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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SIXTH JUDICIAL CIRCUIT
Court of Common Pleas
Fairfield County**

**The Honorable DeAndrea Gist Benjamin
Presiding Judge, South Carolina Business Court**

Case No. 2021-000944

**Blythewood Oil Co., Inc.
Appellant,**

vs.

**Shinda Singh, Five Rivers, Inc.,
and Singh, Inc.
Respondent.**

FINAL INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court erred in failing to direct a verdict in favor of Appellant because Respondent Shinda Singh admitted he formed a general partnership in 2007 with Kabal Singh, Singh, Inc., and Five Rivers, Inc. to own and operate two convenience stores in Columbia, SC, and that the partnership failed to pay Appellant for deliveries of gasoline. As such, all partners of the Singh-Singh partnership are jointly and severally liable for the unpaid invoices for gasoline delivered by Appellant. (Page 13-18)
- II. The trial court erred in failing to direct a verdict in favor of Appellant because Respondent admittedly failed to notify Appellant of any change in ownership, lease agreements, operational changes, or otherwise to either the Hardscrabble Road or Percival Road AM/PM stores throughout their business dealings between 2007 and March 2010 thus making Respondent, as a general partner of the Singh-Singh partnership, jointly and severally liable for the unpaid invoices for gasoline delivered by Appellant. (Page 19-24)
- III. The trial court erred in failing to direct a verdict in favor of Appellant because the law of estoppel and agency prohibits the Respondents from asserting any defense to payment of the funds owed to Blythewood Oil for unpaid gasoline delivered to the Hardscrabble and Percival Road convenience stores. (Page 24-26)
- IV. The trial court erred in concluding that Appellant, Blythewood Oil, Inc. was not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi-contract, or implied contract by law. (Page 26-27)

STATEMENT OF THE CASE

The dispute between the parties arises from Respondents' non-payment of gasoline deliveries by Appellant Blythewood Oil, Inc. to two Columbia, South Carolina convenience stores ("AM/PM Food Marts," the first located at 4225 Hardscrabble Road and the second located at 2409 Percival Road) owned and operated by Respondents as an unnamed South Carolina general partnership.¹ The Appellant specifically pled, in detail, the formation and the operations of the *unnamed* partnership in the 2014 Third Amended Complaint granted by the

¹ S.C. code Section provides" "Partnership" defined; application to limited partnerships. A "partnership" is an association of two or more persons to carry on as co-owners a business for profit and includes, for all purposes of the laws of this State, a registered limited liability partnership.

Court. (R. pp. 235-271 ¶ 1-4,10-11,13-14,17-18,24-25,35-37, 39-50, 52-56, 59-61, 65-75, 77-84, and 87 (paragraphs 37-93 were corrected to coordinate the correct numbers on pages 9-19). In addition, at trial, Respondent Shinda Singh admitted he was a partner in the same unnamed South Carolina partnership and specifically testified that the partnership had no formal name (R. pp. 356 In 16-25, 376 In 1-16 (2019 Trial)). According to the trial testimony of Respondent Shinda Singh, the general partnership was composed of Respondent Shinda Singh, Respondent Kabal Singh (dismissed before trial), and two single-member LLCs owned by Respondent Shinda Singh – Respondents Five Rivers, Inc. and Singh, Inc. (R. pp. 376 In 8-19 (2019 Trial)). Appellant filed its Complaint in Fairfield County in 2012 for the unpaid portion of the gasoline delivered to the two stores owned by the Singh-Singh partnership (R. pp. 42-64). The case was eventually tried on the Third Amended Complaint (R. pp. 235-271). As the admitted partnership has no formal name, and to avoid confusion, Appellant has referred to the partnership that is the subject of dispute between the parties herein by the names of the two individual partners, Shinda Singh and Kabal Singh, i.e., the "Singh-Singh" partnership. Finally, in the 2017 trial, counsel for the Respondents specifically and repeatedly admitted the existence of the unnamed partnership and stated to the trial court that the "law is correct, [liability] is joint and several but he didn't sue the partnership." (R. 2nd Supp. 06 In 11-15). Again, there was admittedly no name of a partnership to sue. Moreover, section 33-41-370(1) South Carolina Code of Laws 1976 clearly states that *all partners* are liable: (1) Jointly and severally for everything chargeable to the partnership under §§ 33-41-350 and 33-41-360. Thus, the argument circumvents the real issue which is the Respondents' failure to name the association or partnership in the first instance. Therefore, the Appellant proceeded against the Respondents on the theory that they "hid" the name of the partnership or business association, in which case each of them could be held

personally and individually liable [*Broom v. Marshall*, 328 S.E.2d 639, 284 S.C. 530 (Ct. App. 1984) citing *Guilford Builders supply Co., v. Reynolds*, 249 N.C. 612, 107 S.E. 2d 80 (1959)] as well as on the basis that a partnership contract between and among Respondents existed whereby each partner is liable jointly. If an agent did not disclose his principal when making a contract with a party, the party, upon discovering the principal, may hold either the agent or the principal liable. See *Goodale v. Page*, 92 S.C. 413, 416, 75 S.E. 700, 701 (1912). In 2015, the Supreme Court assigned exclusive jurisdiction of the case to the Honorable DeAndra G. Benjamin as complex litigation. (R. pp. 06-07). The parties initially tried the case by a jury on November 13, 2017 and ended on November 17, 2017. The trial court refused to direct a verdict in favor of the Plaintiff (Blythewood Oil), and a jury found in favor of the Defendants on all causes of action except for unjust enrichment, for which the trial court declared a mistrial. (R. pp. 38-40). The Plaintiff filed a motion for reconsideration, which the trial court did not rule upon until it issued two Orders after the non-jury trial on the remaining unjust enrichment cause of action. (R. pp. 08-37, 65-148). At the parties' request, the Court heard the "unjust enrichment" issue on September 23, 2019, as a non-jury trial. At the non-jury trial, and with the parties' consent, Plaintiff's Exhibits 1-12 and Defendants' Exhibits 1-4 were entered into evidence as to all matters in the Amended Complaint and e-filed by the Clerk of Court on September 23, 2019. (R. pp. 8-22,42-64,188-234,273-324,450-524,532-538). At the conclusion of the presentation of all evidence by the parties, all parties made motions for verdicts based on the evidence presented at the September 23, 2019 trial. (R. pp. 08-09). The Court took all motions under advisement. (R. pp. 08-09). On July 17, 2020, the trial court issued an Order finding that Plaintiff was not entitled to recovery on any cause of action. The essence of the Court's reasoning was that:

a. In November 2008 the two AM/PM Food Mart convenience stores were leased by Respondents Five Rivers, Inc. and Singh, Inc. (R. pp. 376 ln 8-19 (2019 Trial)) to two LLCs owned by Jesse Singh, son of Singh-Singh partner Kabal Singh. (R. pp. 08, 11 ¶ 8, 12 ¶ 9). The individual general partners of the Singh-Singh partnership (Shinda Singh and Kabal Singh) were not parties to these leases. (R. pp. 450-452, 522-524). Moreover, and importantly, Respondent Shinda Singh repeatedly admitted at both trials that Appellant Blythewood Oil, Inc. was never notified nor had any notice whatsoever that the AM/PM Food Mart stores were "leased" to these LLCs in 2008 in the first instance. (R. pp. 08 ¶ 9-11, 375 ln 22-25, 376 ln 1-7, 377 ln 1-14, 378 ln 25 (2019 Trial)) (R. 2nd Supp. 04 ln 21-25, 05 ln 1-11); and

b. In March 2009, the son (Jessee Singh) of one of the partners (Kabal Singh) signed credit applications and "guarantees" of payment with Appellant. Jessee Singh signed the documents as the "President" of the AM/PM Food Mart convenience stores. (R. pp. 450-452, 522-524).

The Court concluded that the foregoing matters were, in effect, intervening factors that placed Appellant on notice that it was dealing with Jesse Singh alone and not the Respondents. However, Appellant delivered gasoline to the same AM/PM Food Mart convenience stores even though Respondent Shinda Singh admitted at trial that Appellant was never notified nor had any notice that the AM/PM Food Mart stores were "leased" to these LLCs in 2008 in the first instance. (R. pp. 08, 11 ¶ 08, 12 ¶ 09, 11, 375 ln 25, 376 ln 1-7 & 25, 377 ln 1-14 (2019 Trial)) (R. 2nd Supp. 04 ln 21-25, 05 ln 1-11). This admission, taken with the undisputed admission that all Respondents were general partners of the "Singh-Singh" partnership (R. pp. 376 ln 8-19 (2019 Trial) and (R. pp. 08, 11 ¶ 01, 12 ¶ 11-13), and that the partnership between and among Respondents was admittedly unnamed from its initial start-up provides but only one reasonable

factual and legal conclusion. All Respondents are individually liable for gasoline delivery to the two convenience stores by Appellant Blythewood Oil, Inc. South Carolina partnership law is clear and unambiguous. S.C. Code Section 33-41-50 states:

Liability for wrongful act or omission of partner. "When, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is cause to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

On July 20, 2021, the trial court filed a second Order that corrected its first Order's factual findings to parallel the Appellant's contention and conclusions in this appeal. (R. pp. 23-37). In its' second Order, the trial court correctly noted that in March 2009, Jessee Singh, in fact, completed the two Commercial/Wholesale Credit Applications as "President" ((R. pp. 23, 25 (Form 4 Order)) of the same AM/PM Food Mart stores written as the "Firm Name," on the agreements and further correctly finding that the addresses on the two "Commercial/Wholesale Credit Applications" were precisely the same as the addresses and locations Appellant Blythewood Oil Inc. had delivered gasoline since the Singh-Singh partnership originated in 2007. Specifically, the trial court found in its Orders dated July 17, 2020 (R. pp. 08-22) as modified by its Order dated July 20, 2021 (R. pp. 23-37) that:

1. Shinda Singh and Kabal Singh entered a verbal partnership to purchase and operate the AM/PM Food Marts at Hardscrabble Road and Percival Road (R. pp. 23, 28 ¶ 1).
2. Respondents Singh, Inc. and Five Rivers, Inc. "leased" the stores to Jesse Singh, the son of one of the partners (R. pp. 23, 29 ¶ 8-9),
3. Shinda Singh did not provide Blythewood Oil with copies, nor any notice whatsoever, of the (2008) leases as evidenced by Plaintiff's exhibit 6. ((R. pp. 08, 12 ¶ 8-9, and 11, 23, 29 ¶ 8-9, 11).

4. In March 2009, Jesse Singh completed two Commercial/Wholesale Credit Applications provided by Blythewood Oil for the purchase of gasoline listing with the same name (AM/PM Food Marts) and addresses (4225 Hardscrabble Road and 2409 Percival Road) as the "Firm Name" and himself as the President." (R. pp. 23-24, 29 ¶ 12-13, 33).

The amount in controversy, in this case, is \$449,519.07 in unpaid invoices (R. pp. 462-521), prejudgment interest of 1.5% per month, as well as attorneys' fees and costs as noted on the two Commercial/Wholesale Credit Applications. In the alternative, Plaintiff is entitled to prejudgment interest allowed by SC Code Ann. 34-31-20, costs, and for such other and further relief as the Court may deem just and proper. Defendants were served with the Notice of Appeal on August 27, 2021 (R. pp. 149-187).

STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, the jurisdiction of this Court extends to the correction of errors of law. Factual findings of the jury are disregarded when a review of the record discloses that there is no evidence which reasonably supports the jury's findings. *Odom v. Weathersbee*, 225 S.C. 253 (1954). In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without a reference. The judge's findings are equivalent to a jury's findings in a law action. *Chapman v. Allstate Ins. Co.*, 263 SC 565 (1975)." *Townes Assocs. v. City of Greenville*, 266 SC 81, 221 S.E.2d 773 (1976) (emphasis added).

FACTS

In 2007, Respondents Shinda Singh and Kabal Singh, Five Rivers, Inc., Singh, Inc., entered verbally into a general partnership to own and operate two convenience stores in Columbia, SC. (R. pp. 356 ln 21-25, 376 ln 1-16 (2019 Trial)). By agreement of the parties prior to trial, all other defendants were dismissed. The first convenience store, located at 4225 Hardscrabble Road, was titled in the name of *Five Rivers, Inc.*, a single-member LLC owned by Respondent Shinda Singh. (R. pp. 458-461). The second convenience store was located at 2409 Percival Road and titled in the name of *Singh, Inc.*, a single-member LLC also formed and owned by Respondent Shinda Singh. (R. pp. 453-457). Respondent Shinda Singh admitted at trial that he created the two single-member LLCs to hold the titles to the Hardscrabble and Percival Road property owned and operated by the Singh-Singh partnership to prevent Kabal Singh's judgment creditors in Illinois from placing liens on the Hardscrabble and Percival Road

real property and improvements, and thus the properties would not be subject to seizure by Kabal Singh's creditors. (R. pp. 386, 387 In 1-19, 390 In 7-10 (2019 Trial), 453-461).

In 2013, Kabal Singh, one of the individual partners of the Singh-Singh partnership, filed a lawsuit in the Richland County Court of Common Pleas (Case number 2013-CP-40-0050) against the Respondents in this appeal (Shinda Singh, Shinda Singh, Inc. and Five Rivers, Inc.), i.e., the ("Richland County lawsuit"). (R. pp. 42-64). The lawsuit's essence centered on the details of the ownership, operation, formation, and development of the Singh-Singh partnership and the disputes between the parties. (R. pp. 42-64). One of the most relevant points to the present case in the Richland County partnership's dissolution lawsuit between Kabal and Shinda Singh is Shinda Singh's admissions on his answers to interrogatories, averring that \$540,000.00 was owed by the partnership to Blythewood Oil for fuel sold at retail by the two AM/PM Food Mart stores. (R. pp. 217-234 (18, par. 41)). Respondent also admitted this information in the September 2019 trial. (R. pp. 377 In 15-25, 379 In 1-8 & 15-25, 380 In 7-25, 381 In 1-9 (2019 Trial)). Yet, Shinda Singh disingenuously denied he had any knowledge of the unpaid invoices for gasoline due to Appellant, and thus, according to Shinda Singh, the Singh-Singh partnership was and is not liable for the monies due to the Appellant. (R. pp. 362 In 1-6, 372 In 18-25, 374 In 11-22 (2019 Trial)).

At the September 23, 2019 trial, the focus of the defense of the Respondents was that they have no liability for payments of the monies owed to Blythewood Oil, Inc. because the Hardscrabble Road and Percival Road stores were "leased" to the son of Shinda Singh's partner, Kabal Singh, in 2008. Shinda Singh also denied he had any knowledge of the unpaid invoices for gasoline due to Appellant, and thus, the Singh-Singh partnership was not liable for the monies due to the Appellant. (R. pp. 362 In 1-6, 372 In 18-25, 374 In 11-22 (2019 Trial)). However, in

the same testimony, Shinda Singh specifically admitted that Appellant Blythewood Oil, Inc., nor anyone else, was provided notice of the 2008 purported leases of the convenience stores, by lease or otherwise. (R. pp. 23, 29 ¶ 11, 375 ln 25, 376 ln 1-7 & 25, 377 ln 1-14 (2019 Trial)). The representative of Blythewood Oil, Inc. (Larry Sharpe, Jr.) testified that Appellant provided deliveries of gasoline to both the Hardscrabble Road and Percival Road AM/PM stores from 2007 until January 2010 and confirmed that Blythewood Oil, Inc. was never informed of any lease transfers of ownership of the two convenience stores to "Jesse" Singh, or anyone else. (R. pp. 412 ln 21-24, 413 ln 17-25, 414 ln 1-20). Mr. Sharpe's testimony about the amounts owed for the unpaid gasoline was provided without objection and admitted as uncontroverted evidence at trial. (R. pp. 401 ln 9-22, 402 ln 1-19, 462-521). Furthermore, Mr. Sharpe testified "Jessee" Singh (son of the partner Kabal Singh) signed guarantees of payment to Blythewood Oil, Inc. in March 2009 as the "President" of the Hardscrabble Road and Percival Road AM/PM Food Mart convenience stores (R. pp. 450-452, 522-524), utilizing the same addresses of Hardscrabble Road and Percival Road that were formed, operated, and owned by the Singh-Singh partnership in 2007. (R. pp. 450-452, 522-524).

Importantly, *in its Order dated July 20, 2021*, the trial court found that the son of Kabal, Jesse Singh, did, in fact, lease the stores from Five Rivers, Inc. and Singh, Inc. as President of the AM/PM Food Mart stores located at 2409 Percival Road and 4225 Hardscrabble Road. (R. pp. 23, 29 ¶ 9). The trial court also found that Kabal Singh and Jesse Singh operated the AM/PM Food Mart stores located at 2409 Percival Road and 4225 Hardscrabble Road before the lease agreements were signed in 2008 (R. pp. 23, 29 ¶ 7). *Moreover, the trial court found that Jesse Singh did, in fact, sign agreements on March 18, 2009, to purchase gasoline from Blythewood Oil and guaranteed payment for that gasoline as President of the AM/PM Food Mart stores*

located at 2409 Percival Road and 4225 Hardscrabble Road for these same stores doing business under the same names at the same addresses. (R. pp. 23, 29 ¶ 12-13).

In its Orders, the trial court noted that Blythewood Oil conducted investigations of the matters by informing the South Carolina Attorney General's Office and cooperating with their investigating official, Mr. Pete Logan. (R. pp. 23, 30 ¶ 17-18). However, as the Court specifically found in its July 2021 Order, these investigations began in March 2010, *two months after the final deliveries of gasoline to the Hardscrabble Road and Percival Road convenience stores. (R. pp. 23, 30 ¶ 16-17).*

ARGUMENTS

I

The trial court erred in failing to direct a verdict in favor of Appellant because Respondent Shinda Singh admitted he formed the general partnership in 2007 with Kabal Singh, Singh, Inc., and Five Rivers, Inc. to own and operate two convenience stores in Columbia, SC that failed to pay Appellant for deliveries of gasoline. As such, All partners of the Singh-Singh partnership should be jointly and severally liable for the unpaid invoices for gasoline delivered by Appellant.

Kabal Singh filed a lawsuit on January 3, 2013 in the Richland County Court of Common Pleas (Case number 2013-CP-40-0050) against the same Respondents named in this appeal (Shinda Singh, Shinda Singh, Inc. and Five Rivers, Inc.), "incorporating by reference" the Richland County pleadings into the Fairfield County case in his March 21, 2017 Amended Answer and Counterclaim to [Plaintiff's (Appellant's)] Third Amended Complaint. (R. pp. 188-200). Respondent's Answer, Counterclaim, and Third-Party Complaint in the Richland County case were admitted into evidence in the Fairfield County case by consent of the parties. (R. pp. 08-09, 201-206). Respondents detailed the terms of the oral Singh-Singh partnership (R. pp. 356 ln 12-25; 357 ln 1-25; 358 ln 2-16; 392 ln 9-25, 393 ln 1-13 (2019 Trial)) and made the following admissions.

A. Respondents admitted to forming the Singh-Singh partnership to own and operate the two convenience stores located at 4225 Hardscrabble Road and 2409 Percival Road in Columbia, SC. (R. pp. 376 In 8-25 (2019 Trial)).

B. Respondents admitted the two convenience stores operated by the Singh-Singh partnership were those located at 4225 Hardscrabble Road, Columbia, South Carolina, and 2409 Percival Road in Columbia. (R. pp. 278 In 16-25, 279 In 20-25, 280 In 1-11 (2017 Trial)).

C. Respondents admitted, "*...Defendant [Shinda Singh] enter[ed] into a joint venture to purchase the convenience stores on Hard Scrabble and Percival Roads with the understanding that [Kabal Singh's name] would not appear on any legal document, including Deed, Note, Mortgage, or Lease.*" (R. pp. 201, 211 ¶ 32).

D. Respondents admitted, "Both parties [Shinda Singh and Kabal Singh] were to contribute equally and share equally in the profits of the [Hardscrabble and Percival Road stores]." (R. pp. 201, 208 ¶ 16, 286 In 1-20 (2019 Trial)).

E. Respondents admitted, "Both properties were purchased in September 2007 and that both parties contributed to the down payment,

F. Respondents admitted the cost of inventory for both stores was \$83,015.69, and both parties [Shinda Singh and Kabal Singh] contributed equally." (R. pp. 201, 208 ¶ 17).

"An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership." SC Code of Laws, Section 33-41-330. See *Mackey v. Judy's Foods, Inc.*, 654 F. Supp. 1465 (MD Tenn. 1987). Statements or admissions contained in the pleadings are conclusive against the pleader. A party cannot take a position contradictory of, or inconsistent with, his pleadings. The facts admitted by the pleadings are taken as true against the pleader for the purpose of the action.

Evidence contradicting such pleadings is inadmissible. *Truesdale v. Jones, Mayor, et al.*, 78 S.E.2d 274 (S.C. 1953); 71 CJS. Pleadings § 59A, page 147; See also *Curry v. Carolina Insurance Group of SC, Inc.*, 832 S.E.2d 760 (Ct. App. 2019). Therefore, the admissions and statements made by the Respondents, as noted above, plus the admissions made by Respondent Shinda at trial as noted herein, clearly demonstrate that all Respondents are individually and jointly liable for the payment of the gasoline delivered to the Hardscrabble and Percival Road convenience stores owned and operated by the Singh-Singh partnership.

South Carolina adopted the Uniform Partnership Act via section 33-41-10 of the Code of Laws of South Carolina, 1976 et. seq. A partnership agreement may be oral. *Wyman v. Davis*, 74 S.E. (2d) 694 (1953); *Buffkin v. Strickland*, 312 S.E. (2d) 579 (Ct. App. 1984); *S.C. Code Ann.*, Section 33-41-210 (Rev. 1990). Respondents' partnership was oral. (R. pp. 356 ln 21-25, 376 ln 1-24 (2019 Trial)). As confirmed by the Respondents' admissions as noted in Argument I, the Singh-Singh partnership was formed in 2007 and dissolved in March 2010. (R. pp. 376 ln 8-24, 395 ln 15-25 (2019 Trial)). Respondent Singh testified the partners (1) shared profits and losses, (2) had a shared interest in both capital and property, and (3) had mutual control and management of both the Hardscrabble Road and Percival Road convenience stores. *Terry v. Brashier*, 207 S.E. (2d) 82 (1974). (R. pp. 358 ln 4-10, 376 ln 8-24; 392 ln 9-25, 393 ln 1-13 (2019 Trial)). In addition, Respondent Shinda Singh testified under oath at trial:

- A. That he formed the Singh-Singh partnership to own and operate the Hardscrabble and Percival Road convenience stores in 2007. (R. pp. 375 ln 21-25, 376 ln 1-16 (2019 Trial)), and that the partnership was dissolved in March 2010 (R. pp. 276 ln 4-11, 277 ln 1-5, 301 ln 21-25, 395 ln 15-25 (2019 Trial)), *two months after the last gasoline deliveries to the convenience stores by Appellant* (R. pp. 402 ln 25, 403 ln 1-4).

B. That Singh, Inc. and Five Rivers, Inc. were formed as single-owner LLCs to hold title to the property on which the Hardscrabble Road and Percival Road convenience stores are located so that Kabal Singh's judgments in Illinois would not attach to the real property, and thus not be subject to seizure by creditors. (R. pp. 386, 387 In 1-19, 390 In 7-10 (2019 Trial)).

C. That he (Respondent Shinda Singh) discovered in 2008 that (i) the convenience stores were facing financial difficulties, that (ii) the inventory of the stores were "low," (iii) that he (Respondent Shinda Singh) had not received a distribution of profits for the prior six months, and (iv) had become concerned he was going to lose his investment. (R. pp. 386 In 24-25, 35 In 1-7 (2019 Trial)). Similarly, in Respondent Shinda Singh's Richland County pleadings, he stated: "[W]hen [I] became concerned about [my] investment in October 2008, [I] approached [Kabal Singh] and told [Kabal Singh] "[Defendant Shinda Singh] wanted a five-year lease." (R. pp. 201, 211 ¶ 35). See also Doc. 19 at p. 5, para. 9 (R. pp. 201, 206 ¶ 9) and p. 7, par. 21 (R. pp. 208 ¶ 21), admitting that in October 2008, Defendant Shinda Singh agreed with Kabal Singh that the Hardscrabble and Percival Road convenience stores would be "leased" to Kabal's son, Gurpreet Singh aka 'Jessee' Singh because of Kabal's Singh's "credit problems in Illinois." (See also R. pp. 201, 211 ¶ 36).

As the trial court found, Jesse Singh, as President of two LLCs he formed, "leased" the Hardscrabble Road's and Percival Road's AM/PM Food Mart convenience stores from two LLCs created and owned by Respondent Shinda Singh - (Five Rivers, Inc. and Singh, Inc.) (R. pp. 23, 29 ¶ 8-9). However, before this time, the trial court also correctly found Kabal and Jessee Singh operated the same two convenience stores in concert between 2007 and 2008 (R. pp. 23, 29 ¶ 12-

13). *The trial court further correctly found that the leases were unknown at any time to Blythewood Oil (R. pp. 23,29 ¶ 11), and that Jesse Singh signed guarantee agreements to pay for the gasoline delivered as "President" of the AM/PM Food Mart Stores located on Hardscrabble and Percival Road, the same stores operating under the same names from 2007 until the dissolution of the Singh-Singh partnership (R. pp. 23, 29 ¶ 12-13).* Regardless, the trial court implicitly concluded that the 2008 "leases" of the two convenience stores together with the signed guarantees of payment in 2009 by Jesse Singh as President of the AM/PM stores in 2009 effectively put Appellant on notice that they were dealing with Jesse Singh alone. The trial court's Order implies (without stating) that these actions are intervening factors or implied notice of the transactions to the Appellant. However, there is no evidence of record that Appellant was put on actual or implied notice by the Respondents in any manner whatsoever. In fact, the record reveals just the opposite. Instead, continuity of ownership was maintained by the same individuals that operated and controlled the Singh-Singh partnership formed in 2007. (See R. pp. 23, 29 ¶ 1,4-7, and 11, as well as the testimony of Respondent Shinda Singh that Appellant was not notified at any time that the Respondents leased or transferred ownership of the stores to any third party.)

In addition, Larry Sharpe, Jr., Corporate Director of Blythewood Oil, Inc., testified at trial that Blythewood Oil, Inc., delivered the final distribution of gasoline to the Hardscrabble Road and Percival Road convenience stores in January 2010 (R. pp. 402 ln 25, 403 ln 1-3), *two months prior to the time Respondent Shinda Singh testified the Singh-Singh partnership was dissolved.* (See R. 2nd Supp. 07 ln 18-23; 08 ln 18-24). The invoices (R. pp. 462-521) mirror Mr. Sharpe's testimony that Appellant Blythewood Oil, Inc. delivered gasoline to the two convenience stores on the same terms and conditions from the time the partnership was formed in 2007 until the

final delivery of gasoline by Appellant was made in January 2010. (R. pp. 20-25, 401 ln 1, 403 ln 7-16).

The South Carolina Partnership Act requires that each partner is jointly and severally liable for any liability incurred by the partnership during the partnership's existence. S.C. Code Ann. § 33-41-370. *Buffkin v. Strickland*, 312 S.E.2d 579 (Ct. App. 1984). The numerous admissions in the 2013 lawsuit Kabal Singh filed in the Richland County Court of Common Pleas (Case number 2013-CP-40-0050) against the Respondents (Shinda Singh, Shinda Singh, Inc. and Five Rivers, Inc.) are direct evidence both the oral and continuing nature of the partnership, as well as the numerous continuing grievances and disputes between the Singh-Singh partners. (R. pp. 42-64). Respondent Shinda Singh "incorporated by reference" the Richland County pleadings into the Fairfield County case in his March 21, 2017, Amended Answer and Counterclaim to [Plaintiff's] Third Amended Complaint in the case at bar. (R. pp. 188, 192 ¶ 15). Shinda Singh's Answer in the Richland County case was admitted into evidence in the case at bar by consent. (R. pp. 23, 29 ¶ 1, 201-216). SC Code of Laws, Section 33-41-330 specifically states: "Admission or representation by [a] partner as evidence. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership." See *Mackey v. Judy's Foods, Inc.*, 654 F. Supp. 1465 (M.D. Tenn. 1987). Respondents' admissions are detailed above and in more detail in Docs 13 (R. pp. 188-200) and 19 (R. pp. 201-216), including Shinda Singh's response to interrogatories requesting damages from Kabal, one of which is \$540,000.00 to Blythewood Oil for fuel sold at retail. (R. pp. 217-234). Respondent Shinda Singh testified to the same in the September 2019 trial. (R. pp. 377 ln 15-25, 379 ln 1-8 & 15-25, 380 ln 7-25, and 381 ln 1-9 (2019 Trial)). These admissions directly tie the Singh-Singh partnership to the fuel

sold by Blythewood Oil to the two AM/PM Food marts from the beginning of the partnership in 2007 until the last delivery of gasoline in January 2010.

Thus, as admitted partners in the Singh-Singh partnership, all Respondents are jointly and severally liable for the unpaid invoices for gasoline delivered by Appellant to the Hardscrabble Road and Percival Road convenience stores. Accordingly, the trial court erred in failing to direct a verdict in favor of Appellant as a matter of law as Respondent's admissions to their collective participation in the Singh-Singh partnership, as well as their admitted failure to notify Appellant of the "2008 leases" or any change in ownership or control of the partnership, are clear and unambiguous.

II

Respondent failed to notify Appellant of any change in ownership, lease agreements, operational changes, or otherwise to either the Hardscrabble Road or Percival Road AM/PM stores throughout their business dealings between 2007 and March 2010, thus making Respondent as part of the Singh-Singh partnership liable for the unpaid invoices for gasoline delivered by Appellant.

A

As detailed above, Shinda Singh testified at trial that Singh, Inc. and Five Rivers, Inc. "leased" the Hardscrabble and Percival Road convenience stores in 2008 to two LLCs² formed by "Jessee" Singh (the son of his partner Kabal Singh). (R. pp. 359 ln 9-25; 360 ln 1-19, 361 ln 5-25 (2019 Trial)). The trial court agreed to the above knowledge in findings 8 and 9 of its July 20, 2021 Order. (R. pp. 23, 29 ¶ 8-9). Additionally, Respondent admitted that in October 2008 Defendant Shinda Singh agreed with Kabal Singh that the Hardscrabble and Percival Road convenience stores would be "leased" to Kabal's son, Gurpreet Singh, also known as 'Jessee' Singh, because of Kabal's Singh's "credit problems in Illinois." (R. pp. 201, 208 ¶ 21, 525-538).

² Gill and Gas, LLC and Gill and Gas II, LLC

Respondent Shinda Singh also testified at his November 2017 trial and September 2019 trial that Blythewood Oil was *not* provided any notice of the leases or change in ownership, of the two convenience stores, to wit:

A. (R. pp. 280 ln 1-3), Defendant Shinda Singh November 2017 trial testimony:

1: Q (Attorney Megna) I'm asking you, did you give copies of these leases to

2: my clients?

3: A (Shinda Singh) No.

B. (R. pp. 376 ln 3-7) of Defendant Shinda Singh's September 2019 trial testimony:

3: Q (Attorney Megna) Did you ever tell Blythewood Oil or give them

4: any indication that you no longer owned those stores, that

5: you had given them, or sold them or leased them to someone

6: else?

7: A (Shinda Singh) No, sir.

C. (R. pp. 376 ln 25), Page 24 lines 1-7 (R. pp. 377 ln 1-7) of Defendant Shinda Singh's September 2019 trial testimony:

25: Q (Attorney Megna) Okay. Then at some time, at some point in time you

1: decided to lease the stores to somebody else; is that

2: correct?

3: A (Shinda Singh) Yes

4: Q But you never told Blythewood Oil; is that correct?

5: A No.

6: Q So you never told Blythewood Oil?

7: A No, Never

The trial court correctly found the same. (R. pp. 23, 29 ¶ 11).

Respectfully, the only evidence of record is that the Singh-Singh partnership accepted gasoline from Blythewood Oil as of its formation in 2007 until its dissolution in March 2010, and that Respondent Shinda Singh as President of Five Rivers, Inc. and Singh, Inc. knowingly "leased" the Hardscrabble and Percival Road convenience stores while failing to notify Appellant of the purported change in ownership. (R. pp. 23, 29 ¶ 11-13, and 17).

Furthermore, the trial court correctly found that Jesse Singh signed guarantees of payment of the gasoline delivered as "President of the AM/PM Food Mart" stores. (R. pp. 23, 29 ¶ 12-13). Although Jesse Singh signed the guarantees, the trial court erred in determining that these guarantees constituted notice to Appellants that Appellant was dealing with Jesse Singh alone. The trial court's conclusion is also directly contrary to the testimony of Vic Parthania, an employee hired by Shinda Singh. Mr. Parthania testified Kabal Singh (partner of Shinda Singh and the corporate Respondents) operated the two stores with his son Jesse Singh since September 2007. (R. pp. 358 In 15-23, 417-418, 427 In 1-14 (2019 Trial)). The trial court provided no basis or evidence of record that implied that the Singh-Singh partnership was no longer involved in the operation of the stores. Larry Sharpe, Corporate Director of Blythewood Oil, Inc., also testified the guarantees of Jesse Singh were part of Plaintiff's ordinary and usual business of updating information in their files. (R. pp. 415 In 1-9). Mr. Sharpe further testified that at no time (**until after January 2010**) was Appellant informed that the Singh-Singh partnership had relinquished responsibility for the gasoline delivered to the two stores. (R. pp. 412 In 21-24; 15:17-25;16:1-20). There is no evidence of record to contradict Mr. Sharpe's testimony. The guarantees specifically list AM/PM Food Marts as the locations on the guaranteed applications. (R. pp. 450-

452,522-524). These two convenience stores were still owned by Singh, Inc. and Five Rivers, Inc. throughout the term of the leases from November 2008 to March 2010, as evidenced by the deeds and the corporations' ability to terminate the leases. (R. pp, 453-461,539-544). Before the leases were ever signed, Appellants delivered gasoline to these stores—since 2007. (R. pp. 359 In 3-8 (2019 Trial)). As Respondent testified, Jesse Singh was involved with the partnership in some capacity from the beginning when he started operating the Percival Road store in September 2007 until he signed 23 of 32 the guarantees as "President" of the two stores. (R. pp. 358 In 8-20). Jesse Singh's signing of the applications as "President" of the same two stores on the guaranteed applications does not imply that the partnership was no longer involved. On the contrary, it logically and reasonably demonstrates that Appellant was continuing to deal with the same partnership and persons at the same locations as it had since September 2007. Jesse's Singh's signature as "President" of the same two stores at the same addresses represented a continuation of the ongoing business practices of the Singh-Singh partnership. Also, as noted by Shinda Singh's trial testimony (Doc. 3 (2019 Trial)), the Singh-Singh partnership was not dissolved until March 2010, two months after the last delivery of gasoline to the stores by Appellant. (R. pp. 395 In 15-25 (2019 Trial)).

Section 33-41-360 of the SC Code of Laws is clear and unambiguous. Section 33-41-360 states, the "partnership is bound by a partner's breach of trust. The partnership is bound to make good the loss:

- (1) When one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and
- (2) When the partnership in the course of its business receives money or property

of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

The admissions made by the Respondents in this case as to the formation and operation of the partnership, confirmed by the findings of the trial court, together with the admissions that the two convenience stores were leased to a son of one of the partners without notice to Appellant is sufficient to establish the liability of the partnership to Appellant.

Thus, the trial court erred by failing to direct a verdict for Blythewood Oil, Inc. based on the trial testimony of Shinda Singh, as well as S.C. Code Ann. § 33-41-330, 360, and 370.

B

The *de bene esse* deposition of Vic Pathania provides direct evidence Mr. Pathania operated the Hardscrabble and Percival Road stores with Gurpreet "Jessee" Singh as an employee of the Singh-Singh partnership. (R. pp. 429 ln 20-25, 430 ln 1-4). See *Cowburn v. Leventis*, 366 S.C. 20, 39 (Ct. App. 2005) ("The test to determine agency is whether or not the purported principal has the *right to control* the conduct of the alleged agent." (quoting *Fernander v. Thigpen*, 278 S.C. 140, 144 (1982))). In the case at bar, the evidence is plain. Shinda Singh admittedly had control of his agents, agreed with his partner to lease or attempt to change ownership of the AM/PM Food Mart stores, and did so without notifying any third parties (R. Pp. 23, 29 ¶ 11, 375 ln 25, 376 ln1-7 & 25, 377 ln 1-14 (2019 Trial)).

See also SC Code Section 33-41-360, a Partnership is bound by a partner's breach of trust. The partnership is bound to make good the loss. Regardless, as noted above, Shinda Singh and Kabal Singh agreed Kabal Singh's son "Jesse Singh, would continue to operate the Hardscrabble Road and Percival Road convenience stores on their behalf under a "five-year lease," which was admittedly known only to the partners. (R. pp. 375 ln 25, 376 ln 1-7, 377 ln 1-

14, 388 In 3-12 (2019 Trial)). *By doing so, the partners agreed that an agency relationship with a fiduciary resulted from their agreement that Kabal Singh's son would act on their behalf.* (Restatement (Second) of Agency § 1(1) (1958)). S.C. Code Section 33-41-30(3) specifically applies to this situation. Thus, even if this Court finds the 2008 lease is otherwise valid against Appellant, it cannot be ignored that the partnership leased the business and property to organizations admittedly owned by 'Jesse' Singh, who is acting as an agent and principal of the Singh-Singh partnership with the same authority as the Respondents and is therefore bound to "make good" on the damages to Appellant Blythewood Oil, Inc.

C

The guarantees signed by Jesse Singh as President of both the Hardscrabble and Percival Road convenience stores specifically include the costs of collecting the monies owed Appellant, including attorney's fees and interest, added to the cost of the deliveries of gasoline. (R. pp. 450-452, 522-524). Therefore, Respondents are responsible for the unpaid gasoline delivered to the Hardscrabble and Percival Road stores and the interest, costs, and attorney's fees incurred in collecting the funds owed Blythewood Oil Inc.

III

The law of estoppel and agency prohibits the Respondents from asserting any defense to payment of the funds owed Blythewood Oil for unpaid gallons of gasoline delivered to the Hardscrabble and Percival Road convenience stores.

SC Code Section 33-41-310(2) and (3) specifically apply the law of estoppel and agency to SC partnerships. This Court has held:

The elements of estoppel are familiar: ignorance of the truth by the party claiming estoppel, misleading representations or conduct by the party to be estopped, reliance by the party claiming estoppel, and a prejudicial change in position as the result of reliance. *Pitts v. New York Life Ins. Co.*, 247 S.C. 545, 552 (1966).

Respondent Shinda Singh testified at trial under oath he never provided notice to Blythewood Oil, Inc. that he had leased the two convenience stores to his partner's son in 2008. (R. pp. 375 In 25, 376 In 1-7, 377 In 1-14, 388 In 3-12 (2019 Trial)). This testimony, together with Mr. Larry Sharpe's uncontradicted testimony that Blythewood Oil did not have any knowledge that the stores were leased or ownership transferred, is unambiguous and uncontradicted. (R. pp. 412 In 21-24, 413 In 17-25, 414 In 1-20). Estoppel, or equitable estoppel, is designed against "unscrupulous opponents who induce a litigant's reliance" and "then reverse themselves to argue that they win under the opposite scenario." *See Teledyne Indus., Inc., v. NLRB*, 911 F.2d 1214, 1220 (6th Cir. 1990) (citation omitted); *In re Varat Enters., Inc.*, 81 F.3d 1310, 1317 (4th Cir. 1996) (explaining the estoppel rule is designed to protect a party that may be prejudiced by an opponent's change of position). A party may invoke equitable estoppel by showing that (1) an adversary made a representation, (2) upon which the party relied, (3) that was contradicted by the adversary's later representation, (4) to the party's detriment. *Zoroastrian Ctr. & Darb-E-Mehr of Metro. D.C. v. Rustam Guiv Found. of N.Y.*, 822 F.3d 739, 753 (4th Cir. 2016); *Teledyne*, 911 F.2d at 1220. The testimony of the Respondent Shinda Singh in the case at bar, together with the admissions made by Respondents in the Richland County case, leave no doubt that the Respondents formed the Singh-Singh partnership in 2007, attempted to transfer ownership of the two convenience stores in 2008 without notifying Appellant, thus inducing a false reliance to Appellant's disadvantage, and dissolved the partnership in March 2010 -- two months after the final delivery of gasoline and at the same time that the two leases were terminated. (R. pp. 375 In 25, 376 In 1-7, 377 In 1-14, 388 In 3-12 (2019 Trial), 539-544). As evidenced in Section III above, the Respondents were admittedly silent to any alleged transfer of ownership throughout the course of dealings with Appellant.

Silence, when it intended, or when it has the effect of misleading a party, may operate as equitable estoppel. *Welch v. Edisot Realty Co.*, 170SC 31, 169, S.E. 667 (1993). There is no requirement that the person whose silence misleads another have actual knowledge of the true facts if circumstances are such that knowledge is necessarily imputed to him. *Accord Awes v Hartford Life and Accident Ins co.* 372 N.W. 2d 376 (Minn. Ct. App. 1985). Negligence will take the place of the intent to deceive when there is a duty to disclose. *Id*; *see also 3 Pomeroy's Equity Jurisprudence* § 809 at 218 (5th ed. 1941). *S. Dev. Land & Golf Co. v. SC PUB. SERV.*, 426 S.E.2d 748, 751, 311 S.C. 29 (1993). Moreover, "the authorized acts of an agent are the acts of the principal." *Crim v. E.F.*

Hutton, Inc., 298 S.C. 448 (1989); *Carver v. Morrow*, 213 S.C. 199 (1948). "[T]he reliance on a representation by an agent amounts to the reliance by the principal." On behalf of Appellant, Larry Sharpe specifically testified that at no time (until after January 2010) was Appellant informed that the Singh-Singh partnership had relinquished responsibility for the gasoline delivered to the two stores. (R. pp. 412 ln 21-24, 413 ln 15, 414 ln 1-20, 415 ln 25). The actions of Respondents clearly misled the Appellants. The Respondents are liable to Appellant as a matter of law and equitably estopped from denying their liability to Appellant. 311 S.C. 29, 33 (1993) (citation omitted). Moreover, "the authorized acts of an agent are the acts of the principal." *Crim v. E.F. Hutton, Inc.*, 298 S.C. 448 (1989); *Carver v. Morrow*, 213 S.C. 199 (1948). "[T]he reliance on a representation by an agent amounts to the reliance by the principal." On behalf of Appellant, Larry Sharpe specifically testified that at no time (until after January 2010) was Appellant informed that the Singh-Singh partnership had relinquished responsibility for the gasoline delivered to the two stores. (R. pp. 412 ln 21-24, 413 ln 17-25, 414 ln 1-20). The actions of Respondents clearly misled the Appellants. The Respondents are liable to Appellant as a matter of law and equitably estopped from denying their liability to Appellant.

Respectfully, the trial court erroneously failed to direct a verdict on behalf of Appellant because ". . . the evidence as a whole is susceptible of only one reasonable inference, no jury issue [was] created and a directed verdict motion..." was the proper remedy. *Wintersteen*, at 35,

(citing *Bloom v. Ravoira*, 529 S.E.2d 710 (2000)). Mr. Singh's admissions in his trial testimony, as well as the admissions made in the pleadings in the Richland County case, are uncontradicted and conclusive. The trial court's conclusions to the contrary are unsupported by any evidence and clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Wintersteen v. Food Lion, Inc.*, 542 S.E.2d 728, 729 (2001) (citing *Steinke v. South Carolina Dep't of Labor*, 520 S.E.2d 142 (1999)).

IV

The trial court erred in concluding that Appellant, Blythewood Oil, Inc. was not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi-contract, or implied contract by law.

Quantum meruit, quasi-contract, and implied by law contract are the same thing when a party requests an equitable remedy for recovery of unjust enrichment. *Columbia Wholesale Co. v. Scudder May N.V.*, 440 S.E.2d 129, 130 (1994). Appellant specifically plead the Respondents were unjustly enriched at the expense of Blythewood Oil, Inc. "Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *Id.* Moreover, in equity, the measure of the recovery is the extent of the duty or obligation imposed by law and is expressed by the amount which the Court considers the defendant has been unjustly enriched at the expense of the Plaintiff." *Myrtle Beach Hosp., Inc.*, 532 S.E.2d at 872 (quoting *United States Rubber Prods., Inc. v. Town of Batesburg*, 190 S.E. 120, 126 (1937)). *Ellis v. Smith Grading and Paving, Inc.*, 366 S.E.2d 12, 14 (Ct. App.1988). See *Stringer Oil Co., Inc. v. Bobo*, 465 S.E.2d 366 (Ct. App. 1995). (a measure

of recovery on *quantum meruit* is the reasonable value of services that are accepted and that benefit the defendant).

As noted herein, Shinda Singh admitted the formation and existence of the Singh-Singh partnership in both his trial testimony, the Richland County *Singh v. Singh* Answer and Counterclaim to Kabal's Complaint (R. pp. 303 In 1-16, 356 In 21-25 (2019 Trial)) and (R. pp. 201, 202 ¶ 2—*See* Paragraph 2 of Defendant's February 2013 Answer, Counter Claim, and Third-Party Complaint, Defendant admits the allegations of paragraphs 3, 4, 26, 45, and 81).(R. pp. 201-216), as well as Defendant Shinda Singh's Supplemental Answers to Interrogatories in the same case. (R. pp., 217-234). Even if this Court finds that Shinda Singh's admissions do not support his liability under SC partnership law, Respondents have been unjustly enriched at the expense of the Appellant based on the duties imposed by law as well as simple contract law, i.e., the Respondents received goods supplied by the Appellant, and sold those goods; but has not paid the Appellant for the goods sold. "*Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640 (2018).

The evidence in the case at bar clearly shows the operations of the Singh-Singh partnership were fraudulently operated and manipulated to defeat the claims of creditors, resulting in an injustice to an Appellant as a direct result and due to the blurring of the entities' attempted legal distinctions and the attempted "change of notice" by leasing the Hardscrabble Road and Percival Road convenience stores in 2008 to a partner's son – with no notice, actual or implied, to Appellant.

CONCLUSION

The trial court specifically found the Appellant was never notified of the "lease" arrangement, and the Respondents admit that Appellant was never notified. (R. pp. 23, 29 ¶ 11,

375 ln 25; 376 ln 1-7 & 25, 377 ln 1-14 (2019 Trial)). There is absolutely no evidence of record that Appellant knew or could have known that the Singh-Singh partnership changed ownership to Kabal's son, or any other entity, by lease or otherwise in 2008 or any other time. Thus, the essence of this case is the refusal of partners in a failed partnership (Respondents) to pay an innocent third-party supplier of goods (Appellant) for products delivered by Appellant to convenience stores owned and operated by the Respondent's partnership and sold by convenience stores owned and operated by the Respondent's partnership. The trial court apparently assumed, without finding, that the 2009 guarantees of payment signed by Jessee Singh relieved the responsibility of the partnership from its obligation to Appellant. This Court has never suggested that a partnership can avoid responsibility for payments of goods delivered by third parties with absolutely no evidence that the third-party (Appellant) knows that the partnership has been dissolved or otherwise no longer involved. Partners are fiduciaries. (*See SC Code of Laws, section 33-41-540*). As stated above, Appellant has provided direct evidence that Respondent Shinda Singh (the controlling partner) admitted under oath that the Singh-Singh partners made a business decision they believed was in their personal interests but purposely failed to inform creditors. Further, even in more legally protected corporate settings, this Court has held:

Ordinarily, in the absence of a statute, a successor or purchasing corporation is not liable for the debts of a predecessor or seller unless: (1) there was an agreement to assume such debts; (2) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (3) the successor company was a mere continuation of the predecessor; or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims. *Brown v. American Ry. Express Co.*, 123 S.E. 97 (1924).

The facts of the case at bar clearly evidence (a) the successor company operated by Jessee Singh as "President" was a mere continuation of the predecessor; and (b) the 2008 transaction, entered

into without notice to anyone except the partners, was entered into fraudulently to wrongfully defeat creditors' claims. The 2009 guarantee of payment, using the stores' same names and addresses provides the proof.

The Appellant is entitled to damages and judgment against the Defendants in the amount noted on Exhibits 15 and 16 (\$449,519.07), plus costs, interest at the rate on the wholesale applications (R. pp. 450-452, 522-524) signed by Jessee Singh as President of the AM/PM Food Mart Stores, and attorney's fees. If for any reason this Court finds the Appellant is not entitled to costs, interest, and attorney's fees — as the wholesale contracts signed by "Jessee" Singh as President of the A/M Food Mart Stores on Hardscrabble and Percival Road require — the Plaintiff is entitled to the statutory prejudgment interest stated within Section 34-31-20(A), Code of Laws of South Carolina, 1976, as amended, and any other costs provided by law.

This case has been ongoing since 2012. All the information necessary for this Court to provide the Appellant complete relief without remand for further proceedings is of record by direct testimony under oath of Shinda Singh himself and all of the documents included in the record on appeal. The uncontroverted testimony of Larry Sharpe, Jr. regarding the unpaid invoices for gasoline delivered by Appellant (but never paid for) to the Hardscrabble and Percival Road convenience stores (R. pp. 407 ln 12-25; 408 ln 1-5, 450-452, 522-524) provides the amounts owed to the Appellant since 2010. Respondent Shinda Singh's testimony (on behalf of himself, as well as Singh, Inc. and Five Rivers, Inc.) admitting his/their role in the partnership, together with the failure to give notice of any "leases" of the stores by any third parties to Appellant disposes of all of Respondents defenses. (R. pp. 375 ln 21-25, 376 ln 1-16, 377 ln 1-14 (2019 Trial)). Based on the foregoing, the trial court erred in failing to direct a verdict in favor of the Appellant.

Almost one hundred years ago, this Court recognized the general concept that . . . 'Justice\ delayed is justice denied.' More recently, the Court applied the same rationale to civil appeals cases. *See Maner v. Maner*, 278 S.C. 377 (1982). The case at bar has continued for a substantial amount of time; therefore, Appellants respectfully ask this Court to reverse the trial court's ruling and to grant judgment in favor of Appellant Blythewood Oil, Inc. with the relief noted above so all parties may conclude this matter and the Appellant is compensated for the losses it has sustained over a decade ago.

Respectfully submitted,

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June 5, 2022.

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SIXTH JUDICIAL CIRCUIT
Court of Common Pleas
Fairfield County**

**The Honorable DeAndrea Gist Benjamin
Presiding Judge, South Carolina Business Court**

Case No. 2021-CP-00-00944

Blythewood Oil Co., Inc.
Appellant,

vs.

**Shinda Singh, Five Rivers, Inc.,
and Singh, Inc.**
Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that the Final Initial Brief of Appellant was served on the following:

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