I do a, a letter of recision -- rescinding this agreement?

No.

So, I, I, I think it, it, it was just put on the back burner. I guess that's, that's what I'm trying to communicate.

Q Cause I'm trying to delineate between you, you've got a -- you've got a written contract at the time, which is -- which we've talked about, right, in September 17th I do believe?

A Right.

Q Right.

That contract is ongoing until December. You say it's still on the burner.

How, how is the judge to delineate between the work that you're doing for that under that contract which you stated that you weren't billed for the --?

A Well, this contract had a termination date of December 28th I believe. So, it was a short duration contract. So, when Mr. Leary said put all your energies to getting the Inn up and running by November, it, it just stands to reason that you, you, you weren't gonna get this done when all of our efforts were redirected substantially to getting the Inn up and running, and, and Mr. Leary's direction to me was that he wasn't wanting to sell the Inn in an unopened status.

Q And you had planned to open it by Thanksgiving, right --

A Correct.

Q -- or there would be consequences?

A Well, if, if you can---

Q ---under your --?

A ---theoretically negotiate, close, and include a purchase and sale agreement in, you know, four weeks, yes.

Q I've got a -- an exhibit marked Defendant's 12.

THE COURT: Go ahead.

Q Pass that up to you.

A Which way?

Q I wish I was in the back (indiscernible).

Can you tell me what that document is?

A This is an email to Mr. Leary dated October 19th when I addressed sending an email communication to our investor base. I indicated that we did not identify the location specifically beyond the Georgia/South Carolina coastal areas and I indicated that some investor groups had expressed an interest in, in possible offerings.

Q And you agree that's a, a authentic copy of your email, correct?

A Yes.

Q Okay. So, you were still working to try to sell it. You were still communicating with Mr. Leary to try to sell it.

Correct?

A Yes.

MR. GALVIN: I'd like to move Exhibit 12 into evidence, Your Honor.

THE COURT: Any objection, Mr. Borden?

MR. BORDEN: I'm sorry. I -- again, I, I don't know where, where this stuff is.

THE COURT: Well, give him a copy of it so he can look at it.

MR. GALVIN: I'll get it.

(Pause.)

THE COURT: Okay. You looked through that detailing in it. I'll admit it into evidence while he's looked at it and he knows what we're talking about.

MR. GALVIN: Correct.

(WHEREUPON, Defendant's Exhibit No. 12 was received into evidence at this time.)

Q All right. So let me ask you as well.

So, in -- on October 7th I've got -- this is the Defendant's Exhibit 18 and 19.

THE COURT: Uh-huh. (Affirmative).

Q And I don't know if those are in front of you or Plaintiff's Exhibit. Excuse me.

A I've got it.

Q Okay. Do you have those in front of you?

A I do.

Q Okay. This email that you sent to Mr. Leary, you, you agree this is an email that you had sent?

A It is.

Q Okay. And, in this email, you stated that you, you had met with him yesterday, correct, or, or today I mean?

It would be October 8th, correct?

A Yes.

Q Okay. And so, so, at that meeting, it looks like you

discussed potential innkeeper candidates with Mr. Leary.
Is that correct?
A Yes.
Q Okay. All right. Am, am I correct that this agreement that you sent that attached please find the draft agreement for your review, correct?
A Was the agreement attached?
Q Yes.
A Yes.
Q So, Exhibit 19 was attached but -- okay. And you agree that you called that a draft agreement?
A Yes, I was waiting for his review and comments.
Q Okay. And you put that in there, please let me know if you have any questions or comments?
A Yes.
Q Okay. Also the last sentence, am I correct, states that we would be proud to manage your property and we are -- and we can exceed your expect -- standards and expectations?
A Yes.
Q It says would, correct?
A Yes.
Q Okay. So, so, you would agree that you're not confirming a contract here. You're, you're attempting to enter into a contract.
Is that correct?

MR. BORDEN: Object.

THE COURT: Basis.

MR. BORDEN: It calls -- it, it, it -- it's calling for the witness to speculate, three years after the event, what he -- what was on his mind then.

THE COURT: Okay. Well, I think he can answer the question because Mr. Zoul is the principal in this.

So, go ahead. You can answer it.

A There was not -- no doubt in my mind that we were gonna be managing the, the property, hence the amount of effort we were putting forth in the endeavor, and I took Mr. Leary at his word that he was gonna rely on you guys to, to run it. So --.

Q But he would need to have the terms in front of him to determine if he was going to use your accounting, correct?

A Well, the terms were presented well before the contract was.

Q Okay. But the, the, the -- it's your testimony today that he had all -- that you had gone over every single term in this contract with him line-by-line?

A The economic terms. Not the verbiage. If you're asking about words, no, but the economic terms were clearly expressed.

Q The -- what economic terms?

A The monthly fees.

Q Okay. But everything else was, was -- well -- but the, the only thing that was disclosed to him -- is it your testimony today the only thing disclosed to him was the monthly fees?

A No, that's not my testimony. I -- my testimony is that the actual verbiage in the agreement -- I mean I didn't read the agreement to him when we met. But the terms were conveyed. The terms of most consequence were gonna be economic to him but also what our responsibilities were. There were -- that was clearly laid out in terms of what our function, role, and responsibilities were gonna be moving forward once the Inn was up and running.

Q And do -- and let me ask you.

You put a signature line on this contract for him to sign, correct?

A Yes.

Q Okay. And you expected a signature then, correct?

A At some point I would of presumed that he would sign it and I would sign it and it'd go in a file. Sure.

Q And that never happened, correct?

It was never signed?

A It was signed.

Q This?

You're saying Exhibit 19 was signed?

A Well, if, if I am to take Mr. Leary at his word --.

Q No, no.

Do you have a signed copy of Exhibit 19?

A He had one for me to pick up and he called me and asked us to pick it up. It was in an envelope with a check he said at the Inn and Mr. Brooks left his office in Savannah and drove to Bluffton to pick it up.

Q Was that the day that October or was that October 24th?

A I don't recall the day without looking at some document that would speak to that.

Q But you never got a signed copy?

A I never received a signed copy.

Q And you, you filed a signed copy, correct?

That's why you sent Mr. Brooks to pick one up, correct?

A Yes, we would expect to have this---

Q Was the, was the date that he was gonna go over there, was that October 24th to pick up the contract?

A I don't, I don't recall the date unless I can refer to some document. So, I think -- I can answer your question if the chronology I prepared were in front of me. I did provide a chronology and it was entered as an exhibit. But I can't speak to the specific date.

Q All right. And is that chronology in front of you as one of the exhibits?

A It's not one of the exhibits, no.

Q Not one of the exhibits. I see on your -- and you're talking about the chronology from October 29th, 2018?

Does that sound correct?

A My recollection is we had a chronology for the entire undertaking from---

THE COURT: Is it this one that you're referring to?

THE WITNESS: Yes.

THE COURT: Okay. And we just need to find what that exhibit number is but it's something that I've seen in discovery and actually I got this copy, Mr. Galvin, from your pretrial brief.

MR. GALVIN: Yeah, I believe you did.

THE COURT: So, it says -- what exhibit is that number on it, Mr. Zoul?

THE WITNESS: 8-A, Your Honor.

THE COURT: 8-A.

Okay. That's the---

THE WITNESS: It was---

THE COURT: ---chronology you were referring to?

THE WITNESS: Yes.

THE COURT: Correct?

THE WITNESS: Yes.

THE COURT: Okay. Thank you.

THE WITNESS: It was October 21st.

Q Okay. And then looks like he drove over again on the

24th, correct?

A Yes.

Q Okay. So do you know which, which day it was when or if it says it occurred?

A Well, the note says that on October 21st Larry canceled the pick up of the agreement and the check saying he was out of town, and that was the date that Mr. Brooks was literally in route traveling from Savannah to Bluffton to pick up the envelope.

Q Okay. And you were -- would it have -- noting the chronology on October 24th was the date that Mr. Leary informed you that he didn't want to hire you to manage the Inn.

Is that correct?

A That's correct.

Q This statement that you provided, does that have, Page 1, does it -- does Page 1 say $11,753.50 on there?

I'm sorry. I'm just trying to look at your note.

A Oh, October 29th?

So---

Q Yeah.

But at the bottom, does it have the 11,000---

A Yes, sir.

Q ---753?

A Yes, sir.

Q Is this a true copy of the statement that you provided?
A Yes, sir.
MR. GALVIN: Introduce that into evidence, Your Honor.
So, let me ask you a question on your, your monthly rate, right?
The monthly rate for the services under when your proposed contract was was $10,000 a month.
Is that correct?
A Only for the first two months.
Q No -- correct. No.
A For two months.
Q I think I'm only on the one month I believe.
Is, is that correct?
A Yes.
Q Okay. So, with regard to the -- you, you claim that there were 17 days that you did work for the management of the Inn, correct?
A I did that as an equivalency --
Q Oh, I have to see---
A -- and I testified that we didn't keep logs of our times. So, it, it was a, a formula driven methodology.
Q I understand.
But I understand that, pursuant to your statement here, you said that you worked for 17 days equivalent?
So you're saying that --

A That's what I said, yes.
Q -- you worked for 17 days?
Now, your normally monthly rate was $10,000 a month, correct?
That's what it was in, in your proposed time?
MR. BORDEN: Object to the form. I don't think that's what he testified---
MR. GALVIN: Well---
MR. BORDEN: ---and I think it keeps getting twisted.
THE COURT: Okay. You---
MR. GALVIN: I'm not trying to twist anything. He put $10,000 here.
THE COURT: Okay. Tell him what you're referring to and show him.
Q Okay. With the Plaintiff's Exhibit 19, this proposed agreement --
A Right.
Q -- do you -- you agree that, in that, that agreement, it states that the -- for the first months work, it is $10,000?
A Yes.
Q Okay. And that's what you testified you, you went forward with Mr Leary?
A Yes.
Q So, my question is you, you stated in here that you did

17 days of work, correct---
A Yes.
Q ---in, in this thing?
So, if I do the math, and I figure that that would mean that it would be about $333.00 a day if you took 10,000 divided by 31?
You can do the math.
A I'm not, I'm not sure I, I understand.
Q I'm just trying to figure out a daily rate based on $10,000.
So, so, 10,000 a month, if they're 31 days in a month, I come up with $322.58 worked out in a day.
A Well, I, I think you'd have to equate it to some sort of work day -- work days presumably but --.
Q No, I understand. But I'm just taking your word here that there's 17 days.
So, what I'm saying is that you would agree if you divide 10,000 by 31, I come up with $322.58?
A Well, I haven't done the math but I'm not---
Q Well, then---
A ---I'm not gonna differ---
Q If I'm wrong -- then -- but -- so, if I take that $322.58 and I multiple that by 17, I come up with $5,483.
You wouldn't dispute that math, correct?
A Well, I dispute the methodology but I, I, I don't

dispute your mathematics. So --.
Q All right.
A Our, our daily rate is -- $1,000 a day is our daily rate and you're, you're trying to correlate our daily rate with a, a contract rate. The contract was not effectuated beyond the term that ended on October 24th.
Q Am, am I confused because when I'm looking in -- and I could just be confused.
But I look at Exhibit 19, which is the proposed agreement, I do not -- do I see a thousand dollars a day in, in there?
A Our rate isn't a thousand dollars a day when we have a one year contract. Our rates vary based on the duration of the engagement.
Q I understand that.
A So --.
Q I'm just trying to figure out where that thousand dollars a day would come from.
A That's our standard rate. If we weren't working under the auspices of a 12 month engagement, then we would convert it to some other rate schedule. I, I, I don't think you can correlate two different things. They, they, they don't relate to one another.
Q Okay. And do you have any documentation where you told Mr. Leary that he was gonna have to pay your management fee

for -- before the October 8th date?

Do you have any documentation where you told Mr. Leary that he was gonna have to pay an innkeeper in addition to Hospitalities Advisors Group?

A Yes.

Q You, you have documentation to that?

A I do.

Q Where is that?

A The proforma. The proforma speaks to the salaries of the innkeeper.

Q Okay. And did you discuss that with him and, and say here's where the costs come from or did he just receive a copy of this?

A No, we, we were -- reviewed the proforma at our meeting when I was on site with Mr. Brooks and Mr. Alsko. That was one of the documents that we went over.

Q Correct.

And that would be October 8th, correct?

A Yes.

Q And that was the day that you emailed him the contract, correct?

A No, that was the following day. Our meeting was one day before the day that I sent the --

Q But the---

A -- agreement.

Q -- the day that he, the day that he learned that, that he was gonna have to pay Hospitality Advisor Group and the innkeeper, that would of been the day of your meeting with, with---

A That would of been the group meeting and then I met with him the next morning, and I reviewed the terms face-to-face, he and I sitting in the lobby of the Inn, and, and because I didn't have a laptop with me, I actually went to the public library and typed up the agreement.

Q But that was the, the -- October 8th, that was the same day that you emailed him the -- an agreement?

A Yeah, the -- subsequent to the group meeting --

Q Yeah.

A -- whatever the next day was --

Q And it was---

A -- yeah, then it was emailed that day.

Q (Indiscernible) because you're trying -- your contention is, is that you owe -- that Mr. Leary owed you from September 20th all the way through, through October 4th I guess?

A Plus, plus---

Q (Indiscernible).

A ---the transition, transition period thereafter.

Q And you agree that the work that, that, that, that you claim was done, that was -- the Inn was the -- they were

established to benefit the hotel, correct?

A I---

Q The---

A The hotel---

Q (Indiscernible).

A I mean the hotel --.

Q I'm sorry?

A I'm not sure what benefits the hotel, what's the hotel? That's kind of an inference.

Q Well, the, the Old Town Bluffton Inn. The -- these---

A The ownership---

Q These were for the benefit of the Old Town Bluffton Inn.

Is that correct?

A For the benefit of whatever the ownership entities were associated with the hotel.

Q But they were to -- they were all hotel services?

A Yes.

Q Correct?

A Yes.

Q And that -- just confirming they weren't personal services for like they weren't Mr. Leary asking you to go pick up his car for him or well, you know --?

A Correct.

Q All right. And, and the, and the -- any studies of the

market, you would have to do that to attempt to sell the, the property, correct?

A Not necessarily. It, it might be that prospective buyers would undertake their own analysis and presumably would, through their due diligence, process.

Q But to get a higher price for it -- a property, you would want to have a proforma and sell it as a business, correct?

A We thought it had added value if the business was up and running, yes.

MR. GALVIN: I'm sorry, Your Honor.

Did you -- did you do any work with Margaret Johnson?

A Only in the transition. Mr. Brooks spent some time turning over documents and some of the reservation inquiries. I didn't personally myself do any work with Margaret Johnson. Larry had asked that I interview her. But that, that never came about.

MR. GALVIN: And just, Your Honor, would you mind if we pause for a break?

THE COURT: Well, if you're done, I think we're gonna take a lunch break.

MR. GALVIN: No, please---

THE COURT: So can you look and see what you've got?

MR. GALVIN: Hold on.

THE COURT: Okay.

MR. GALVIN: And I think I'm very close.
THE COURT: Okay. And I can give you a few minutes to look through what you've got and we'll sit tight.
(Pause.)
MR. GALVIN: That's all the questions I have, Your Honor.
THE COURT: Anything further, Mr. Borden?
MR. BORDEN: I, I don't think I have any questions, Your Honor.
THE COURT: Okay. All right. You may step down, sir. Thank you.
All right. So, Mr. Borden, do you have left just your witness.
Is that correct?
MR. BORDEN: Yes.
THE COURT: Okay. And how long do you anticipate his testimony to take?
MR. BORDEN: It's gonna depend on the cross-examination. My testimony---
THE COURT: How long---
MR. BORDEN: My direct, again pro -- provided that---
THE COURT: Uh-huh. (Affirmative).
MR. BORDEN: -- I don't elicit a lot of objection---
THE COURT: Uh-huh. (Affirmative).
MR. BORDEN: ---to it, probably, probably 15, 15

minutes, 20 minutes.

MR. GALVIN: And, Your Honor, from all of our standpoints, I'm -- I've got the transcript of Mr. Leary and I'm not gonna offer any witnesses.

THE COURT: Okay.

MR. GALVIN: So --

THE COURT: Okay.

MR. GALVIN: -- after that we're done.

THE COURT: Okay.

MR. GALVIN: I don't---

THE COURT: Okay.

MR. GALVIN: Can I just put on the record that I have -- I want to have a continuing objection to this expert by my motion?

THE COURT: And, again, I haven't considered it and won't until after I hear what his testimony is and then decide whether or not it's appropriate.

Okay?

MR. GALVIN: Thank you, Your Honor. I just --.

THE COURT: Okay. So let's do this, y'all. Let's take about 45 minutes or so or a little bit more than that and we'll all come back at one o'clock --

MR. GALVIN: Okay.

THE COURT: -- where I will, during that time, read Mr. Leary's testimony and then decide whether or not I may

consider that and then we'll come back. We'll put on your last witness.

MR. BORDEN: Two o'clock I think.

THE COURT: All right. Two o'clock. You're right.

MR. BORDEN: I, I just---

THE COURT: I apologize. Did I say 1:00?

MR. GALVIN: You did.

THE COURT: I'm sorry, y'all. Two o'clock and then we'll go ahead and then I'll let you both, after you both have rested, give me a brief, you know, synopsis of what you think are the salient facts and points made and any arguments of law you'd like to make as well.

Okay?

MR. GALVIN: Thank you, Your Honor.

THE COURT: All right. We'll see you back and if you're running a few minutes late, don't worry about it. I understand.

(WHEREUPON, Court was in recess for the lunch hour.)

THE COURT: Okay. All right. Mr. Borden, if you will call your first witness for this afternoon.

MR. BORDEN: Thank you, Your Honor.

I'll just call Doctor John Salazar to the stand.

THE CLERK: Raise your right-hand.

JOHN SALAZAR, being first duly sworn, testified as follows:

THE CLERK: If you can state your name and spell your last name.

THE WITNESS: John P. Salazar. S-A-L-A-Z-A-R.

THE COURT: Thank you, sir. Please go ahead and take a seat.

All right. I'll note for the record that this is subject to Mr. Galvin's, the defendant's objection, based on a late notice for this proposed expert witness. As I've stated for the record, and as I've stated repeatedly, because it's being bench tried, obviously we're just gonna do the testimony as opposed to a proffer, and then I'll decide whether or not it's appropriate for me to consider.

All right?

MR. GALVIN: Thank you, Your Honor.

THE COURT: Absolutely.

DIRECT EXAMINATION

BY MR. BORDEN:

Q Mr. Salazar, the, the name that you stated for the Court, is that your correct name?

A Yes.

Q Okay. And is that -- where do you live?

A Currently Watkinsville, Georgia in the Athens community.

Q How long have you been there?

A Just a little over two years but prior to that I was

living in the Lowcountry for 14.

Q Where in the Lowcountry?

A Bluffton. Bluffton.

Q Okay. And what do you do for a living?

A I am a college professor currently with the University of Georgia and I'm also the program coordinator there of the newly established hospitality management program, and, prior to that, I was at the University of South Carolina here in Beaufort as a research director and also a faculty member.

Q All right. Let me show you this document if I may. It's Exhibit 24. (Indiscernible) for a second.

MR. GALVIN: Your Honor, I think we just enter that. I don't think we --.

THE COURT: It's already been entered.

MR. GALVIN: No, I was just saying---

THE COURT: Without objection.

MR. GALVIN: ---go ahead.

THE COURT: Okay. Twenty-four is in evidence without objection.

MR. BORDEN: Okay.

THE COURT: That's his CV?

MR. GALVIN: Yeah.

THE COURT: Thank you.

Okay. Give you that. Perfect.

(WHEREUPON, Plaintiff's Exhibit No. 24 was received

into evidence at this time.)

Q Just to very briefly cover, is this -- first of all, in, in Exhibit 24, is there, is there anything of which you're aware that's inaccurate?

A No.

Q And that's a document that you prepared in which you furnished to, to me?

A Yes.

Q Is that correct?

A Yes.

Q Does this CV that -- it's a, a curriculum vitae that, that you have.

Does it accurately reflect your education, teaching background, and work background?

A Yes.

Q Are there professions, occupations, or subject areas to which you know more and possess greater information than the adult you encounter -- adults you encounter?

A Well, I'm -- I am a professor of hospitality and tourism. So, this is, this is my field. This is what I know.

THE COURT: Have you ever been qualified before as an expert witness in any courts of law?

THE WITNESS: I have been an expert witness previously, yeah.

THE COURT: Okay. And, and in what courts?

Do you know?

THE WITNESS: It was a court here in Beaufort County I believe.

THE COURT: Okay.

MR. BORDEN: I was -- I can ask some more -- get some more information, Your Honor, but I was going to move to certify---

THE COURT: How many years of experience do you have in hospitality and tourism?

THE WITNESS: Oh, my gosh. Good Lord. It dates back to -- my first position actually in hospitality and tourism industry at the airport in Boston back in 1986.

THE COURT: Okay. That's 35 years?

THE WITNESS: Yes, I guess so.

THE COURT: About 35 years.

Okay. So what are you tendering him as an expert in?

MR. BORDEN: Your Honor, we, we, we wish to move to certify him as an expert on hospitality services and the tourism business, and I, and I can attest myself that, that, that, that he, he has been my expert before on tourism.

THE COURT: Okay. So, this is what we're gonna do. I know you object to his testifying, Mr. Galvin, because of the late notice.

MR. GALVIN: Yes, ma'am.

THE COURT: But do you question his qualifications and would you like to do any voir dire of him and his qualifications?

MR. GALVIN: The only question I have is what do you, what do you mean by tourism?

THE COURT: Good question.

MR. GALVIN: Yeah, I---

THE WITNESS: I can answer.

THE COURT: Yes, I want you to.

MR. BORDEN: Please do.

THE COURT: That would be fabulous.

THE WITNESS: Absolutely.

THE COURT: Thank you.

THE WITNESS: Okay. Here we go and I, I -- I'll give you the shorter version. Not the professor's version.

MR. GALVIN: Thank you.

THE WITNESS: Tourism is usually related to the destination. Specific whether it's an urban destination, a resort destination be it Atlanta, Tampa, or, or Hilton Head or Beaufort for that matter, right, it -- it's what inspires a traveler to go to and, and travel within, and you see a lot of that within the Lowcountry. That's tourism.

The hospitality side is we're really where the business of tourism happens. Whether it's those, those -- it's, it's the financial and economic exchanges for the services

rendered to those visitors coming in that -- to, to your community, and, and Beaufort County's a perfect example of having hospitality, right, hospitality services that cater to our tourists. That's the difference.

THE COURT: Okay. So, do you have any objection to his qualifications as an expert in hospitality services and the tourism business?

MR. GALVIN: I do not, Your Honor.

THE COURT: Okay. All right. Can I see his CV really quickly?

THE WITNESS: Yeah, I apologize for the length but it's, it's---

THE COURT: Yeah. No, it's fine.

THE WITNESS: It's one of those things that we're required to do.

THE COURT: Yeah.

Q Actually, there's, there is several terms that come to mind. There are -- there's, there's, there's a, a phrase that's frequently used in this area called food and beverage.

A Yes.

Q Does food and beverage fall under hospitalities -- hospitality services?

A Yes, it would.

Q How about marketing?

A This is where both worlds are actually very much aligned. In order to understand what the tourism market demand is, you have to understand how the hospitality operations fit into that demand model so they -- out of both worlds and that's why you have tourism marketing and hospitality marketing.

Q What does one have to do to become an expert in the hospitality trade?

By that I mean not the -- knowing more than the average individual about those things in hospitality.

A Sure. Well, I have -- I've been part of a few hospitality management programs throughout the United States, and, and some of them at very large institutions, i.e. where I am now, University of Georgia and, of course, University of South Carolina. They have that program here as well as in Columbia which is the -- probably one of the more oldest established hospitality programs east of the Mississippi.

Students that graduate from those hospitality programs are very well received by our industry, whether it's in the tourism side of things or the hospitality side. And, and so the hospitality degree allows an individual to move up rather quickly in, in the business because they are more familiar with the nuances and the business metrics, and, and everything that's required to run an operation.

Q Do, do, do people reach the upper levels of hospitality -- the hospitality business, and the tourism business as far as that goes, through, through sort of a sweat equity process?

Is there such a thing as the food and beverage worker who ends up, you know, attaining a, a level similar to what you've attained?

Does that happen?

A Yeah. We -- you know, within, within the industry and, and my colleagues, often times we refer to this industry as a bootstrap industry. We pull ourselves up by our own bootstraps. And in order to lead people, whether it's on the restaurant, catering, or even the resort side or the hotel side, we have to understand the actual product or service we're providing to the customer.

So, many, many of us have come up through the ranks and, and, yeah, a lot of us do.

Q Have you taken any steps to familiarize yourself with the issues and the parties in this lawsuit?

A I was able to review the summary proceedings. The summary proceedings.

Q Okay.

A Yeah.

Q Would that include pleadings?

A Yes.

Q Would that include discovery answers?
A I believe so, yes.
Q Okay. And you reviewed those things?
A Yes.
Q Do you, do you -- what, what are, are your -- where are you currently staying and what are you currently doing?
A I am at a meeting in Savannah at -- attending the Georgia Association of Convention Visitors Bureaus annual meeting which is hosted in Savannah which, when I was contacted, that was, was already on my schedule.
Q Have you had the opportunity to, to speak at all with, with any of the parties, the plaintiff or defendant, at some time period?
A Not specifically about the case, no.
Q Okay. All right. Have you -- did you encounter any -- anything that was revealing or illuminating about Hospitality Advisors Group in the materials that you've reviewed before coming here today?
A Other than I was, I was -- other than services that they're providing or just the --?
THE COURT: You might want to rephrase your question---
THE WITNESS: Yeah.
MR. BORDEN: Okay.
THE COURT: ---cause I don't know what you're asking him.

MR. BORDEN: Okay. Let, let me, let me try it one more time.

Have you reviewed the work of the Hospitality Advisors Group and what was performed at the Old Town Bluffton Inn?

A Reviewing the documents, I reviewed the documents. I was able to digest the services that they anticipated or did attempt to provide, and I also quickly reviewed the group's website to, to examine a little bit more closely who these, who these individuals were, and then also tried to learn a little bit about the Old Town Bluffton Inn since I -- it, it had opened a little bit. So, right before I had left the Lowcountry.

So, I needed to familiarize myself a little bit more with that. So --.

Q And did you get to review the proformas that had been prepared by the Hospitality Advisors Group?

A Yes.

Q Okay. Have you formed any opinions to a reasonable degree of expert certainty as to the knowledge and competency of Eric Brooks in doing such paperwork as proformas as is called upon in your trade?

A Sure. Eric, Eric -- the, the proforma was a, a pretty straightforward, simple statement that resembles proformas in our industry. So, perfectly acceptable in, in terms of what their, what their rate expectations were and, and

margins as well as labor costs.
Q And then -- and, and there were -- there was more than one proforma, correct?
A Yes.
Q And you found both acceptable?
A The first one I, I found within, within reason. I found the second one kind of aggressive. But that's because I'm more conservative in nature when I come to estimates and, and economic forecasts.
Q Right. There was an action list.
Is that something that's common in, in these sorts of matters?
A Sure. And, and from my, my training, we call them punch lists, punch lists, and those are action lists, yes. We call them punch lists.
Q Okay. And with respect to Mr. Zoul, Plaintiff, Plaintiff Zachary Zoul, have, have you done any background review on, on Mr. Zoul that might reflect on his competency?
A Other than what is available at the website, I, I haven't done any deeper dive. But, of course, they have or what I saw at the website were multiple previous work or arrangements or agreements with other companies and hotel properties that I'm, I'm, I'm familiar with from industry prospective.
So, I could only observe that as, as the, the -- he's

reputable at what he does. That's the only thing I could address.

Q What do you -- to put it in another term, what did you think of his portfolio?

A It was, it was impressive. It was impressive.

Q Did -- have you -- and you may, may not have.

Have, have you formed any observations at all concerning work performed by Hospitality Advisors Group personnel, particularly Mr. Brooks and Mr. Zoul, for the Old Town Bluffton Inn, LLC and Lawrence Leary?

A I think the, the work that I reviewed through the PDF documents that I received were pretty much standard. But as I say standard, as they're submitted to a client or future client, they hold extremely valuable information that's -- that is important to any operating business. So, it's -- you know, they, they, they performed what you normally would perform, staffing guides, proforma statements, market reviews.

Q And, and, and, and let's just follow along with that.

If those documents we're talking about, two proformas, the action list, the -- and so on, if those are handed to somebody, do you consider that -- if, if I hand that to you, do you consider that to have value?

A As an individual whose, whose work often that happens to, yes.

Q Is there -- any there any other -- are there any other things immediately -- that immediately you would want to review before forming any opinions about the, the work of Hospitality Advisors Group work that's before the Court today?

A So, my familiarity with, with the value comes from the PDF and also the, the conversations or, or what's been happening in the hearing since this morning as I walked in, and, and listening to, to -- listening to how they've -- they valued their services. I think -- let me just say it this way. I have done similar work and I've actually had my worked valued higher than, than what they're expecting to receive.

Q And, and does the fact that you have lived in -- actually lived in the Bluffton area for a period of time contribute to the information -- the reservoir of information you have on this?

A Yes, cause I've studied this market extensively.

Q If you had a contract to do the Old Town Bluffton Inn like the management agreement that, that went -- was apparently unsigned, what do you consider to be a reasonable degree of -- to a reasonable degree of expert, expert certainty a fair market rate for such services?

A Well, as, as I have just said, I would -- I -- it -- for the preopening information and the work up to

post-opening and the management contract, I would of personally valued those services somewhere around between 30 and 50 K.

Q Okay.

A Yeah.

Q To a reasonable degree of expert certainty, what is the value of the services bestowed upon Old Town Bluffton Inn, LLC and Lawrence Leary by Hospitality Advisors Group?

A I would put it in that range, maybe the upper end, knowing the product, the value that they've assigned to the room rate, knowing what this, this market is about, and some of the challenges that it has.

Q Does it, does it matter that the, the Old Town Bluffton Inn and/or Lawrence Leary actually received mat -- material that was -- that had been manufactured?

Does it -- does that affect your, your opinion on the value?

A In, in order to come up with that information, it takes a lot of legwork in the beginning. And so when you're doing a market assessment and, and when you're working with a proforma, you really have to understand how the market performs, right, because that proforma's going to, to include with it the rate structure and the labor costs and, and Bluffton's not Beaufort. Bluffton's not Hilton Head.

It is -- it has exponentially grown over the years.

It's a little bit harder in terms of putting a finger on the pulse of what that value is. So, it requires a lot more homework. And so turning that -- turning any of that information over is extremely valuable and important to any operator on the onset.

Q Would you, would you consider, and possibly you already have, but would you consider Hospitality Advisors Group to have bestowed valuable benefit upon Old Town Bluffton Inn, LLC and Lawrence Leary?

A Yes, based on, based on exactly what I just said, yes.

Q All right. Do you have anything that, that you have thought of that might further contribute to our understanding of your value of, of the valuation that you came to and the, the things you considered in coming to it?

A Sure. So, when I looked at their work, I, of course, I, I quickly think about my work and all the other previous projects I have been fortunate enough to collaborate on with, with colleagues throughout the country, and, and, you know, like I'd said, their work is, is in line. I believe it's a little bit on the lower end but, then again, I never -- with the work that I've done and the market research side and the economic analysis side, my intention is not to gain a management contract. And, and so my intention is to provide the best market research about a destination and hospitality offering.

Q In this, in this instance, you -- I understand your testimony to be to a reasonable degree of expert certainty that the, the value of, of what was delivered by Hospitality Advisors Group to Old Town Bluffton Inn and Larry Leary is between 30 and $50,000 and closer to the high end than the low?

A Yeah. Yes.

Q And, and that's to a reasonable degree of expert certainty?

A Yes.

MR. BORDEN: I have no further questions.

THE COURT: All right. Mr. Galvin.

CROSS-EXAMINATION

BY MR. GALVIN:

Q It's, it's -- it's your opinion that the -- you, you testified that you thought that the value of the services that they provided you think they're in (indiscernible).

Is that right?

A Yes.

Q Okay. And the -- is most of that in the -- what's done in the proforma?

A In order to get the proforma you need to have a full context of the destination. And, and so the proforma's just not a set of numbers that are put on a sheet. It comes from the context of, of, of the community that the hospitality

business is, is trying to survive in.

And so, in order to do the proforma, you have to understand what the rate is, what the seasonality fluctuations are. It's a lot more complex than what people think and, and I think the -- I think actually COVID is produced that thinking and for a lot of people in terms of how complicated this industry is. But, yeah, it's, it's more than just numbers.

Q Is that the bulk of what you say the value is with that proforma?

A It is part of a process. It is valuable. It has a lot of the clues for an operator, the metrics, the markers, to examine. But you can't get to the proforma without understanding what your market is.

Q Correct.

So, with regard to the documents you were provided, were you provided with a lot of marketing research?

A I saw that they -- well, what I did see was that they in the document -- it was documented that they, they had to do the market research. But I also saw the staffing guides and the staffing guide is important as well, and that's another operational clue, which, of course, that gets elevated in the proforma.

Q So, that's all part of preparing the proforma, right?

A All of that is, yes.

Q How much value did you put on the, the, the work that they did for the, for the opening?
A For the actual opening?
Q Yes.
A You know, when I, when I looked at that work and what they were doing, my first response was they, they were undervaluing their own services.
Q All right.
A Yeah.
Q That -- you would agree that -- I think what they, they were trying to get a six percent commission on the sale of the property, correct?
A Yeah.
Q So that is part of what they were hoping to earn, is that right, and they never sold the property?
A I guess that's --
Q You don't (indiscernible).
A Yeah.
Q But that would go into selling a property or, or a hotel is to figure out how much you think the hotel's gonna make with respect to (indiscernible), correct?
A Understanding that, that commission rate?
Q Well, understanding the profitability, right?
A Understanding the profitability, yes.
Q That's what the proforma shows, correct?

It shows you what you think -- how you think this hotel's gonna perform, right?
A Yeah, that's what a proforma basically does.
Q And, and that's how you get a higher value in the sale of the property, right, is you say I think this hotel's gonna make a million dollars a year and here's why, right?
A Yeah, and you have to verify that million dollars with --
Q Right.
A -- with real information.
Q Yeah, I figured.
My point is, is that if I was going to you as a buyer, I -- and you said okay, I only have this hotel and tell my client or whatever---
A Yeah.
Q ---or decide to buy it myself, you take a look at that proforma and say man, this place is gonna be a good hotel to buy or a bad one, right?
A I wouldn't make my only decision off of a proforma.
Q I agree with you but that's what the numbers are there for, right?
A That, that is a clue but they're multiple layers regarding a successful, successful hospitality operation in a given market.
Q Yeah, I agree with you but then that's one of the main

points of a proforma, right?
A To give a clue, yes.
Q All right. And what do you mean by stating that the second proforma was aggressive?
A I can't remember the exact rate, but when I looked at the rate, I, I kind of questioned could a hotel in Bluffton or an inn for that matter get that kind of rate considering that it doesn't have the amenities that some of the properties do have on Hilton Head Island as well as Palmetto Bluff. But that was, that was my observation.
Q Okay. And with regards to hotel advisers group or Hospitality Advisors Group, really the only information you got from them was from their website, correct?
A Yes.
Q Well, you, you, you just relied on the -- their website in verifying.
Is that correct?
A I would expect the website to be truthful. I would hope it would be.
Q And I'm not questioning your honesty or anything. Try to figure out for the Court how you came up with your, your -- came up with your opinions here and part of the testimony today was with regard to the reopening -- to the opening of the Inn. A lot of the testimony today, they -- would you expect to see a lot of people work and

documentation from -- let me strike the whole thing and start over.

But would you expect for -- if somebody spent a hundred hours working on a -- on bringing that hotel to opening, you'd see a lot of documentation from that?

A I, I would anticipate information flying back and forth. Whether it's digital information or, or, you know, not so much paper like I was use to.

Q Yeah, I understand you---

A But---

Q ---see a lot of documentation, you know. I took a -- you know, I had to, I had to email this guy 200 times and then you would see a lot of documentation with that?

A I guess it would be documented whether in an Outlook file or G networking or something like that. Plausible, yeah.

Q It'd probably be somewhat paper intensive, wouldn't you?

A Meetings are meetings, meetings -- the conversations are, are healthy which lead to the agreements between the vendors and the operator.

Q Okay. And how much are you being paid today for, for your work on this case, sir?

A For this case specifically?

Q Yeah.

A It's an hourly rate. $375.00 an hour.
Q $375.00 an hour.
And you were hired five days ago?
A Yes, I -- approximately. It's, it's been a, a world wind prepping to come down here for this meeting, and then, and then the call but it was approximately then, yeah.
Q We appreciate you taking off your time. Thank you, sir, and I don't think I have any other questions.
One second, Your Honor.
(Pause.)
MR. GALVIN: No more questions, Your Honor. Thank you.
THE COURT: Anything further, Mr. Borden?
MR. BORDEN: No, Your Honor. Thank you.
THE COURT: All right. Any objection to this witness being excused?
MR. GALVIN: I have no -- none, Your Honor.
THE COURT: Thank you, sir. You're excused.
THE WITNESS: Sure. Thank you.
THE COURT: You're free to leave.
All right. Anything further from the plaintiff?
MR. BORDEN: None. None. No, Your Honor. Thank you.
THE COURT: Okay. All right. Any motions?
MR. GALVIN: Your Honor, I do make a motion for a directed verdict on the breach of contract action. One is that they testified that they expected a written contract

but they never received a written contract. The writing was a requirement and you can tell by the signature lines.

I just reference what I put in my pretrial brief that providing a contract would be a mutual manifestation, manifestations -- manifestation to accept the terms and that didn't exist in this case. And the acceptance must comply with the requirement as well as the promissory estoppel.

If the contract is, is not accepted, Your Honor, the, the case law in the District Court says that you can't use promissory estoppel in a contract to create a contract by (indiscernible) copy -- held that be bound by something that to (indiscernible) and I've provided a pretrial brief. I'll file it when I get back to the office---

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: ---electronically.

THE COURT: Okay. All right. Mr. Borden, you want to respond to his directed verdict motion on the breach of contract issue?

MR. BORDEN: I, I think that, at a, at a bare minimum, the fact issue -- what -- there clearly was a benefit bestowed on not only, not only -- although we're making this distinction repeatedly not only upon Old Town Bluffton Inn, LLC but also Lawrence Leary. Lawrence Leary knew he was receiving benefits.

However, as to the issue of con -- of a, of an

expressed contract, Mr. Leary was presented and, and the two have been conflated and intertwined and so on. He received a consulting services agreement, which he signed, and then subsequently he seems to have changed his expectations and I think the testimony supports it.

And so the plaintiffs tried to adjust to their client, and, and, and to a new agreement, a management agreement, written by a nonlawyer, which those things happen, and most of my lawsuits over deeds have been over deeds that somebody -- nonlawyer drafted.

As to the issue of the breach of contract, we've shown by a preponderance of the evidence that Lawrence Leary, on behalf of Old Town Bluffton Inn, LLC, and himself signed one written contract with HAG and accepted another. The acceptance was both oral. Testimony was given to that effect that he said I'm in. I want you all to work. I want you to do it. But when he was presented with the written management agreement, he didn't just tell them oh, this is acceptable, get out.

He kept them around until October 24th hustling until, you know, it, it -- until it -- basically it was time to insist upon a check from him and then oh, we don't have an agreement according to him.

But if one looks at the case of Scott versus Mid-Carolina Homes as one -- 293 S.C. 191, we have a lady who

signed a Form 500 for a mobile home to buy a trailer which she did not get. The Form 500, in order to effectuate, effectuate the transaction, had wording on it which said, in bold letters, not valid unless signed and accepted by an officer of the company. But then they took her check and they kept it, and they shipped the trailer down the road somewhere else, and they took a couple of steps to accommodate her and a jury came back and found that, under those circumstances, she did have a contract, that, you know, basically the trailer company put one over on her. But, but there had been -- the conduct and the words of the mobile home contractor had been deemed acceptance to the written offer.

I know in other states as well that, that, in some instances, this situation comes up even more. But, but it is good law that, that oral representations as well as conduct can bring about a valid acceptance of contract. So, that's my take on that.

THE COURT: Okay. All right. What does the defense have in their case?

MR. GALVIN: Your Honor, I submitted a transcript of Mr. Leary's testimony -- a deposition---

THE COURT: Yes.

MR. GALVIN: ---and that's all I have, Your Honor.

THE COURT: Okay. And I will go ahead and note for the

record that I have read it.

MR. GALVIN: Okay.

THE COURT: Thank you.

Anything else?

Nothing from the defense?

You as rest well?

MR. GALVIN: Yes, Your Honor.

THE COURT: All right. Well, I think I just heard your closing arguments. So unless you-all really need to rehash anything, if there's something more specific you'd like to make, I'm happy to hear it.

MR. GALVIN: I feel like I should, Your Honor.

THE COURT: Sure. Let's do this.

Can we just take five minutes?

MR. GALVIN: Sure. Right.

THE COURT: Y'all get yourself together, and then if you both want to make your closing statement, I'm happy to hear that from you.

MR. GALVIN: Thank you.

THE COURT: Okay. Thank you.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Okay. All right. Are we ready to go?

MR. GALVIN: You ready?

THE COURT: Mr. Borden, go ahead.

MR. BORDEN: Your Honor, this will be fairly short. I

am -- here we go.

In closing, Your Honor, we have several factual and legal matters to raise. We think, we think that we have shown, by preponderance of the evidence, that, that Hospitality Advisors Group and its members are en -- are entitled to judgment and an award consistent at a, at a minimum with the market value. We also think, unfortunately, that the record shows Mr. Leary's behavior to have been lesser than one would hope in business dealings.

On the issue of breach of contract, I will simply repeat we have shown a preponderance of the evidence that Lawrence Leary, on behalf of Old Town Bluffton Inn, LLC and himself, signed one written contract with Hospitality Advisors Group and accepted another. The acceptance occurred, if one looks at Scott versus Mid-Carolina Homes citation 293 S.C. 191---

THE COURT: What year was this---

MR. BORDEN: I won't, I won't elaborate on---

THE COURT: ---(indiscernible) case?

MR. BORDEN: I won't elaborate on that.

MR. GALVIN: '87.

THE COURT: Thank you.

MR. BORDEN: The, the other, the other -- we've also sued in quantum meruit, Your Honor, which calls for, under both the, the Myrtle Beach Hospital versus City of Myrtle

Beach case, and the Hornbook elements of civil causes of action, we needed to show a benefit conferred upon the defendant by the plaintiff. That certainly was shown. A realization of that benefit by the defendant. He would of had to have had his eyes closed not to know. And, and a retention by the defendant of a benefit under conditions that make it unjust to retain it without paying its value.

Well, we've established its value. They've retained it. They've retained those benefits.

Going back to our original point of fairness and trustworthiness, who is more important for Mr. Leary than his banker, John Sulka?

When John Sulka had a question, who did Larry Leary point Mr. Sulka to?

Down the street to the Hospitality Advisors Group who leant credibility to Mr. Leary with his banker.

At the same time, once they've decided that they can wash their hands of Hospitality Advisors Group, they bring in Margaret Johnson, an adult citizen of Colleton County. She's been there at -- in over 20 years. She's known the family. She has managed hotels, and timeshares, resorts, vacation rentals and is experienced in daily operations and administrative business.

She is now, to our latest knowledge, at Windham Vacation Rentals. She knew Larry, Larry Leary's family for

about 35 years. Larry Leary indicated that the hospital -- that, that, that the Hospitality Advisors Group would be calling her for an interview. Larry Leary stated to her that hospital -- that Hospitality Advisors Group has been engaged.

Lawrence Leary told the affiant that, if, if hired, she would be working for Hospitality Advisors Group. During this time, the affiant---

THE COURT: Mr. Borden, this, this is not in evidence. You're reading me an affidavit from Margaret Johnson which is not in evidence in this trial. I saw that it was attached to the summary judgment motion as an exhibit but that wasn't in evidence.

MR. BORDEN: I -- it -- I --.

THE COURT: The evidence that I heard was from Mr. Zoul or from Mr. Brooks, I'm not sure which---

MR. BORDEN: I, I---

THE COURT: ---that Margaret Johnson was the one that was hired and there was testimony that she had known the family for 35 years and that she an ex -- had experience.

So, that testimony is appropriate, but anything more than that, it's not in evidence.

MR. BORDEN: Mr. Albrick was the one to give her the good news that she was moving on.

THE COURT: Okay. Well, as of right now, I didn't even

know that that was Mr. Albrick sitting in the courtroom. He wasn't called as a witness. I didn't know what his position was.

So anyway.

MR. BORDEN: That, that, that, that -- that's all --

THE COURT: Okay.

MR. BORDEN: -- Your, Your Honor, and, and the -- I, I think that we made our case and I just, you know, re -- regret the difficulties for some of the people here.

THE COURT: All right. Also, Mr. Borden, before he starts, I, I do have a question for you.

One of the things you've stated is you talked somehow about attorney's fees. I don't see anywhere in the contract or statute that attorney's fees are appropriate in this case.

MR. BORDEN: I did not---

THE COURT: What about---

MR. BORDEN: I did not all -- Your Honor, I did not, although I have considered making a submission of, of nonresponsive answers to numerous requests to admit, denials on the basis of unsure of the date of the conversation, stuff like that, proving the stuff that could of been admitted to here. It's probably worth about three to $5,000 in, in going over facts with these fellows.

The, the, the -- this is request to admit that we

submitted and, and what we got back.

THE COURT: Did you file a motion to compel?

MR. BORDEN: I'm, I'm, I'm, I'm, I'm withholding it.

THE COURT: You're what?

MR. BORDEN: I, I, I have not submitted it. In other words I, I was---

THE COURT: You didn't file it?

MR. BORDEN: Correct.

THE COURT: And you didn't serve it?

MR. BORDEN: Oh, I -- oh, the, the discovery I served.

THE COURT: I didn't ask you that.

MR. BORDEN: But, but no.

THE COURT: I asked about a---

MR. BORDEN: No, Your Honor.

THE COURT: ---motion to compel.

MR. BORDEN: And, and I, and I -- my, my comment was I was withheld it. I have held it. I have not filed it. I have not served it.

THE COURT: Okay.

MR. BORDEN: So that -- so that's where we are on, on the --.

THE COURT: Okay.

MR. BORDEN: I --.

THE COURT: Okay.

All right. Mr. Galvin, yes, sir.

MR. GALVIN: And, and, and the -- I think a lot of the angst we've talked about in this case was not between Mr. Borden and I but I think we've done pretty well. (Indiscernible) is here.

Your Honor, I looked up, while we were wanted -- while Mr. Borden was talking, the Scott versus Mid-Carolina Homes. I think that's a breach of con -- contract accompanied by a fraudulent act. I don't think that applies here.

We've got, after summary judgment, we have three claims left. We've got a breach of contract. We've got promissory estoppel and---

THE COURT: And quantum meruit. Quantum meruit.

MR. GALVIN: ---quantum meruit.

With regard to Mr. Leary, I think one thing the Court needs to think about when they look at some of his actions is, if you read his deposition, he's got about a third grade reading comprehension --

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: -- grade school education. You know, some of the stuff you and I may take for granted. He, he's done --.

THE COURT: He must have been a pretty successful businessman that he can go get a loan from John Sulka for -- I don't even know what the loan amount was.

MR. GALVIN: Well, he---

THE COURT: But it's a beautiful building from what I've seen on the outside.

MR. GALVIN: Totally agree. But there's, there's building side and then there's the other side. So, I'm just saying as far as the writing---

THE COURT: But he is the owner.

MR. GALVIN: He is the -- he -- he is the, the part owner of the Old Town Bluffton Inn. But yes, I will agree with you that that's the case. That wasn't my only motion.

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: Okay. You know, with regard to the benefit, if you look at -- if you take a look, we've got this neat book here, take a look at the elements of promissory estoppel and quantum meruit, and I'll start with quantum meruit. You have to show that the benefit conferred by the plaintiff on the defendant.

I think, with that element, the Inn would be the, the party that got the benefit. Everybody who testified today said, yeah, the proforma was for the Inn, that it is for the Inn, all the stuff, but, again, they have to also show the realization of the benefit by the defendant. So, I think the Inn was the one that received the benefit.

THE COURT: Can I ask you a question.

Who owns the Inn at this point?

Has it been sold?

MR. GALVIN: No.
THE COURT: Okay.
MR. GALVIN: It's---
THE COURT: And is it still -- you said that originally it was -- what percentage in the trust and then what percentage -- that's, that's what I heard you say. One percent in Mr. Leary's name.
MR. GALVIN: One percent in Leary's name and one---
THE COURT: One percent Leary. Okay.
MR. GALVIN: And then I think it's -- and then Danielle Harrison, I think she has 49 and he has another, through her trust, and he has another 50 in his trust. So, he owns 51 percent collectively and she owns 49.
THE COURT: Okay.
MR. GALVIN: That is off the top of my head but I'm almost a hundred percent sure that's correct.
THE COURT: Okay. So, he, right now, owns 51 percent of the hotel and she owes 49 percent?
MR. GALVIN: He personally owns one and, through his trust---
THE COURT: Trust.
Okay. Yeah.
MR. GALVIN: And I think that---
THE COURT: Okay.
MR. GALVIN: I can't remember if -- it may

(indiscernible) that work and I think Robert but I think (indiscernible).

THE COURT: Okay. And when was that transferred?

Do you know?

MR. GALVIN: I can get the document for you here. It was transferred on April 3rd, 2017. You can take a look on the last one.

THE COURT: April, I'm sorry, 3rd, 2017?

MR. GALVIN: Yeah.

THE COURT: Oh, okay. Okay. That's fine.

Okay. Okay.

MR. GALVIN: And it looked like it was Nicholson's office who received (indiscernible).

THE COURT: Okay.

MR. GALVIN: So, so, with regard to anything that they argue as far as quantum meruit, the, the party that is -- if the Court finds that there was benefit, it was conferred by (indiscernible) the Inn. And I think if you look at the case law, when you have a writing that before -- when, when you have a written offer and you're expecting to get a offer back with a signed writing, you know, it's kind of like -- this, this case has kind of got the problem that -- it's kind of like a realtor that comes out to your house and agrees to sell your house for six percent and then they say oh, you can get some more money if you stage it, and then

maybe they start doing a little staging. If you don't -- you know, I don't -- it gets all screwy and then they say yeah, it's gonna be 7,000 a month and then all these other conditions, and you go oh, let, let me think about it for a minute.

That's kind of how I kind of see the facts kind of developing to the fact that there was a lot of confusion there I think as far as if you looked at the two contracts on top of each other. Even some of the written agreements that the plaintiff put on, you know, some of them didn't say what was what and what, what they were doing. And with regard to the proforma, which seems to be what the main value from what even their expert said, is that proforma, one, it was to the benefit of the Inn.

But if you look at the proforma, that was done before, that was done in -- Mr. Brooks testified that was done to try to sell the Inn. And if you look at that contract where they were trying to sell the Inn, it says that Hospitalities Advisors Group will be responsible for all professional services and expenses which it incurs, and you'll be able to get a consulting fee of six percent if they find somebody to buy it, and it also says in here that they'll visit the property with an investment group in September of 2018.

So, in that contract they were gonna come out and visit the property anyway, and that's when they had the

discussion, and, after that meeting on the 7th, October 7th and 8th, that they turned around and sent him a draft contract in which they said we would be proud to manage, and I think there's a thing here.

I mean I, I don't think anybody disagree with me that the, the, that the -- Mr. Brooks and Mr. Wilson will be fairly sophisticated. I think they're, they're well spoken and I think the fact that you see we would be proud to manage, that, that tells me that they're sending a draft contract for review and they're saying let me know if you have any questions or comments, and then they're saying we would be proud to manage October 8th, and I think that shows what the thoughts of the parties were at the time.

But we would be proud to manage your property. We would, you know, like to, to manage it and here's our proposed agreed.

So, I think that once you look at this agreement, the other thing it has in it is that it has a signature line that it requests a signature. And then they provided you with a document from the Secretary of State showing that the Secretary of State -- that they have looked up what the proper entity to -- that they were trying to contract on when they were doing the, the agreement.

So, I think that shows they were trying to contract with the Old Town Bluffton Inn (indiscernible) while they

full well. And, you know, so they were trying to get the parties right. But I think if you take out the proforma, that's a big, big problem.

Also, you know, as I went through the math with Mr. Zoul, if you take and try to figure out what $10,000 a month would be, right, and you calculate that out on a yearly basis and take his, his calculation for 17 days, I think you -- the -- if the Court was gonna give them something, I think they would take that 10,000 and divide it by the month, and then figure out how much a day in that would be. So I think that that's the proper measure of, of what the, the damage would be if they were to receive any of it.

Also, let me go through here. So, I think the, the Court's seen my pretrial brief and with regards to the extent of the contract and what is required to that document. I think there was still plenty of negotiation when -- I know they were doing some work. But one thing you've got to remember, when you already have a contract to do some work, and they're already there trying to get it up and get it sold, say that you knew all the stuff they were doing there is credibility later for it later especially when they give you a written contract which I think, I think it, it, it makes some sense that's Mr. Leary's position.

Also I mean it was only a small period of time. This

wasn't a two year -- you know, this wasn't two years where they said we worked for two years and we had a contract, you know, here's, you know, and here's what -- how we operated. It was 17 days and that's, you know, we negotiate contracts longer than that and for a lot of (indiscernible) we live in here where we go back and forth and we, we talk about what, what changes they want to be or what have you. But we can look by the, the -- it wasn't even 20 days and Leary told them that he didn't want to hire them and made the contract (indiscernible).

And I think the, the other big problem was that when Mr. Zoul testified, he said that, that Leary says in his deposition that I expected, when I was gonna hire them, to manage it. I was expecting to pay five, ten, or 5,000 a month but I didn't ever dream that I'd have to hire an innkeeper on top of that. I mean it strips out any profits that they would have, and Mr. Zoul testified that the day he went over there with him was when the proforma was shown to him, which was October 7th or 8, which is---

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: ---right around the time that this, this contract was, you know --

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: Your Honor, that's the (indiscernible).

THE COURT: And just so I understand, in the proforma,

there was the cost for an innkeeper in addition to the $10,000 monthly cost for HAG to manage it.

Is that correct?

He says in his testimony, his deposition testimony on -- at the October 8th meeting, he learned that it did not include them being the on site person and that they were gonna hire an innkeeper on top of that. That's where he didn't understand it. I, I think that's where everything broke down. That's obvious where -- that was his problem.

MR. GALVIN: And I think if you, if you provide this to anybody, especially a guy with a third grade education, I don't, I don't think he ever figured that out. But Mr. Zoul testified that, that he told him that, that -- that they went over it at that meeting --

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: -- and I think that's when words -- he says that doesn't make any financial sense. So, it's, it's, it's a -- my wife says a sticky wicket. That's kind of what word we're dealing with in this case. But to say that I gave you a complicated financial statement, and you would of picked it up and understood everything in it, but, but I think what Mr. Zoul says yeah, that's what I told him, then that's where it --.

THE COURT: Okay. So, he realized it on October 8th and then he goes on in his testimony to say I told them I

wasn't interested. They couldn't bring anything to the table. I mean they weren't doing anything. That's what he testified to in his deposition, and he finally communicated that he has no interest in using them for either management or any more operations or preopening work on the 26th is what I see.

MR. GALVIN: Well, I see in the -- if you look at the documents here, which was their breakdown, they showed it ending on the 24th, that she -- where they broke down how much their work was --

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: -- I can dig through here but it said that they were told on the 24th and it's in evidence. It's that breakdown of the work performed. The one -- I think it started with the $11,000.

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: And here it is. There it is. Twenty-four, services performed. I can pass it up if you would like, Your Honor.

THE COURT: I'm looking at it right now. Hold on a second.

MR. GALVIN: Sure. Well, what I---

THE COURT: I've got it as October 26th is the date, the one I'm looking at.

MR. GALVIN: I think they were confused in, in the -- I

think they said that in some letter but then if you look back at the---

THE COURT: Show me the one that says the 24th.

MR. GALVIN: I can pass it up.

THE COURT: Is that, is that the one that---

MR. GALVIN: I'll just pass it up.

THE COURT: ---shows all of the -- yeah, just let me look at it.

MR. GALVIN: I circled it. So, that, that is my signature or my circle.

THE COURT: Okay. Okay.

MR. GALVIN: Your Honor, thanks for taking time to, to---

THE COURT: Uh-huh. (Affirmative).

MR. GALVIN: ---hear this case and thanks for taking a phone conference.

THE COURT: Sure.

Okay. Okay.

MR. GALVIN: We would --

THE COURT: All right. I will be in touch with the attorneys shortly.

Okay. I'll let you-all know something but I appreciate it and I'll let you know.

MR. GALVIN: Thank you.

THE COURT: Okay. Thank you.

MR. BORDEN: Thank you.

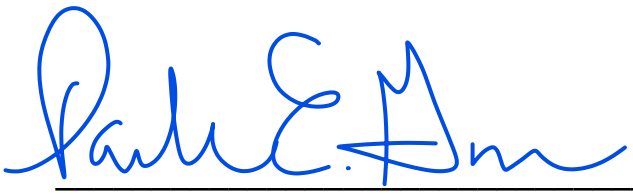
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina, on the 18th day of May, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 23rd, 2021



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT

ZACHARY Z. ZOUL, ET. AL.,

Plaintiffs,

vs. CASE NO. 2019-CP-07-117

LAWRENCE LEARY, ET. AL.,

Defendants.

DEPOSITION OF: ZACHARY Z. ZOUL
(VIA ZOOM)

DATE: TUESDAY, MAY 11, 2021

TIME: 12:30 P.M.

LOCATION: GALVIN LAW GROUP
23 Plantation Park Drive, Suite 503
Bluffton, S.C.

TAKEN BY: COUNSEL FOR THE DEFENDANTS

REPORTED BY: AARON J. SELMAN, CR, NP

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ZACHARY Z. ZOUL

After counsel stipulated to the identity of the deponent, the deponent was first duly sworn and testified as follows:

(Reporter Note: After diligent research, phonetic(ph.) spellings were used for all proper names or words not specifically spelled during the course of the deposition.)

(Whereupon, Defendant Exhibit No. 1, Information from Discovery Responses, was marked for identification.)

MR. GALVIN: I've got present in the deposition Larry Leary by telephone, Ward Borden is here representing Zachary Zoul and Zachary Zoul is present, as well as myself Greg Galvin.

EXAMINATION

BY MR. GALVIN:

Q. Mr. Zoul, could you go ahead and just spell out your full name?

A. Yes. Zachary, Z-a-c-h-a-r-y, Zoul, Z-o-u-l.

Q. And have you ever had your deposition taken before?

A. Yes.

Q. What kind of cases have you had your

deposition taken in?

A. I'm not sure I can recall. It's been probably decades, thirty years ago.

Q. Okay. Do you understand that when I ask you questions, I need you to give me a yes or a no answer because the court reporter cannot take down head nods?

A. Yes, I understand.

Q. I have to ask everybody these questions. Are you under the influence of any drugs or alcohol which would change your reasoning or cloud your thinking?

A. No.

Q. Okay. And if I ask you question that's unclear, you can ask me to rephrase it. But if you don't ask me to rephrase it, I'm going to assume that you understand what I'm asking, okay?

A. Yes, sir.

Q. All right. And during this deposition, you're probably going to hear some objections from Mr. Borden.

If he instructs you not to answer, don't answer. But if he just objects, then you can go ahead and answer unless he instructs you

otherwise. Do you understand that?

A. I do.

Q. Mr. Zoul, can you tell me what your educational background is?

A. Yes. I have a Bachelor's Degree in Public & Business Administration from Drake University. I have a Master's Degree in Planning from Minnesota State University.

Q. Okay. Do you have any other certifications or licenses?

A. I have a certification by the American Hotel & Lodging Association as a certified hotel administrator. I have a real estate license in the state of Nebraska as a real estate broker. And I believe that's it, at least those are two that come to mind.

Q. You said you have a hotel administration certification. Can you tell me when did you get that, what year?

A. It's been sometime ago. I can only proximate the year.

Q. That's fine.

A. I believe it was 2000.

Q. Why did you get that certification?

A. I commenced my career in hotel

administration in 1997, and the American Hotel & Lodging Association at that time offered an executive certification program for management, primarily general managers and managing directors in the field. And it represented just an acknowledgement of one's credentials. I think that's really the reasons of pursuing the associated training and the designation. It's just related to professional certification.

Q. Did you have to study for that or take a test?

A. I had to do both.

Q. How much did you study for that, how long?

A. I don't know that I studied very much. It was pretty much in my wheelhouse. The test in and of itself was a fairly easy undertaking.

Q. Okay. Did it take you a few months to get that, or do you know how long it took you to get that certification?

A. Now you're really testing my memory.

Q. I apologize.

A. I just can't recall if it was three months, six months, a year. I really can't recall the processes for how long it took me.

Q. That's fine. Can you tell me what your work history was as far as in the hotel field?

A. My work history in the hotel field, did you say?

Q. Yes.

A. I commenced my work as a hotelier in 1997. It was the beginning of my work in the hotel field.

I was the general manager of the Grayfield Inn on Cumberland Island, Georgia, which is a seventeen-room luxury boutique inn. I was there for six-and-a-half years.

Q. Okay.

A. I then accepted a position with a start-up operation called Hampton Island Preserve which was and remains a private club facility with lodging. I did that for a very short period of time. It was a contract position for six months after I left the Grayfield Inn.

Q. Okay.

A. I then assumed the position of operations manager for Palmetto Bluff in Bluffton, South Carolina.

Q. Okay.

A. I oversaw the hotel and resort operations at Palmetto Bluff in Bluffton.

Q. What years were those? Do you have an idea on that?

A. It was three-and-a-half commencing -- I'm going to have to back up a little bit just to think through the exact chronology.

Q. Okay.

A. Sometime in 2004, I believe. It could be 2005. So just backing up, I started with Greyfield Inn in 1997 for six-and-a-half years. Went to Hampton Island for six months. That's going to take me into the, I think, the late 2004 -- I'm sorry. I can't remember the exact chronology, and I'm no longer in a position where anybody wants me to give them a resume so the dates aren't --

Q. That's fine.

A. But sometime in I think it was late 2004 or early 2005 at Palmetto Bluff. I was there for three-and-a-half years.

In the -- in March of 2008, I took the position of chief executive officer, president and director of the Cote Family Companies based in Minnesota.

I was responsible for the resort properties in Minnesota and Arizona consisting of two resort properties, as well as a real estate development and children's camp programs. I did that until the fall of 2010.

Then I organized and initiated Hospitality Advisors Group. So that was formed -- and I can be a little fuzzy on the details. I assume sometime in 2009, 2010. I think in the summer of 2010 I formed Hospitality Advisors Group.

I did consulting from that day through the present. I also, during that time, served in various interim general manager positions for hotel properties.

I did an opening of a Quality Inn in Nebraska. I opened up the Hotel Deco in Omaha, Nebraska, which is a luxury boutique hotel consisting of ninety-nine rooms. But that was all under the umbrella of the Hospitality Advisors Group even when it was essentially a full-time engagement for certain periods of time.

Q. All right. And then was that the extent of your hotel experience?

A. That would be a summary just

delineating the positions without identifying all of the clients in the consulting mode.

Q. How many clients do you think that you had?

A. I would say roughly two dozen.

Q. And was that from 2010 to the present?

A. Yes.

Q. I have to ask everybody this, and I think I already know the answer. Do you have any type of criminal record? Any felonies or charges, you know, breach of trust or anything like that? I have to ask everybody.

A. Any criminal convictions?

Q. Yes.

A. No.

Q. All right.

A. I should correct. Traffic citations, I guess I should reference those for my lead foot.

Q. Don't ask me that question. You don't have any type of felony or any type of breach of trust or anything like that, correct?

A. Correct.

Q. I think everybody's got speeding tickets.

All right. So I've gone through the

discovery that you've provided. I'm trying to put this in order, kind of date order. Some of this stuff, I just don't why it was produced. So I have to kind of go through some of this with you. It will kind of go pretty quick.

One of the things you guys produced was this Pearce Scott Architects bill. You can see the little Bates number. It starts: Zoul Depo 5-11, and starts 001 and ends 0005. Do you know why this was produced in discovery?

A. You're asking me if I know why that was produced?

Q. Yes. Is there any significance to this?

MR. BORDEN: Greg, if we could go off the record, I can tell you.

MR. GALVIN: That's fine.

(Discussion off the record.)

MR. GALVIN: Back on the record.

BY MR. GALVIN:

Q. So how did you become connected or begin discussions with the Old Town Bluffton Inn? How did that come about?

A. In May of 2018, I was contacted by Vince Harrison, and he was looking for consulting

services associated with the inn, and we ultimately accepted a small engagement in response to his inquiry.

Q. So in May 2018, it looks like you said Vince Harrison reached out to you. Tell me about that engagement that you were a part of. What were you hired to do?

A. Mr. Harrison was needing some help -- receiving some help with respect to a loading zone that they were seeking a permit for from the Town of Bluffton. And I felt in our capacity as hotel consultants, we could set forth the case, the argument for why that was meritorious.

And I think it was also some feeling that my connections to the Town of Bluffton on behalf of Palmetto Bluff and being the Palmetto Bluff representative to the town having appeared before the town council would be a useful connection as well.

Q. And if you look at the very bottom on Zoul page 18, it says: Zoul Depo page 18. Was that what this invoice was for $1,350.00?

A. Do you have a page number --

Q. It should be page 18.

A. Page 18?

Q. Yes.

MR. BORDEN: That's under the Zoul deposition.

THE WITNESS: Are you referring to the statement?

BY MR. GALVIN:

Q. Yes, the statement. I don't know if you can see it from here.

A. I have it up.

Q. Is that what this invoice was from?

A. Yes.

Q. Okay. And were you paid on this statement?

A. Yes.

Q. And were all your discussions with Vince Harrison on that, or did you ever discuss anything with Mr. Leary related to I guess I'll call it the loading issue?

A. Personally, my discussions were solely with Vince Harrison. I believe with Eric Brooks, he may have had a discussion with Larry Leary, but I can't speak to that definitively. But I wanted to disclose that possibility. At some point, I had a communication with Mr. Leary with respect to the payment of the bill.

Q. And then you said with regard to that $1350 bill, you were paid at one point in time, correct?

A. Yes.

Q. And then how did your relationship continue with the Old Town Bluffton Inn? What happened next?

A. After the completion of that small engagement?

Q. Yes.

A. As far as I can recall, there was -- I don't recall any involvement in the project after that engagement was completed, other than some communications regarding payment of the bill.

At one point a check was sent, but it wasn't signed. So we had a couple of communications with Mr. Harrison in particular about payment and then getting the check signed and so on. There were actually more than -- it was more than you might expect on that minor issue.

Q. Okay.

A. I don't recall any specific communications thereafter. There may have been, and I suspect there were some communications

either with Vince Harrison or Danielle Harrison just to inquire as to how things were going with the town or how things were going with the project. You know, those would have been very casual sorts of phone connections that Mr. Brooks or I might have had. But I don't profess to remember them, but they may well have taken place.

Q. And do you know who is Eric Brooks? What is his --

A. Associate of mine. And he works with me in the consulting realm.

Q. So does he work for Hospitality Advisors?

A. Yes, on a per engagement basis. He's not an employee. He's an associate.

Q. Do you have a contract with him for each project you do together? Is that how it works?

A. A contract with him? I don't know if that term really fits. He handles assignments in conjunction with me. And we don't have a written agreement, but we have an understanding. I guess you could call it a contract that he performs certain work, and he gets compensated for that work.

Q. Okay. And the -- go ahead.

A. The relationship goes back enough years that you might call it an informal one because he's been doing this with me for probably six years at least.

Q. Okay. And where is he located?

A. Savannah.

Q. Okay. And was he located in Savannah the entire time this was going on?

A. Yes.

Q. And then I see some emails in here where looks like you produced one which would be page 25 from Eric Brooks to you just about, I guess, a Yoder wedding requesting all rooms. Do you remember that?

A. Yes.

Q. Can you tell me about what was going on there and what the importance of this email was that was produced to me by your attorney?

A. Yes, I can. I don't know if I just -- to make certain that I haven't neglected to answer your earlier question. I kind of stopped without completing it, but it's not pertinent to me, but if it is to you, I just wanted to be forthcoming.

Q. I appreciate that.

A. So after that loading zone issue, then the next subsequent involvement and discussion with the inn occurred on September 5, when Larry Leary called me on the phone to secure additional services.

So I just wanted to kind of complete that answer since I sense that you're moving on, and I didn't want to leave an incomplete answer.

Q. I appreciate that. This was easier in 2019 to do, and now it's harder to do by Zoom, but we are both learning.

Okay. So tell me what happened on that September 5 call.

A. September 5, Mr. Leary called and expressed some interest in retaining our services. And ultimately he did engage our services in a number of respects that continued throughout the month of September and the month of October.

Q. And are you talking about -- if you look at page 30 which will be page 30 on the PDF and the Bates number.

A. Yes.

Q. This is what you're talking about, correct, page 30 and 31? Is page 31 the contract that you are talking about?

A. That was the first engagement, yes.
Q. Okay.
A. The loading zone issue and this would have been the next engagement preceding the other.
Q. Okay. And do you see this contract? Is that a true copy of the contract of page 31?
A. Yes.
Q. And what were you hired to do here?
A. He was interested at that particular time for some assistance in locating a potential buyer in the event that he desired to sell the property which was his interest at that time.
Q. Okay. And you both signed this contract here? That's the version of the contract. Are you seeking any damages from this contract?
A. No.
Q. And you've not sold the property or anything, correct?
A. Correct.
Q. So after this contract was signed -- we'll call it the September 17, 2018 contract. After that was signed, I guess the next thing you did, if you look at page 32, did you send him some -- I'm sorry.

Page 33. Can you tell me, does this look familiar? You produced these in discovery. It looks like it's page 33 to 38. Did you do this pro forma?

A. Eric Brooks and I were collaboratively on the pro forma, but Mr. Brooks actually produced it.

Q. Okay. So page 33 to page 38, those were pro formas you created for Mr. Leary, correct?

A. Yes.

Q. And those pro formas were created under the September 17, 2018, contract?

A. No.

Q. Yes?

A. No.

Q. No. All right. What were these produced pursuant to?

A. On September 20, Mr. Leary contacted me and indicated that he wasn't certain at that time that he did want to proceed with the sale of the property. And he wanted to do instead a dual approach which included the order -- was of the mind that the property would be more valuable if it was up and running.

Q. Okay.

A. And he asked us to redirect our efforts to move in that direction expeditiously.

And then on September 27, he further amplified that by telling us to not even endeavor to continue any efforts with respect to the sale of the property and just focus entirely on bringing it to an operational state.

Q. Okay.

A. We worked with a very precious timetable of our getting it open by Thanksgiving and directed us to assume the role of management operations where we would do the preopening work, and then evolve into ongoing property management as the operator of the inn.

Q. All right. And do you have any documents in here showing that those discussions occurred after September 20, discussions about having you run the unit?

A. The documents are the exhibits themselves that reflect the work ethic -- not the work ethic, but work product associated with operations.

Q. Okay.

A. All of our work product related to

getting the inn up and running.

Q. So let me ask you this. If you go to page 47, will you take a look at 47 and 48.

A. Sure.

Q. Can you tell me what this document is?

A. I need to scroll to it. Just a second.

Q. Sure. Take your time.

A. I believe I'm looking at, this seems to be 47, the management services agreement for the ongoing operation of the inn. And it also addressed the preopening services which were well under way at that point.

Q. And am I correct that if you look at page 46, is this the email where you sent the contract over for his review?

A. Yes.

Q. Okay. So am I correct that October 8, 2018, at 7:56, you emailed Mr. Leary this proposed management agreement between Hospitality Advisors Group and Larry Leary, is that correct?

A. Yes.

Q. And was this contract ever signed?

A. I believe that it was, yes.

Q. This contract was signed page 47 and

48 by Mr. Leary?

A. Mr. Leary told me that it was signed.

Q. And do you --

A. He directed -- we had Eric Brooks pick it up along with the first one payment.

Q. Were you ever produced a signed copy of this agreement?

A. No.

Q. So you've never received a signed copy of this agreement, correct?

A. That's correct.

Q. Okay. And this was the agreement that you were going to work under to open the hotel and do the preopening and then the operations, is that correct?

A. Yes.

Q. And this had your terms and conditions for that work, is that correct?

A. Yes.

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. All right. So tell me what happened after you emailed Mr. Leary on October 8, at 7:56. So what happened next?

A. What happened in what sense?

Q. Well, what occurred after that? Did you have discussions with Mr. Leary about getting the signed contract back?

A. Mr. Leary, as I mentioned, called me and indicated that the signed contract was there at the inn along with the check, and that Eric should come by and pick it up. And Mr. Brooks did, in fact, leave Savannah to stop at the inn to pick up the contract and the check.

Q. And do you know what date that was?

A. No. I mean not without going through my records, I wouldn't know it off the top of my head.

But when Eric Brooks was en route, Mr. Leary called back and asked me to hold off because he wanted to -- I can't recall what the reason was he just asked to hold off. So I called Eric Brooks while he was en route and I said, go back to Savannah.

Q. Okay. And do you know was that two days after or was that twenty days after? Do you know how long after that was? Do you have an approximation?

A. I don't.

Q. You don't, okay. Do you have a record

that I could look for where I could tell what date that would be?

A. I wouldn't have a record of it. Mr. Brooks may have a recollection or he may have, you know, a calendar entry, something to that effect, but I wouldn't have one.

Q. You were planning to manage the hotel, essentially you were going to be in Nebraska and the other gentleman, Mr. Brooks, was going to be in Savannah, is that correct?

A. Three of us were going to be involved. Mr. Alsko from Hilton Head Island and Mr. Brooks in Savannah. And then we were to have an on-site innkeeper which we were interviewing. I interviewed several applicants for that position.

I got quite a few communications with Mr. Leary where he was going to meet them after we vetted them and met them. I was going to present two or three candidates to Mr. Leary. We had some tentative dates for doing that. I don't recall if it was done by text message or email or phone call.

Q. Do you recall if you told Mr. Leary up front that you guys were going to hire local, you know, interview and hire local innkeepers?

A. I did. And my communications reflects that.

Q. But did you do that before you sent him the signed contract or the contract that he was supposed to sign, or do you have any documentation where you told him that you were going to use essentially people that were part of your company?

A. I believe so. I know it was made very clear; whether that form of it, I'd have to double-check my record. I presume that there are multiple emails, but I don't want to stipulate to that without double-checking.

Q. All right. So if you look on page 60. Is this what you were talking about where you started trying to introduce Mr. Leary to perspective candidates to run the inn?

A. Yeah. That's one of the communications in that regard, yes.

Q. Okay. And you agree that was after the date that you had sent him the draft agreement for the management of the hotel?

A. In this particular instance, yes, but not in the prior.

Q. Do you agree that when you sent the

contract, the written contract, that you were requiring a written contract to be engaged to do this work?

A. No.

Q. No? So you sent a written contract, but you didn't want use the written contract? I'm confused.

A. Well, we worked in the first instance with a verbal contract.

Q. Correct.

A. Certainly any ongoing permanent role would typically be governed by a written contract, but we were already working actively under the verbal contract and had been since late September.

Q. But you expected to work under the terms of the written contract, correct?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. You can go ahead and answer.

A. Yeah. I certainly expected to honor the terms that we agreed upon whether written or verbal, and they were one and the same.

Q. Well, you sent over a written contract. I'll call this one, page 47 and 48, I'll call this the October 8 contract. You

expected that to be signed to govern your relationship, correct?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. Can you go ahead and answer the question, sir?

A. Well, I'm not sure. I generally function with a written contract, but I've also functioned with verbal contracts. I'm a firm believer in good faith and goodwill, and a handshake works for me in the absence of any other form of agreements.

I certainly at some point would have expected this contract to be signed, but we had an agreement, and we were working actively for a period of several weeks at that point.

So if your question is, do I need a signed contract to commence work? The answer is no. We had commenced work in mid to late September.

Q. But one of your things was that you were requiring that you have a signed contract, correct?

MR. BORDEN: Object to form.

THE WITNESS: I was not requiring a

signed contract to commence work. We already commenced work.

BY MR. GALVIN:

Q. But you sent over a signed contract to govern your relationship with Old Town Bluffton Inn, correct?

A. I did send -- believe sent over -- I believe it had my signature on it. I'd have to double-check, but it was in front of me a moment ago.

Q. Sure. It's page 47 and 48.

A. I don't think it -- it didn't have my signature on it either.

Q. Okay. But do you have any emails or anything showing these were the terms of the contract before this October 8 proposed agreement?

A. I don't recall any. I don't believe that I do. But, you know, I probably need to refresh my recollection to make certain of that.

Q. I mean you obviously sent over this contract and you were looking to receive a signed copy back, is that correct?

A. Yes.

Q. And one of the reasons you stopped work is because you never got a signed contract or

never received --

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. One of the reasons you stopped work was because you never received the October 17 proposed agreement back and signed, correct?

A. That's incorrect.

Q. That's incorrect?

A. I said that's incorrect.

Q. Well, explain it to me. Why is that incorrect?

A. We stopped work because Mr. Leary advised us to stop work. He did not -- had nothing to do with the -- whether or not the contract was signed.

He terminated our services, and he hired Margaret Johnson directly. We had previously referred to us to interview. But he hired Margaret Johnson directly to be an employee of his because he found that to be more cost effective.

Q. And he had found Margaret Johnson on his own, is that correct?

A. I believe so, yes. And that's what I've been told, yes.

Q. On page 60, it looks like I guess you sent an email because you had some perspective candidates to meet for the interviews, is that correct?

A. Page 60?

Q. Yes.

A. Yes. I had interviewed candidates while I was there on October 7 and 8, and Eric had as well. And from those series of interviews that he and I completed, we had some candidates to forward to Mr. Leary, and that's what that email speaks to.

Q. Okay. And then on the next page, I think it's page 61, do you know who Lindsay Edwards is? It looks like she had sent you an email?

A. Yes.

Q. Who is Lindsay Edwards?

A. She was my -- an operations assistant for me at Palmetto Bluff who, for a period of time, I would call her the -- I don't recall her title. But she basically did project work in the operations realm for me at Palmetto Bluff. And I was attempting to recruit her as a possible contender.

And then I believe on October 7 or 8, I met with her and her husband to make the case. I think ultimately she concluded that it wasn't a good time for her to make a move because she had a very good position. But she recommended someone to me that I also considered.

Q. Okay. And then you had forwarded a resume on from Kristen Natale? I think that was included with her email, right, yes. That was page 62 to 65?

A. Yes.

Q. All right. She was one of the potential candidates to be an innkeeper, is that correct?

A. It's someone we looked at. I don't know if this was someone that we were going to forward.

There were two other individuals that I think were highly ranked, one that Eric Brooks dealt with, and one that I met with as well that I think were higher on the matrix in terms of candidates than this particular one.

Q. And then on page 66, I think that's 66 to 68. Can you tell me what was the significance of this? You produced it in discovery. It says:

Bluffton Inn Pro Forma originally provided to the bank.

A. Page 66?

Q. Yes, sir. 66 was the email and then the following two pages.

A. My recollection is that this was -- that the reference to it being provided to the bank, that is the pro forma that Mr. Leary had provided to his bank prior to our being engaged. And I think he gave it to us as a -- just something to work with or at least to be aware of prior to what we did to develop the operating pro forma.

Q. Okay. So this pro forma was the pro forma that he had prepared page 67 and 68?

A. That's all that was represented to us. We didn't prepare it.

Q. Did you ever prepare a pro forma?

A. Yes.

Q. Do you know when?

A. It's in the -- I thought I saw those documents, but we provided a --

Q. Can you take a look and tell me what page you see it on?

A. Just to clarify my understanding of

what I'm looking at. These are your documents, correct?

Q. No. These are your documents. This is what you produced to us in discovery.

A. That's the totality of our documents.

Q. I tried to organize them by dates so they were somewhat understandable.

A. So what I'm doing now is I'm just scrolling through.

Q. Sure.

A. I think the pro forma commences on page 32.

Q. Let's take a look here.

A. It continues for a period of time. The one on page 32 is dated September 28.

Q. Okay.

A. I believe you asked me about this earlier. If I haven't gotten fuzzy already, I mentioned that the pro forma was developed. It was a collaborative effort between Mr. Brooks and myself, but it was produced by Mr. Brooks and the preponderance of the work was mostly Mr. Brooks's work product.

Q. This was the pro forma you produced. This was produced. Do you know when you started

on it? How long it took him?

A. It was dated September 28. And I can only approximate the time. I believe he started work on it around the -- shortly after the 20th of September when Mr. Leary advised us to focus on getting the inn operational.

Q. Do you have any emails back and forth where you guys were discussing this pro forma? Because I didn't see any produced in discovery.

A. I don't think we had any. That's not how Mr. Brooks and I generally worked. I mean he would have sent this document to me.

But as I specified in an affidavit, I think I had sixty-eight documented -- I could be off a little bit -- documented phone calls with Mr. Brooks during this period of time. And that's generally how Mr. Brooks and I work. We generally pick up the phone and go over things in that fashion.

Q. But did you have any other projects at the time with Mr. Brooks?

A. We dropped -- we put all of the other projects on hold in order to meet the Thanksgiving deadline Mr. Leary had specified.

Q. How many other projects did you have

going on with Mr. Brooks at the time?

A. Two.

Q. What projects were those?

A. One was the project in Okoboji(ph.), Iowa, and one was in Costa Rica. Might have been one in Dominica as well, but I'd have to check my records to see if that was still in play at that time.

Q. I hope you went down and visited those a few times.

A. I went to Costa Rica and saw monkeys.

Q. Well, that's good. I would have been down there a lot.

So this pro forma, can you tell me what goes into preparing a pro forma?

A. Well, it was a great deal of industry data that was taken into account. But what we generally work on in terms of the income side is what are called Star Reports, then travel research reports. I don't believe we had a special one done for this undertaking.

But periodically we order Smith travel research reports and speak to regional trends with respect to occupancy levels and grades. And that will direct us to the income side in large

measure.

In this instance, however, Eric and Mike and myself were so immersed in this particular market, Mike at Hilton Head, Eric in Savannah and me in Bluffton, that we really had an intuitive sense for the market and the rates and occupancy levels.

When I was at the Greyfield Inn, I was chairman of Classics Inns of the South. And in that capacity, I worked with all of the boutique inns along the North Carolina, South Carolina and Georgia coast, including Beaufort and Savannah. So I'm very familiar with rates and occupancy levels and marketing strategies for these types of properties.

So once we addressed the income side and the cost structure, it's far more nuts and bolts, meaning that Eric was talking with and meeting with particular vendors in Bluffton.

We started out by working with some industry norms. But as his work continued in September and October, he started having one-on-one meetings there at the inn with vendors. So, you know, that related to the cost side of the equation.

Q. So for the pro formas, it looks like when I look at this here, it looks like you figure out on top how many rooms the hotel has, right, is that where it says 14 rooms up top?

A. Yes.

Q. Then it looks like the rooms available. Is that a calculation of the number of rooms times the number of days in the year or something like that?

A. Yes.

Q. And then the next is an estimate of how many rooms the hotel is going to rent, is that correct?

A. Yes.

Q. Okay. And the next is the occupancy rate which is how you come up with the number of rooms sold, is that correct?

A. Yes.

Q. So to get the occupancy proposed or assumed occupancy rate, I assume that you just take a look at the similar hotels in the area and try to figure out what the occupancy rate is going to be?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. You can go ahead and answer.

A. Well, you know, the rates would reflect market conditions. They'd also reflect the unique characteristics of the property.

In this case, we wanted to hit the ground running, so to speak, so we weren't all that aggressive from day one because we wanted to build the rate and build the occupancy. So it would be a very different scenario after one year of operations. You've got an established track record, and you've got a clientele in your own right.

So we kept the rates really conservative to begin with. But over time, the presumption would be that you're going to build the rates on occupancy and reputation as your marketing initiatives take hold.

But, again, specifically in response to your question, this would pertain to the concept, you know, what is our concept, what are other properties in the region doing. But then also the unique characteristics of the property and what the motivation was to hitting the ground running as opposed to more of a slow build.

Q. And do you use a specific type of

software to do this?

A. No.

Q. Is this all done on Excel spreadsheets, or how is it done?

A. I don't know if Eric has a more sophisticated methodology for computing this. He did the actual computations. My role was more a consultative role. We were collaborating and talking about, you know, what's the best fit for the market, what's the acceleration we're looking for in terms of occupancy. There are a lot of different factors that go into it, you know.

We look at rates in Palmetto Bluff in a very different way because they built those rates up to 500, 600 dollars a night. It can start out that way.

Q. But with regards to where you calculate the occupancy and the number of rooms sold, I looked through discovery. I didn't see any backup provided or research, is that correct, that was not produced?

A. That's correct. I'm not sure what methodology Mr. Brooks employed.

Q. Okay. I just want to make sure that I didn't miss something. You didn't produce any

backup for how those numbers were arrived at, correct?

A. That's correct.

Q. And the same with the room rate? You tried to figure out when you thought the room rate would be in the market? And it looks like you built up over time, is that correct?

A. Yes.

Q. And then when you talk about the revenue, the revenue is just a calculation, right, of the occupancy rate and the room rate with the occupancy rate and the number of rooms? That's how you come up with the room income, is that correct?

MR. BORDEN: Object to form.

MR. GALVIN: I'll rephrase it.

BY MR. GALVIN:

Q. You calculate the room revenue. That is a calculation of the rooms sold with the occupancy and the assumed room rate, is that correct?

A. Yes. In this instance, there were also some anticipated ancillary revenues for food and beverage.

Q. Is that a standard industry food and

beverage assumption? Is there some assumption you use in the industry that you're going to make 4 percent or what have you on food and beverage, is that correct?

A. Yes.

Q. So those are pretty standard calculations. And then the parking, I assume, that you figure out how many spaces there are and then that's kind of a standard calculation as well?

MR. BORDEN: Object to form.

THE WITNESS: I'm not sure of the number in this instance.

BY MR. GALVIN:

Q. Say that again. I'm sorry. I missed you.

A. In this instance, I'm not sure how he derived at that. I just don't recall.

Q. And then the detrimental expenses. It looks like they came up with 38% on the rooms. Is that a standard that you would use for the industry?

A. It's going to vary based on the size of the property. Because a smaller property is going to have higher percentages because of the

lack of economy as a scale. Generally speaking, it's going to be industry averages.

Q. Okay. Same with food and beverage?

A. Yes.

Q. And then the parking, you're not sure how they came up with those expenses, or do you know?

A. I just don't remember what that arrangement was and how he came up with that. I can't recall if it was some anticipation of parking or not. I just don't remember. It was long enough that was a fairly inconsequential item.

Q. And then the expenses. It looks like you have a series of expenses here administrative, credit card, management fees, information technology, sales, marketing, property option, maintenance and utilities. Did those come from a standard industry assumption? Is that where those came from?

A. They are to an extent, but then they're informed by the unique characteristics of the property.

Q. So you tweak these a little bit, is that correct?

A. Yes.

Q. And do you know how you tweaked each of these categories? Like the administrative and general, do you know how that was changed?

A. I don't remember at all on the nuances of that. It's been too long.

Q. And then the nonoperating income and expenses, property and other taxes, insurance, replacement reserve. Are those the same, kind of an industry average?

A. It would be, you know, informed with any unique characteristics of the property. This document like all, some we'll undertake and go through many, many variations for this final.

Q. It looks like I produced to you pages 33 through 35. That's, I guess, one pro forma. And then you updated on October 2, which is pages 36 through 38, is that correct?

A. Yes.

Q. Do you know or do you have any evidence that Mr. Leary ever used these pro formas for anything?

A. No.

Q. Do you have any evidence that he derived any benefit from those pro formas?

A. Yes.

Q. What is your evidence that he derived benefit from them?

A. My understanding is that he provided this information to his banker.

Q. Are you talking about Coastal States Bank?

A. I believe his name is Mr. Sulka, if I remember, John Sulka. Mr. Leary introduced the banker to us and indicated to the banker that we were the entity that was going to manage the property.

Q. Do you know when that occurred?

A. Not off the top of my head. I believe we've furnished some documentation on that, but I don't remember it.

Q. Did the banker have discussions with you regarding the pro formas?

A. His discussions were with Mr. Brooks. I can't speak to the content of those discussions.

Q. It looks like, do you agree, that on October 18, if you look at page 66, it looks like these pages 66 through 68, these were the pro formas that Mr. Leary prepared and produced to the bank, is that correct?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. You can answer.

A. This is how -- that is how it was defined or described to Mr. Brooks. I don't have any first-hand knowledge.

But, you know, my knowledge is that Mr. Brooks told me that these pro formas were given to him by Mr. Leary and at some point, they were given to the bank.

But I can't speak authoritatively on that because I'm getting this secondhand, so I'm just relaying to you what my understanding what's --

Q. Well, I understand that, and I appreciate that. And then page 69 through 71, looks like you had a potential candidate of a Yumi Ferrel. Mr. Brooks sent you an email with her resume, is that correct?

A. Yes.

Q. That was one of the potential candidates to be an innkeeper, is that correct?

A. Yes.

Q. On 73, it looks like you -- am I correct, that you emailed Mr. Leary on October 19?

It looks like he would send you text messages and you could not open them, is that correct?

A. Correct.

Q. Were you ever able to open his text messages?

A. I don't know if ever -- I know I could from time to time. But I know there was a period of time when his text messages came through as illegible. Either some sort of icon or some sort of graphic there wasn't understandable or legible. And so in this instance, I think I was just advising him of that.

Q. If you go to page 74, you'll see there's an email to you from Mr. Leary?

A. Yes.

Q. Is this a true and correct copy of this email?

A. Yes.

Q. So it looks like at this time, you're still trying to sell the property on behalf of Mr. Leary, is that correct?

A. No.

Q. Okay. Well, tell me what's the background of this email.

A. I was just trying to stay current with

folks that might have a potential interest at some point in time on a property more in the realm of just keeping a database open and available.

Q. But these were people that had expressed an interest in small luxury hotels, correct?

A. They could have encompassed that. But it was really any investor group that could potentially have an interest in a property there or anywhere. That's something that I'm continually doing in any work is keeping my ear to the ground, so to speak. I guess that's the best way to put it.

Q. Okay.

A. People came to either buy or sell or invest in hotel properties. So it's a rather informal process. And it certainly was in this instance, because we were not disclosing the location of any property. We were prohibited from doing so. We certainly couldn't mention Bluffton, and we couldn't even mention exclusively South Carolina.

So it was more a theoretical exercise of just keeping my ear to the ground and being cognizant of people that might have a potential

interest at some point in time.

Q. You agree that the title of the email is: Update Buyer Prospect Identification, correct, that was what the subject of the email was to Mr. Leary?

A. The subject of the email?

Q. Was: Update Buyer Prospect Identification?

A. Yes.

Q. Then it looks like on page 75, it looks like you had an email to Mr. Leary, is that correct?

A. Yes.

Q. This was where you were looking for -- still talking about potential innkeeper hiring, the potential innkeeper that was in the area?

A. I believe this is that. And I think this speaks directly, if I remember correctly, to Barbara Johnson, because it references a phone conversation that Mr. Leary and I had that date where he wanted me to arrange to meet with her.

Q. And then I had a question for you, too. How was Q4 Launch -- how are they related to this?

A. Q4 Launch was between Mt. Pleasant in

the Charleston area which initially had been, as I understand, engaged by Danielle Harrison when she was operating and undertaking the care of what would be called preopening operations. This firm was engaged either by her or by Mr. Leary or by them in consultation with one another.

They were doing two things. They provided the web site and the associated marketing. And they were also providing, for lack after better term, the booking engine or the mechanism by which someone would make a reservations inquiry. That booking engine hadn't been initiated whereby people could actually go on-line and make a reservation. But they could make a reservation inquiry, and then that would be sent to the designated management of the inn. Previously, that person was Danielle Harrison. And she was the designated person that would get those reservation inquiries.

But at the time of the October 11 meeting in Mt. Pleasant, Mr. Brooks traveled there, Mr. Leary traveled there and that was considered to be the hand-over meeting at which time Q4 Launch was instructed that Hospitality Advisors Group was the management company for the

inn, and that all reservations inquiries were to be directed to Mr. Brooks.

And, in fact, from that day forward, Mr. Brooks received directly the reservation inquiries, and he commenced negotiations with different parties in reference to group bookings.

Q. Do you know what the date of that meeting was?

A. The 11th of October.

Q. Can I take you to page 85?

A. I'm not quite there yet.

Q. That's fine. You may not have any knowledge of this email, but it was produced in your discovery.

Do you know on this email, was that Chelsea Thiese(ph.), or do you know who the Chelsea was on here? I'm just trying to figure out why it was produced.

A. I think secondhand Danielle Harrison -- my understanding Chelsea -- at first, Margaret Johnson was hired. And then Chelsea was hired. And I believe Mr. Brooks met with either -- both of them or one of them in late October to transition -- to turn over the files and transition the various operational issues to them.

Q. If you go to page 89, it looks like -- I think it's 89. I think it might be 91 to 94 or 95. It looks like you did an action list, is that correct?

A. Sorry. It's taking me a moment.

Q. Take your time. This is a really awkward way to do depositions, but it at least saves us a flight.

A. Page 91?

Q. Yes. It starts at 91. It looks like the email is back --

A. 91 and thereafter, and they were probably out of order, but I don't know that for certain without studying it.

Q. I think they are out of order, actually.

A. This was our preopening -- kind of a preopening checklist. It's got some of my handwritten scribbles on it which are not as important as any notes that Eric might have put in his head or on paper. And I know because he was really carrying out the preopening duties. But this was the preopening list.

Q. Did anything else go along with this preopening list? It looks like you kind of came

up with a to-do list. Did Mr. Brooks do any of this work or was this all done by Mr. Leary?

A. No -- some was Mr. Leary following through on things that he had commenced. There was kind of a division of labor on that.

There were some items that Mr. Leary had started. It was felt that he would be the one that should see them through because they were already so far out of the gates, so to speak, that it didn't make sense for somebody else to pick up the ball and run with it.

The rest were items that were really being started from scratch, and in many cases, principally from Danielle Harrison.

Some of the vendors had been identified. And it was a matter of Eric meeting with them, which he did, in many cases.

Q. Am I correct it's just a two-page list, essentially? It looks like they really should be 91, 92 -- yes, I have it right. 91 and 92. So 91, 92 is just a version without your writing on it. And then you had written on 93 and 94, is that correct?

A. Yes.

Q. And do you know who came up with a

list initially or how the list came about?

A. Mr. Brooks put the list together.

Q. All right. Then on page 95, do you know what the significance of the -- take a look at the web site Bluffton Bookkeeper. Was Mr. Brooks trying to recommend her as the accountant for the inn? Is that what the significance of this email is?

A. Yes.

Q. Okay.

MR. BORDEN: What page was that?

MR. GALVIN: Page 95.

MR. BORDEN: Thanks.

BY MR. GALVIN:

Q. Can you tell me the significance of page 97 through 99?

A. These were the notes to the pro forma. It looks as though there was an updated pro forma on 10/7.

And it's customary as we refine the pro formas and really shake out and fine-tune them that there are narrative notations that help explain and delineate what the numbers mean. So this looks like a first initial effort to do that.

Q. So these are the initial notes. Are

these pretty standard notes that go along with any pro forma?

A. Yes.

Q. Okay. Let me keep looking here. I think we already went through this and I asked you this. Page 100 I already went through it. I think this is a duplicate. We have gone over this email, correct? This is October 8 where you had sent the draft agreement to Mr. Leary?

A. Yes.

Q. It's hard to keep track of all this stuff. Can you go to page 115?

A. Yes, I see it.

Q. Can I go a little out of order here? It's a little better date order. Let's start at page 122. Do you see that? Is that a letter from you to Mr. Leary?

A. Yes.

Q. Can you tell me what spurred this letter?

A. Without giving more thought or attention, when I had the final -- what I call the final call with Mr. Leary, he -- I guess that would have been Friday, October 26, when he indicated that he was terminating our services.

He asked me to send him a bill, because I know that came up in our discussion. I brought it up. He said, well, send me a bill. So this was my letter explaining what I thought would have been a very reasonable resolution.

Q. And it looks like you were trying to contact his attorney as well to try to get the signed contract, is that correct?

A. I don't believe I did.

Q. It says: We are disappointed by your decision to terminate our management agreement. Based on your repeated assurances - and that of your attorney - that we were engaged and were to move forward, we did so in good faith.

MR. BORDEN: Object to form.

THE WITNESS: Can you repeat the question?

BY MR. GALVIN:

Q. I said you also reached out to his attorney, right, to try to get the signed contract, is that right?

A. No.

Q. Your letter says: Based on your repeated assurances - and that of your attorney. What does that refer to?

A. The attorney called me.

Q. Who was that attorney?

A. I don't remember all the name. I remember that he caught me, I think, driving down the road and didn't write anything down. So I don't remember the name.

Q. It wasn't me, correct?

A. I don't remember who it was. I remember it was an attorney somewhere in the Northeast. Again, I don't remember the name.

But he called and said that Larry had decided to engage our services. And he had a couple of questions that pertained to the structure of the entity, you know, was it an LLC. You know, he just wanted to get the language right in the legal sense for what kind of entity it was that Larry was contracting with. So it was a very brief discussion. And he made the comment in discussion. He said he thought that the contract was a little rich, but Larry was determined to proceed on the basis of it, and that was the end.

Q. Do you know when that call was?

A. No.

Q. Was it right after you sent the agreement?

MR. BORDEN: Object to form.

THE WITNESS: I just don't remember.

BY MR. GALVIN:

Q. Okay. It looks like you had a call with Mr. Leary on October 26, where he had told you that he was not interested in your services?

A. He called me.

Q. Okay. And on page 123, it looks like you produced: Activities by Eric Brooks on behalf of Old Town Bluffton Inn. Was that as a part of this letter?

A. I should back up in one instance of what I just answered.

I'm not absolutely certain he called me or if I called him. I'd have to think through if Mr. Brooks had a face-to-face conversation and it was something that Mr. Leary told him, then I called Mr. Leary or Mr. Leary called me. I mean the end result was the same. It ended up in a call between Mr. Leary and I. I better not say with certainty how the call originated.

Q. There was some conversation, it looks like, on October 26, 2018?

A. It was a phone call. I'm not 100 percent sure.

Q. Who called whom?

A. Or originated the conversation.

Q. Let's go back to page 122. In this letter you -- I think this makes more sense. I'm going to just move on from that.

So page 123, you have listed the activities by Eric Brooks, is that correct? That was a part of this letter that's identified as 122?

A. No, this was not part of the letter. This was something totally unrelated to it.

Q. What is page 123, do you know?

A. I asked Mr. Brooks to just provide a general summary of his work. I don't remember why, but he prepared that at my request.

Q. Okay. And then on page 115 to page 118. Was this the statement that you had sent?

A. I'm sorry. Now that I look at this stuff, I have to clarify the answer with regard to page 123.

That pertains to activities after October 8. I can't speak to why, but that's the date specific document. I'm sorry. You were referring to what page? 126?

Q. No. 115 through 118. This is where

you essentially list out what you think you're owed from Mr. Leary, is that correct?

A. Yes.

Q. The first thing on your list is a $10,000 charge, is that correct?

A. Discount to that rate. It's a $17,000 charge that I offered to discount to 10,000.

Q. So with your other clients that you work with, you receive a thousand dollars a day from those other clients --

MR. BORDEN: Object.

BY MR. GALVIN:

Q. -- is that correct?

A. Everyone is different. Our fee schedule is basically as follows. The hourly rate is $150, and that's what we charged for the loading zone issue for Mr. Leary. Our daily rate was a thousand dollars a day. Our weekly rate is $4,000 a week.

And then, you know, monthly rate generally is discounted to different levels depending -- and all of that, you know, weekly, daily, monthly, presumes that that's full time for that week or that day.

Obviously, an hourly rate is full time

for the hour. But a weekly rate would presume we're full time doing nothing else for that client, with that associate for that period of time and the same for the monthly. But there is no one size fits all. Every engagement is different.

Q. Do you have other clients that pay a thousand dollars a day?

A. Usually we don't work by the day. It's typically an engagement basis. As we set up with Mr. Leary, it -- I don't know that -- I have to think through it.

I don't know that we ever worked per day for a client. We're usually working by engagement, meaning scope of work as we laid out for Mr. Leary. And then we quote a rate for the scope of work. We generally function that way.

Q. And do you have any other clients that you charge 10,000 a month to?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. You can answer.

A. Not at the present time, no. I mean we -- since the pandemic, what's happened with the hotel and resort business has been fairly

devastating, so there's not a whole lot of consulting engagements going on. Most resorts and hotels are hanging on by their fingernails right now.

Q. But at the time of this invoice, were you receiving $10,000 a month from any client?

MR. BORDEN: Object to form.

THE WITNESS: We were exclusively -- we had put all other clients on hold in order to meet Mr. Leary's ambitious Thanksgiving schedule.

BY MR. GALVIN:

Q. I understand that. But your other clients, were they being charged $10,000 a month for your services?

A. At that time, we weren't working for any other clients. We were working exclusively with Mr. Leary with the exception of finishing up some odds and ends.

Q. All right. What about the month before you began working for Mr. Leary, were you receiving a $10,000 monthly rate from any client?

A. No.

Q. What about the year before working for Mr. Leary, were you --

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. -- receiving a $10,000 rate from any client?

A. Yes.

Q. You were. What client was that?

A. I would need to -- I've got nondisclosure agreements with these clients. I can identify a geographic area. But I'm prohibited by the nondisclosure agreements from disclosing the name of the client.

Q. What type of work were you doing for this client?

A. It was a feasible study in Okoboji(ph.) Isle.

Q. So you're doing a feasibility study. And how many months did that study take?

MR. BORDEN: Object to form.

THE WITNESS: Two months.

BY MR. GALVIN:

Q. And did you do anything else for that client where they paid you $10,000 a month?

A. I'm sorry. Did I do anything else --

Q. It wasn't the greatest question. With regard to the client that you were receiving $10,000 a month for, you said that you had a

feasibility study that you were doing for them, correct?

A. Yes.

Q. And that feasibility study took two months, correct?

A. Yes.

Q. And you were paid $20,000 for that study, is that correct?

A. Yes.

Q. And did you do any other work for that client where they paid you $10,000 a month?

A. Yes -- well, not at that same rate. I did some subsequent work.

Q. What kind of work did you do for that client?

MR. BORDEN: Object to form.

THE WITNESS: Did a great deal of follow-up associated with facility operations pro formas. And I did all of that pro bono at that point because I felt like we had a good relationship, and I was just seeing it through.

BY MR. GALVIN:

Q. And you did that after you did the feasibility study?

A. Pardon me?

Q. You did your pro bono work for that client after you did the feasibility study?

A. Yeah. I just didn't charge them anymore. We had a good working relationship and he asked for some more work, and I just thought I had enough good faith and goodwill that I didn't need to send him another bill.

Q. And were there any other clients that you were paid $10,000 a month by?

MR. BORDEN: Object to form.

THE WITNESS: Yes.

BY MR. GALVIN:

Q. And when was that?

A. I think it was in 2016, but I'd have to check.

Q. And how long did that engagement take?

A. I think that was three months, but I'd have to check my records.

Q. And what kind of work did you do during that three-month period?

A. That was a business plan, business plan feasibility study for a hotel.

Q. What goes into a feasibility study?

A. What goes into --

Q. I'm sorry. Did you hear me?

A. You said, what goes into a feasibility study?

Q. Yes, what goes into that?

A. It's not unlike some of what we talked about earlier with the pro forma development. It really starts with a market analysis. It depends.

These projects that I have done basically concern startup operations. So I did one in Illinois that I mentioned. One in Okoboji(ph.). There was one in South Dakota. They all had the same general reference market analysis defining the market. From there, we do a comp set analysis.

I think in every case, I have engaged or in most cases a Smith travel research report to address the occupancy levels, rates for whatever regions apply to the client.

We put together pro forma, operation budget. We look at all of those things that we discussed earlier, along with other factors such as debt service and, you know, owners equity, rate of return. I don't know how long you want me to speak to this. That's kind of a summary.

Q. The feasibility study, you do that before you're even going to build a hotel,

correct?

A. Yes.

Q. You try to figure out what the best place to build a hotel is and where you think the proper market would be for whatever type of hotel you're going to open, is that correct?

A. Yes.

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. And then did you ever receive $10,000 a month for just managing a hotel?

A. No.

Q. Do you have anything showing where Mr. Leary was informed that this work that you were doing was going to be at a rate of $150 an hour?

MR. BORDEN: Object to form.

THE WITNESS: We're charging Mr. Leary, in this instance, $150 an hour. I'm not sure I understood the question.

BY MR. GALVIN:

Q. Let me strike that question and ask you this question.

Do you have any documentation where you show that you were going to charge Mr. Leary a thousand dollars a day?

A. No. The documentation showed -- I think I need to back up in order to give you an accurate answer.

Q. Okay.

A. I was charging Mr. Leary $10,000. The contract was $5,000 a month. That's what the contract provided for. It was merely a two-month startup period when we were doing the pre and postopening that the amount was 10,000 a month. But the monthly amount was the rate of $5,000 a month.

And a number such as that or a number of 7500 a month is an amount that I've charged other clients. I don't charge the same rate in all circumstances. We weren't charging Mr. Leary that rate except for the first sixty days.

The thousand dollar-a-day number that you asked about was offered on my part to resolve this in a fair and equitable way given that our contract had been terminated.

Mr. Leary was no longer going to use our services, and I needed to come up with a methodology that I recall went to the sense of professionalism as well as good faith and goodwill. I didn't think charging customary rates

for a short-term duration was most appropriate in this instance.

So I attempted to discount it to be more consistent with what would have been an engagement for the first couple of months. It became a moot point because he didn't accept the discounted bill or any bill.

Q. The October 8, 2017 proposed contract had a rate of $10,000 a month, correct --

A. No.

Q. -- for the first two months, correct?

A. Two months when we were fully engaged in pre and postopening and the concentration of work was so intensive given the very aggressive Thanksgiving schedule that Mr. Leary directed us to pursue.

It was such an exhaustive amount of work in such a short period of time that I deviated from what would otherwise have been the standard rate because we specified 5,000 a month, but the concentration of work was so intense initially that we allowed for basically doubling up on the associated work effort.

Q. But then when you sent him an invoice, you sent him an invoice for $10,000 for seventeen

days of work, correct?

MR. BORDEN: Object to form.

THE WITNESS: I computed based on my time and Eric's time that we had the equivalency of seventeen full-time days of work.

Now I hasten to add that we don't clock in and clock out. We don't have a system that attorneys might use where every increment of time is definitively recorded. So it was an estimate. But I estimated that we devoted the equivalent of seventeen full-time -- seventeen days.

Q. I'm trying to figure out where Mr. Leary could have noticed that you were going to charge a thousand dollars a day before you sent the statement on October 29?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. Can you point me to somewhere where Mr. Leary would know to expect a thousand-dollar-a-day bill before this October 29, 2018 letter?

A. I think the contract speaks to the compensation was going to be $10,000 a month for the first two months.

Q. Okay.

A. And there was an ongoing sum of $5,000 a month. I can't speak to what Mr. Leary would have thought in terms of what was fair, you know, presumably he determined what was fair was to pay zero.

Q. But I'm just trying to understand where he would have noticed that you were going to charge a thousand dollars a day. Do you have document or any communications where you said, we are going to charge you a thousand dollars a day?

MR. BORDEN: Object to form.

THE WITNESS: Well, we didn't have in the contract a fee in the event that the contract was unilaterally terminated without notice.

BY MR. GALVIN:

Q. You didn't have any documentation where you would --

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. You didn't have any emails or any documentation showing where you were going to charge a thousand dollars a day?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. You can go ahead and answer.

A. I guess I would have to answer that in the contents of the agreement. I don't know how one interprets that agreement.

Q. The agreement you're talking about is page 47 and 48?

A. Right.

Q. Go ahead.

A. That obviously encompasses an incremental time. It doesn't specify what an increment of time is that was going to derive the sum of $10,000. So in that sense, it's not delineated.

Q. So you're referring back to this contract on page 47 and 48 as a representation of what the agreement is between you and Mr. Leary?

A. Well, I would answer that in this way. If normally -- the initial agreement we had with Mr. Leary specified a fee of $150 an hour.

So if I was looking for the most defined basis, I would have gone back to May and calculated it on the basis of $150 an hour. I would have taken seventeen days at, I'll just say, eight hours a day. And I would have computed that times 150.

So I think the basis of what Mr. Leary would have for defining what he would owe would be what he had paid to begin with, which is $150 an hour.

Q. But what I'm asking is, is there anywhere it was communicated to him other than page 47 and 48 where the rates for your services were?

MR. BORDEN: Object to form.

THE WITNESS: No.

BY MR. GALVIN:

Q. All right. Let me continue on here. You also, on page 115, identified some expenses where you, I guess, traveled out here to meet Mr. Leary.

It looks like the travel of Delta, 996.40, and you had some expenses for car rental, Hampton Inn and airport bookings. Do you know what the date of that trip was? Let me see if we can figure it out from here.

A. I think it was a three- or four-day trip commencing on or about the 6th of October, I believe. I could be off.

Q. If you take a look at the next page and we may be able to sort it out. 116, 117. Was

it the October 8? Is that when you came out to visit him?

A. Let's see. It says that the 6th -- I traveled there from Grand Island, Nebraska, on the 6th of October.

Q. All right.

A. And I returned on the 9th.

Q. But you had the meetings on the 8th, is that correct?

A. I had meetings on the 7th, 8th and 9th. I think our meeting with Mr. Leary was on the 8th.

Q. It looks like on your notes here, you say: Zoul travels from central Nebraska to Bluffton (10/8).

A. On the 6th.

Q. But if you look on page 117. I'm not trying to confuse you. I'm just trying to understand.

A. 117, it says: Zoul travels from central Nebraska to Bluffton.

But above it, it speaks to October 6 and 7. I'd have to get the calendar out and look at the specific receipts. I believe I furnished them at some point.

I know I didn't travel on the 8th, because the meetings with Mr. Leary were on the 8th, first thing in the morning. So I did not travel on the 8th. If that note would be erroneous, the one that says: Zoul travels from central Nebraska to Bluffton on (10/8). That's an incorrect date.

Q. Then you just list some other work that you've done here on page 117, 118. This is what you are detailing that you did there.

I think I'll be getting close to done here shortly. If you could go to page 156.

MR. GALVIN: I think the court reporter would like to take a break for a couple seconds. Is that okay with you, Mr. Zoul?

THE WITNESS: Sure.

MR. GALVIN: We'll go off the record for a second for a break.

(A short recess was taken.)

MR. GALVIN: Back on the record.

BY MR. GALVIN:

Q. Mr. Zoul, it's your contention in this case that you have an oral contract with the Old Town Bluffton Inn, correct?

A. Yes.

Q. And you believe that the Old Town Bluffton Inn is the entity that's been --

MR. BORDEN: Object to form.

THE WITNESS: I'm sorry. I shouldn't speak to the entity.

BY MR. GALVIN:

Q. Are you answering differently because Mr. Borden objected to the form?

A. No. I don't feel that I know the answer to that. I would have to look at the filing in court for who we filed the case against. So I spoke prematurely.

Q. Your claim is that you have a contract with the Old Town Bluffton Inn to manage the inn, is that correct?

A. Again, I don't want to speak --

MR. BORDEN: Object to form.

THE WITNESS: -- without looking it up. I had a contract with Mr. Leary and whatever entity that he represented. I don't recall if it's one entity or multiple entities, and I don't want to speculate.

BY MR. GALVIN:

Q. Well, you filed a lawsuit against these parties?

MR. BORDEN: Object to form.
MR. GALVIN: How is that objectionable, Ward, that he filed a lawsuit? What's the problem with the form of that question?
MR. BORDEN: Well, the problem with the form of it is, is that we started out this --
MR. GALVIN: Ward, stop instructing your client how to answer. I just asked you --
MR. BORDEN: There were five --
MR. GALVIN: Ward, I have the right to ask your client questions. You can try to clean up whatever you want. I can't have you instructing him how to answer it. That's the problem.
I said you filed a lawsuit, and you objected to the form. That is not an objectionable question. I just don't want the objection to form to try to instruct people. And I'm not accusing you of anything. I don't think there's anything wrong with that question.
BY MR. GALVIN:
Q. I'm trying to just understand your contentions in this case, Mr. Zoul. But you find that all this work was done for the Old Town Bluffton Inn, correct?

A. It was done on behalf of Mr. Leary and whatever entities he was representing.

Q. Well, let me ask you. You filed suit at one point in time against Landmark 2 Developers, LLC. Do you know what they were?

A. No.

Q. But you had filed a suit against them. I was just trying to figure out why you would have named them.

And then you have the Old Town Bluffton Inn, LLC. Was that the entity that you were doing the work on behalf of?

A. There were multiple entities, and I relied on legal counsel to tell me which had proper standing as far as filing a claim against them for the work associated.

I don't pretend to understand to or be able to speak to intricacies of any operating agreements, any corporations, which owns which and who has controlling interest in which one.

Q. But what I understand is from all your testimony, all your work was done on behalf of the hotel, correct, or the Old Town Bluffton Inn?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. Is that correct?

A. I can speak to the work being done on behalf of the inn, but I can't speak to the ownership structure.

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. I don't expect you testify to the ownership structure.

A. Or what capacity Mr. Leary was serving in his interactions with me.

Q. And was he serving as the manager of the inn?

A. I can't speak to what capacities he was serving in.

It's my understanding that he had multiple hats with different entities. And I can't speak to the structures of the entities and who he was representing.

Q. Okay. But would you agree that the hotel itself was what all your work was supposed to benefit, is that correct?

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. Can you answer that question?

A. Well, I -- I mean we were working on

the operations of the inn. But who benefited from that, if you're asking who derived the benefit from that, I can't speak to that.

Q. Would it be the hotel itself that --

MR. BORDEN: Object to form.

BY MR. GALVIN:

Q. -- would be the beneficiary?

A. The hotel itself? I don't know that that's an entity. The hotel is a business. The ownership of the business or what structures were in place, I don't know issues.

Q. If you go back to page 31 on my documents. I'm not trying to give you a hard time. I'm trying to figure this out.

A. I've got that.

Q. That contract is with the Old Town Bluffton Inn, isn't it?

A. It has Larry Leary as a signatory and lists the Bluffton Inn. But I'm just indicating that I cannot profess to have any understanding of whether the Old Town Bluffton Inn in those precise words is a legal entity. I'm just not an attorney and don't purport to understand the legal intricacies of the ownership, management or operational structure of the inn as a legal

entity.

Q. But you prepared this document, correct?

A. I did.

Q. And you prepared the signature line, correct?

A. Yes.

Q. And the signature line says Larry Leary owner of the Old Town Bluffton Inn, correct?

A. That's what it says, yes.

Q. Then we go onto page 101, correct. If you read that first paragraph, and I'll give you a second to read that on page 101.

A. Yes.

Q. You state here: Larry Leary (Owner) for the Old Town Bluffton Inn (Inn), is that correct?

A. Yes.

Q. So the work was being done for the Old Town Bluffton Inn, correct?

MR. BORDEN: Object to form.

THE WITNESS: I don't know if the Old Town Bluffton Inn is a legal entity.

BY MR. GALVIN:

Q. But you prepared this contract,

correct?

A. Yes.

Q. All right.

A. I'm not an attorney. I wasn't purporting to delineate the legal structure of any of the entities.

Q. Let me ask you this then. Have you had contact with a Danielle Harrison at all?

A. Yes.

Q. When was the last time you spoke with her?

A. I think it's been -- and I'm guessing it's been five or six months ago. But I think the last time I spoke to her, Vince Harrison -- would have been at the time they commenced operations of the inn.

It's my understanding that sometime last year, they started managing the inn. And on or about that date would have been the last time I had any communication with her.

Q. What were you discussing with her at that time?

A. She was just kind of comparing notes on some of the work we had done. And I would call it more in the way of follow-up on our earlier

transition assistance, you know, just marketing, sphere of influence and concepts. That's really just checking in generally.

Q. Who contacted whom? Did she reach out to you?

A. I think there was -- there was more than one communication over that period of time. I think it worked both ways. I couldn't be sure. I'd be speculating on who originated the first call and what transpired.

Q. Did they hire you for any work?

A. No.

Q. What other times did you speak to the Harrisons?

A. Nothing after that date.

Q. Okay. Before that date?

A. Before that date, there were occasional calls after our engagement was terminated.

Q. And what were those calls about?

A. Just checking in, see how things were going with the inn and what the talk of the town was, so to speak.

Q. What does that mean, talk of the town?

A. There were some incidents that seemed

to pertain to our issue that I think we had some conversation about, there was an altercation that we had heard about. I don't recall now between Mr. Leary and a contractor. We had understood the police were involved, conversations of that nature. Again, they were casual in nature and they were of substance.

Q. Did you have any emails with them?

A. I got one. I provided that. I believe we had a discovery request for any written communication. And I did search all of my emails. Vince Harrison's name and Danielle's name. And I found one. I believe I furnished that to Mr. Borden. I assume he passed it on as required.

Q. Did the Harrisons assist you in this lawsuit?

A. No, not at all.

Q. Not at all. Did they refer you to anybody with regard to this litigation?

A. No.

Q. Did you have any other communications with them other than the ones you've noted --

MR. BORDEN: Object to form.

MR. GALVIN: That was a bad question.

BY MR. GALVIN:

Q. Tell me about this talk of the town. Can you tell me more of what was discussed and when that discussion occurred?

A. I meant that term just, so to speak, you know, how are things going, what's happening, how's the inn doing, that sort of thing.

Q. Did they inform you that they were trying to buy the inn?

A. I thought they owned the inn -- I mean I thought they had an ownership.

Q. They do, but did you understand that they were trying to purchase Mr. Leary's interest?

A. No.

Q. Did they have discussions with you? What other discussions did they have with you about Mr. Leary?

A. The discussions related to just how things were going with the inn. And, you know, we had been so invested in the property in terms of our time and attention. I think Eric would have had some communications with them as well just to see how are things going, how's the inn doing, is it busy, how's it being run, how are things going.

It was just matter of fact discussions of curiosity because we had so much time and

effort spent on it that we wanted to know how things were going, and obviously we couldn't speak to Mr. Leary about it. So it was just a matter of curiosity.

Q. Do you remember, did you reach out to the Harrisons or did they reach out to you?

A. I think it was a little of both. We would have -- I don't know who would have started it. I just don't remember.

Q. With regard to your claimed damages in this case, we had gone over that invoice which is the statement on page 115.

A. Yes, I see it.

Q. Does that encompass your damages in this case? What your claimed damages are?

A. I'm sorry. The question about damages?

Q. Does that encompass what you claim your damages are in this case?

A. No. This was a statement seeking payment in follow-up to Mr. Leary's request that I send him an invoice.

Q. Are you claiming more damages in this case?

A. Yes.

Q. What more damages are you claiming?

A. In the mediation session that we had, I had offered a settlement amount to resolve it.

Q. I understand that. I'm just trying to figure this out here.

You claimed that on October 29, 2018, that the amount of your damages was $11,753.15, correct?

A. Well, after discounting the fees with the expectation of payment, you know, when payment did not materialize, the goodwill discount, in my view, was inapplicable.

Q. So as we sit here today, are you claiming that you're owed $17,000 for your management fee, plus other than $1753.15?

A. Among other things, yes.

Q. The other things that you're claiming, were they incurred after October 29, 2018?

A. Yes.

Q. What were those?

A. We -- a couple different things. We had some transition work that we billed or specified in the amount of $2,000 for the turnover of property and materials and information to Margaret Johnson. So I know there was a

supplement amount referenced for that.

Also, I'm seeking or intend to seek to the extent permissible by applicable law in the event of a successful outcome in this case from my perspective would be legal fees and then damages for breach of contract.

Q. And the damages for the breach of contract, you're claiming that -- what other damages are you claiming are as a result of the breach of contract?

A. Well, we had the -- I believe we had every reasonable expectation of having payment of $10,000 per month for first two months and $5,000 a month for the successive ten months. I'd have to refresh my recollection.

I think we had it as a one-year contract. So, you know, I think there was a reasonable expectation that we were putting forth the work product that we were in part relying on what would have been a one-year engagement.

Q. And that was based on this contract that's identified as page 47 and 48?

A. It would be based on the verbal agreement we had with Mr. Leary. That agreement was just codifying the agreement that we had. We

had that agreement. That agreement reflects what Mr. Leary and I had agreed upon.

Q. So you're claiming that your verbal agreement that you had specified all of the terms set forth in page 47 and 48 verbally?

A. Yes.

Q. Every single word of it?

A. The terms, yes, every word -- no. I mean the word is verbiage. But the terms were delineated in a very precise way.

MR. GALVIN: Let me take one break real quick, and I think I'm pretty close to finished with the questions. And then Mr. Borden may have questions for you. I'll be back in a second.

(A short recess was taken.)

MR. GALVIN: Back on the record.

BY MR. GALVIN:

Q. Let me go back to this. So your damages, you're claiming that you're entitled to $10,000 for the first two months, is that correct, and then 5,000 for the additional ten months of the year?

A. That's what the agreement was. I can't speak to what the value under the

circumstances were. The contract was unilaterally terminated with me. I don't think my opinion particularly matters. I'm not able to address them.

Q. But you agree that the oral contract that you're filing suit on, you're claiming that you had a contract for one entire year of work, is that correct?

A. Yes.

Q. And would that continue on after the year?

A. I have to read it again. I think there was a clause that spoke to that, but I don't have it in front of me. I can pull it up if you'd like me to.

Q. I'm just trying to figure it out. You claim you have an oral agreement with Mr. Leary, is that correct?

A. Yes.

Q. And you're claiming that that oral agreement can take more than one year to complete, correct?

A. It says it shall continue thereafter unless sixty days advance notice is provided by either party.

Q. It would be one year plus however long the contract went until it was canceled or terminated, correct?

A. Yes.

MR. GALVIN: All right. That's all the questions I have, Ward.

MR. BORDEN: Let me ask you one question.

EXAMINATION

BY MR. BORDEN:

Q. Mr. Zoul, are you there, sir?

A. Yes, I'm here.

Q. What, if any, difference is there between an oral agreement, an oral contract and a written contract that has been accepted orally?

MR. GALVIN: Object to form.

THE WITNESS: I don't believe there are any differences.

MR. BORDEN: I have no other questions.

MR. GALVIN: All right. I hope all your medical stuff goes well. I'm sad to hear when anybody has any problems. You'll be in our thoughts. Thank you for all your time today.

(Reporter Certification: The witness,

after having been advised of his right to read and sign this transcript, waives that right.)

(The deposition was concluded at 3:30 p.m.)

CERTIFICATE OF REPORTER

I, Aaron Selman, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date, time and location stated on the title page of this transcript; that the deponent was duly sworn; that the testimony of deponent and all objections made at the time of the deposition were recorded stenographically by me and were thereafter transcribed to the best of my ability as a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 14th day of May, 2021, at Bluffton, Jasper County, South Carolina.

Aaron J. Selman

_____

Aaron J. Selman, Court Reporter
My Commission Expires 9/1/2030

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