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Jun 14 2022

SC Court of Appeals

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

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Hon. Perry H. Gravely, Circuit Court Judge

Common Pleas Case No. 2019-CP-23-02032

Appellate Case No. 2021-001177

JULIA SIBLEY-JONES,
*as Personal Representative of
the Estate of William A.L. Si-
bley, Jr.,*

Respondent-Appellant,

v.

DECIDE4ACTION, INC.,

Appellant-Respondent.

Supplemental Record On Appeal

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Howard W. Anderson III (#100329)
Devon M. Puriefoy (#102097)
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ORDERS

Order Dismissing Appeal 9/2/2021

PLEADINGS

Answer & Counterclaims 5/22/2019

Defendant's Motion in Limine 7/26/2021

Notice of Cross Notice of Appeal 11/12/2021

The South Carolina Court of Appeals

Julia Sibley-Jones, as Personal Representative of the
Estate of William A.L. Sibley, Jr., Respondent,

v.

Decide4Action, Inc., Appellant.

Appellate Case No. 2021-000875

ORDER

Because there are pending post-trial motions in the lower court, this appeal is dismissed without prejudice. *See Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of . . . Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions."). Because this appeal is dismissed, this court will take no action on Appellant's "notice of supersedeas."



FOR THE COURT

Columbia, South Carolina

FILED
Sep 02 2021

cc:

Devon Marc Puriefoy, Esquire

Gregory Jacobs English, Esquire

Kimberly Truluck Thomason, Esquire

Respectfully Submitted this 22nd
day of May, 2019

TRULUCK THOMASON, LLC

/s/ Kimberly Thomason

Kimberly T. Thomason,
Bar No. 79179

/s/ Devon Puriefoy

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Attorneys for Defendant/Third-Party Plaintiff

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 William A.L Sibley, Jr.)
)
)
 Plaintiff,)
)
 vs.)
)
 Decide4Action, Inc.)
)
 Defendant.)
)
 _____)
)
 Decide4Action, Inc.)
)
)
 Counterclaimant/Third-Party Plaintiff)
)
 vs.)
)
 William A.L. Sibley, Jr.; and Joyce)
 Fetherstone)
)
 Counterclaim Defendant/Third Party)
 Defendant)
 _____)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-23-02032

ANSWER & COUNTERCLAIMS

FOR A FIRST DEFENSE
(General Denials)

1. All allegations not specifically and expressly admitted herein by Defendant Decide4Action, Inc. (*hereinafter* “Defendant”), are deemed to be denied.
2. Upon information and belief, Defendant admits the allegations contained in paragraph 1 of Plaintiff’s Complaint.
3. Defendant admits the allegations contained in paragraph 2 of Plaintiff’s Complaint.
4. Defendant admits the allegations contained in paragraph 3 of Plaintiff’s Complaint.
5. Defendant admits the allegations contained in paragraph 4 of Plaintiff’s Complaint.

6. Defendant admits the allegations contained in paragraph 5 of Plaintiff's Complaint.

7. Defendant admits the allegations contained in paragraph 6 of Plaintiff's Complaint.

8. Defendant denies the allegations contained in paragraph 7 of Plaintiff's Complaint and demand strict proof thereof.

9. Responding to paragraph 8 of Plaintiff's Complaint, Defendant admits it notified the Escrow agent of its valid claims against Plaintiff. Defendant denies the remaining allegations contained in paragraph 13 of Plaintiff's Complaint and demand strict proof thereof.

10. Responding to paragraph 9 of Plaintiff's Complaint, Plaintiff breached the Purchase Agreement. Defendant denies the remaining allegations contained in paragraph 9 of Plaintiff's Complaint and demands strict proof thereof.

11. Defendant denies the allegations contained in paragraph 10 of Plaintiff's Complaint and demand strict proof thereof.

12. Responding to paragraph 11 of Plaintiff's Complaint, Defendant, upon information and belief, does not believe Plaintiff had, or has, the authority to act on any of the other Shareholders' behalf and therefore denies this allegation and demands strict proof thereof.

13. Defendant denies the allegations contained in paragraph 12 of Plaintiff's Complaint and demand strict proof thereof.

14. Defendant denies the allegations contained in paragraph 13 of Plaintiff's Complaint and demand strict proof thereof.

15. The allegations contained in paragraph 14 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of the same.

16. The allegations contained in paragraph 15 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of the same.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

17. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

18. No response is required to paragraph 16 of Plaintiff's Complaint. To the extent a response is required, Defendant denies the same and demands strict proof thereof.

19. Defendant admits the allegations contained in paragraph 17 of Plaintiff's Complaint.

20. Defendant denies the allegations contained in paragraph 18 of Plaintiff's Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in paragraph 19 of Plaintiff's Complaint and demands strict proof thereof.

22. Defendant denies the allegations contained in paragraph 20 of Plaintiff's Complaint and demands strict proof thereof.

23. The allegations contained in paragraph 21 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of the same.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act)

24. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

25. No response is required to paragraph 22 of Plaintiff's Complaint. To the extent a response is required, Defendant denies the same and demands strict proof thereof.

26. Defendant denies the allegations contained in paragraph 23 of Plaintiff's Complaint and demands strict proof thereof.

27. Defendant denies the allegations contained in paragraph 24 of Plaintiff's Complaint and demands strict proof thereof.

28. Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint and demands strict proof thereof.

29. Defendant denies the allegations contained in paragraph 26 of Plaintiff's Complaint and demands strict proof thereof.

30. The allegations contained in paragraph 27 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of the same.

FOR SECOND DEFENSE

(Prior Breach)

31. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

32. Without admitting to a breach of the Purchase Agreement, or Escrow Agreement, Plaintiff's claim for breach of contract, and breach of contract accompanied by a fraudulent act, are barred by Plaintiff's prior breach of the same.

FOR A THIRD DEFENSE

(Fraud)

33. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

34. Plaintiff's Complaint is barred by the legal doctrine of fraud.

FOR FOURTH DEFENSE
(Misrepresentation)

35. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

36. Plaintiff's claims are barred by the legal doctrine of misrepresentation.

FOR A FIFTH DEFENSE
(Laches)

37. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.

38. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of laches.

FOR AN SIXTH DEFENSE
(Estoppel)

39. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.

40. Plaintiff's Complaint is barred, in whole or in part, by the equitable doctrine of Estoppel.

DEFENDANTS COUNTERCLAIMS

Parties, Jurisdiction, and Venue

Defendant, by way of his Counterclaims, would allege and show unto the Court the following:

41. Decide4Action, Inc. (“Defendant”) is a corporation organized under the laws of the State of Florida, and maintains its principal place of business in Greenville County, South Carolina.

42. Upon information and belief, William A.L. Sibley, Jr. (“Plaintiff”) is a citizen and resident of Greenville County, South Carolina.

43. For the foregoing reasons the Court has personal jurisdiction over the named parties and venue is proper in Greenville County, South Carolina.

Facts

44. Richard Bergeron (“Bergeron”) began discussions with the shareholders/owners (the “Owners”) of Computer Control + Integration, Inc. (the “Company”) regarding a potential acquisition of 100% of the Company’s stock sometime around mid 2016.

45. The Company was a software development and systems integration firm offering services primarily to the beverage and textile industries.

46. The Company consisted of six (6) shareholders, Plaintiff, Joyce Featherstone, James Clark, Frank Scarrett, Jr., Scott Dozier, and Robert Levnier. The Company also consisted of a number of key employees that were tasked with creating, maintaining, and developing existing and new iterations of the software that was used by the Company’s customers.

47. On or about October 20, 2016, Bergeron received an Offering Memorandum (“Offering”), drafted by Generational Equity, LLC (“GE”), an investment banking firm that acted as Seller’s broker in its search for a buyer of the Company.

48. For purposes of a historical analysis of the Company’s financial strength, Bergeron was to be provided financials for the three (3) preceding years (2013, 2014, 2015). Page 27 of the

Offering indicated that the July 2015 to June 2016 fiscal year would serve as the valuation year for purposes of determining the Company's worth.

49. According to GE, the 2016 earnings before interest, taxes, depreciation, and amortization ("EBITDA") was approximately \$1.173 million, with a purchase price based on a multiple of 3.75.

50. On or about March 10, 2017 a Letter of Intent ("LOI") was executed by and between all Owners of the Company, including Plaintiff, and Bergeron on behalf of Defendant. The LOI set forth a purchase price of approximately \$4.4 million with ninety percent (90%) paid in cash at closing, and the remaining ten percent (10%), or \$440,000.00, being held in an escrow account for a period of twelve (12) months, to indemnify Defendant from any alleged violation of Section 8 of the Stock Purchase Agreement ("SPA").

51. Section 8 of the SPA, titled "Remedies for Breaches of this Agreement," stated that, in the event any of the Sellers of the Company, including Plaintiff, breached any of the "...representations, warranties, covenants, or agreements..." contained therein, Buyer [Defendant] could elect to make an indemnification claim against one or more of the Sellers for violation thereof. Section 8 went on to read that any such liability associated with a breach of Section 8 would limit Sellers' aggregate, cumulative liability to \$2.5 million.

52. The LOI established a ninety (90)¹ day due diligence period. In addition to Defendant's review of the Company's financial during the due diligence process, Defendant also scheduled a tentative site visit by Defendant on May 17, 2017. The purpose of the due diligence period was to ensure the accuracy of the October 10, 2016 Offering and in the name of transparency, GE

¹ Due diligence, with the agreement of all interested parties, was extended on two separate occasions.

created what is referred to as a “Virtual Room” which is a document sharing software that allows for the free flow of communication and requested document production between all parties involved in the transaction. Virtual Room was the manner in which Defendant would collect all required information regarding GE’s valuation of the Company.

53. Defendant retained the services of Dan Calton, CPA (“Calton”) of Lake Mary, Florida to assist in the due diligence process. Over the following weeks, GE representatives worked hand-in-hand with Calton to better assist him in making his determination as to the financial condition of the Company.

54. Naturally, Calton took particular interest in the salary and bonus structure of the Company to better understand at least one facet of the Company’s fixed expenses.

55. Calton’s review of the available documents, dating back to 2013, revealed that no non-owner bonuses were ever paid by the Company, with the exception of one year.

56. This exception was disclosed by Plaintiff via an email to Defendant on May 7, 2017. In the email Plaintiff discloses that in 2016, the Company paid non-employee special bonuses on 3 occasions for a total of \$35,000. Outside of these 3 special occasions, paying bonuses was not considered within the ordinary course of business for the Company.

57. With Calton satisfied that GE’s valuation metrics were accurate, Defendant then turned to Patton and Associates, LLC, an Indianapolis, Indiana based valuation firm to perform a more extensive valuation. Because the contemplated transaction was being funded by a Small Business Administration Loan (“SBA Loan”), PNC Bank required that a nationally recognized valuation firm assist in the due diligence phase, which gave rise to Patton & Associates, LLC’s involvement.

58. With PNC Bank now satisfied with Patton & Associates, LLC's findings, Defendant elected to move forward with the purchase of 100% of the Company's stock.

59. On or about October 13, 2017 a SPA agreement was executed by and between all Owners of the Company, including Plaintiff, and Defendant. The closing of the transaction was finalized on October 16, 2017.

60. At the time of the execution of the SPA by all of the Owners of the Company, including Plaintiff, Section 4, titled "Representations and Warranties Concerning Target," sets forth a number of representations and warranties that the Owners of the Company, including Plaintiff, were to be bound by and declare as accurate as of the date of the closing of the transaction.

61. The representations in Section 4 of the SPA read, in its pertinent parts:

- a. *Events Subsequent to May 17, 2017.* " Except as set forth in §4(i) of the Disclosure Schedule, since May 17, 2017, there has not been any Material Adverse Change and Target has conducted its business in the Ordinary Course of Business. Without limiting the generality of the foregoing, since May 17, 2017:"
- b. (xvi) "Target has not granted any increase in base compensation of any of its directors, officers, or employees outside the Ordinary Course of Business";
- c. (xvii) "Target has not adopted, amended, modified or terminated any bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, or employees (or taken any such action with respect to any other Employee Benefit Plan); and
- d. (xviii) "Target has not made any other changes in employment terms for any of its directors, officers, or employees outside the Ordinary Course of Business.";

62. The representations contained in Section 4 of the SPA were intended to assure Defendant that the specific representations set forth therein, were, in fact, true and accurate as of the date of the closing.

63. At the time of execution of the SPA by all Owners of the Company, including Plaintiff, Section 7(iv) of the SPA, titled “Conditions to Obligation to Close,” read: “Target shall not have suffered a Material Adverse Change between the Most recent Fiscal Month and the Closing.”

64. The representations contained in Section 7 were intended to assure Defendant that the Company had not suffered any Material Adverse Change or Effect (“MAC” or “MAE”) prior to the closing. The SPA defines MAC or MAE as any effect, change, circumstance, development, event, occurrence or state of facts that is materially adverse to the business, financially or otherwise.

65. Following the closing of the transaction, Defendant immediately began operating.

66. On or about November 15, 2017, Plaintiff, in a series of correspondence to Defendant, disclosed the following:

- a. Prior to the closing of the transaction, and without disclosing the same to Defendant at the closing, Plaintiff increased Kimberly French’s salary yearly by \$2,500.00 in addition to a \$10,000.00 bonus. Kimberly French was an employee of the Company at the time the increase occurred;
- b. In addition to this bonus, Plaintiff informed Defendant he had authorized the payment of six (6) more bonuses to employees of the Company prior to closing, totaling \$324,864.000.

67. Although the LOI and SPA specifically allowed the Owners to retain all cash from any checking or savings account as of the date of the closing, Section 4 of the SPA required the disclosure of certain exceptions to the express representations.

68. As noted above, Sections 4(i)(xvi) and (xviii) required that no changes to the employment terms of any employee, including increases in compensation, be made unless done in the ordinary course of business.

69. Despite this fact, Plaintiff unilaterally elected to increase one employee's salary by \$2,500.00, and failed to disclose the same at the closing.

70. As noted above, Section 4(i)(xvii) of the SPA specifically prevented the Owners of the Company, including the Plaintiff, from adopting, or amending the manner in which bonuses were paid.

71. Due diligence ended May 17, 2017 at which time the Company was to take no action outside the ordinary course of business, so as to ensure there was no material adverse change to the Company prior to the closing of the transaction. Although this extraordinary bonus would have been paid during the July 2016 to June 2017 fiscal year, the impact this payment would have had on the valuation of the Company is, for all intents and purposes, the same as if they had been paid during the 2015-2016 fiscal year.

72. Plaintiff and the remaining Owners of the Company held a meeting on or about June 15, 2017 to discuss the payment of the bonuses. At the time of the meeting, all of the Owners, except Plaintiff, questioned the legality of the payment without making a corresponding disclosure to Defendant. Plaintiff instructed the other Owners that the payment of bonuses was "in the regular course of business" and as such disclosing the same to Defendant was unnecessary.

73. Despite his direct knowledge that the SPA required disclosure of a payment of this nature, and his colleagues' concerns regarding the legality of the payment on the whole, Plaintiff intentionally failed to disclose the payment of \$324,874.00 in bonuses to employees prior to

closing. By comparison, this bonus distribution was approximately **9.3 times** the value of the only other non-owner distribution made in the history of the Company.

74. Upon information and belief, Plaintiff's election to increase Ms. French's yearly compensation, and the extraordinary bonuses came on the heels of Plaintiff's realization that a number of key employees may be inclined to seek alternative employment opportunities as a result of the impending sale, which Plaintiff knew would likely result in Defendant's offer to purchase the Company being pulled.

75. Upon discovery of this fact, Defendant invoked its indemnification rights under the SPA, and informed Plaintiff of the same. Contemporaneously therewith, Defendant instructed the escrow agent not to release the escrow funds as a dispute had arisen between the parties.

76. Over the coming months Plaintiff and Defendant attempted to reach a resolution on all of the complained upon issues, each time to no avail.

77. By June 2018, the end of the first fiscal year since the closing of the acquisition, three (3) of the four (4) software designers resigned within a one month period, indicating they had found alternative employment opportunities.

78. As a direct result, Defendant was required to hire new software designers with no prior knowledge of or experience with Defendant's software, costing valuable time and money.

79. A former employee of both the Company and the Defendant, Justin Pavatte, stated in a linkedin message, that he was informed by the Company's management team, that the large bonus amount was to compensate employees for the low salaries, creating an ongoing expectation for large year end bonuses. In fact, in support of this position, Mr. Pavatte also stated

that Defendant's former employee, Joseph Taylor, would have stayed with Defendant if bonuses had been paid at the end of 2017.

80. These statements make clear the materiality of the undisclosed bonus payments during the due diligence phase and prior to closing.

81. Defendant once again engaged the valuation firm of Patterson & Associates, LLC to make a determination as to what the value of the Company would have been had the bonus payment been included in the valuation.

82. It was determined by Patton and Associates, LLC that had the bonus payment been factored into the valuation method, the value of the Company would have been significantly different. More specifically, Patton & Associates, LLC found that because of Plaintiff's misrepresentations, the cost attributable to employee compensation was artificially reduced, in turn inflating the EBITDA metric. As a result of the adjusted EBITDA upon discovery of Plaintiff's action, the value of the Company was reduced by nearly \$1,300,000.00.

FOR A SEVENTH DEFENSE AND
BY WAY OF FIRST COUNTERCLAIM
(Breach of Contract)

83. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

84. On or about October 16, 2017 a SPA was executed by and between the Owners of the Company, including Plaintiff, and Defendant.

85. The terms of the SPA required certain representations and warranties be made by the Owners of the Company, including Plaintiff, and required that those representations be true and accurate as of the date of the closing of the transaction.

86. More specifically, Section 4(i)(xvi)(xvii) and (xviii) of the SPA required that no changes be made to the terms of employment for any employee of the Company, including changes in compensation, and that no change to the bonus structure of the Company be adopted, amended or modified.. Additionally, Section 7 of the SPA required representations to be made by the Owners of the Company, including Plaintiff, that no material adverse change had occurred prior to the closing.

87. Plaintiff's intentional failure to disclose the changes in the terms of Ms. French's compensation in accordance with Section 4 of the SPA, as well as his election to not disclose the payment of \$324,874.00 in non-owner bonuses in accordance with Sections 4 and 7 of the SPA constitutes a material breach of the SPA.

88. As a direct result of Plaintiff's breach of contract, Defendant has suffered severe economic harm in the form of actual damages, including, but not limited to lost profits. Defendant is also entitled to specific performance of the SPA.

FOR AN EIGHTH DEFENSE AND
BY WAY OF SECOND COUNTERCLAIM
(Breach of Contract Accompanied by Fraudulent Act)

89. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.

90. At all times leading up to the sale of the Company, certain representations were made to Defendant by way of Plaintiff's execution of the SPA, representations Defendant relied upon.

91. The value of the Company, and in turn the purchase price of the Company, clearly reflects Defendant's reliance on these representations.

92. In addition to the breaches set forth more fully above, Plaintiff's conduct demonstrates fraudulent intent relating to the breach of the contract and not merely to its making, and both a fraudulent intent and fraudulent intent accompanying the breach.

93. As a direct result of Plaintiff's dishonest conduct, and attempt to get one or more of the remaining Owners of the Company to engage in the same unlawful conduct, Defendant has suffered extensive economic damages.

94. Defendant is entitled to recover actual and consequential, as well as attorney's fees as a result of Plaintiff's conduct. Additionally, Defendant, as a result of the fraudulent acts of Plaintiff, is entitled to an award of punitive damages in an amount to be determined by a jury should there be a trial in this matter.

FOR A NINTH DEFENSE AND
BY WAY OF THIRD COUNTERCLAIM
(Fraud)

95. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

96. On or about October 16, 2017 a SPA was executed by and between the Owners of the Company, including Plaintiff, and Defendant.

97. Contained in the SPA were representations by the Plaintiff that he would inform Defendant of any material changes to the Company prior to the closing of the anticipated transaction.

98. Plaintiff ordered the increased compensation of a Company employee and distributed \$324,874.00 in bonuses to Company employees. At the time of the increased compensation and bonus distribution, Plaintiff knew he was acting contrary to, and in violation of the SPA.

99. Specifically, knowingly withheld invaluable information from Defendant that would have likely altered the course of the still pending transaction. Plaintiff's conduct demonstrated an intent to fraudulently induce Defendant's into executing the SPA, with Plaintiff's direct knowledge that the representations contained therein were no accurate.

100. Despite this knowledge, Plaintiff allowed Defendant to rely on the SPA representations and, at the closing table, intentionally failed to disclose information that would have likely resulted in (1) a substantially reduced sales price; or (2) the termination of the purchase agreement.

101. In an attempt to ensure the closing of the transaction, and in turn, ensure a large financial windfall from his fraudulent conduct, Plaintiff made a conscious decision not to disclose what even his fellow co-owners deemed to be material information.

102. Defendant relied on Plaintiff's SPA representations, and but for the representations contained in the therein, Defendant would have never agreed to the purchase.

103. As a direct result of Plaintiff's fraudulent conduct, Defendant has suffered severe economic harm in the form of actual damages and consequential damages, including, but not limited to lost profits. Additionally, Defendant, as a result of the fraudulent acts of Plaintiff, is entitled to an award of punitive damages in an amount to be determined by a jury should there be a trial in this matter.

FOR A TENTH DEFENSE AND
BY WAY OF FOURTH COUNTERCLAIM
(Intentional Misrepresentation)

104. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.

105. On or about October 16, 2017 Plaintiff, via his execution of the SPA at the closing of this transaction, intentionally misrepresented material facts to Defendant. Specifically, Plaintiff represented to Defendant that each and every representation contained in the executed SPA was true and accurate and no material adverse changes had occurred.

106. Plaintiff was fully aware that the representations contained in the SPA were inaccurate and misleading. Rather than disclose the material exceptions to the representations, Plaintiff allowed the SPA to be presented to Defendant for execution, ensuring the transaction closed and in turn ensuring a financial windfall, achieved under false pretenses, by Plaintiff.

107. In executing the SPA, it was clear Plaintiff intended that Defendant rely on the representations set forth therein.

108. Defendant was completely unaware of Plaintiff's misrepresentations and reasonably relied upon the same. .

109. Plaintiff's misrepresentations has resulted in severe economic harm to Defendant in the form of actual damages, including, but not limited to lost profits.

FOR A FINAL DEFENSE

(Preservation of Right to Amend Answer)

110. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.

111. Defendant may have other defenses against Plaintiff and, therefore, reserve the right to assert such defenses in a timely fashion after the facts to assert such defenses become known to them and to request amendments to these affirmative defenses to conform to the evidence.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests the following relief:

- a. The Court dismiss Plaintiff's Complaint in its entirety, with prejudice;
- b. Actual, incidental, consequential, special, compensatory, and punitive damages;
- c. Lost profits and future earnings;
- d. Attorney's fees and costs of court; and
- e. Such additional and appropriate relief to which Defendant are entitled.

Respectfully Submitted this 22nd
day of May, 2019

TRULUCK THOMASON, LLC

/s/ Kimberly Thomason

Kimberly T. Thomason,
Bar No. 79179

/s/ Devon Puriefoy

Devon M. Puriefoy
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Attorneys for Defendant/Third-Party Plaintiff

William A.L. Sibley, Jr
Plaintiff,

vs.

Decide4Action, Inc.
Defendant.

DEFENDANT'S MOTION IN LIMINE

C.A. No.: 2019-CP-23-02032

Decide4Action, Inc.
Counterclaimant/Third-Party Plaintiff,
vs.
William A. L. Sibley, Jr; and Joyce Featherstone,
Counterclaim Defendant/Third Party Defendant.

COMES NOW Defendants, by and through their undersigned attorney, and request this Court to enter an Order in Limine, to prevent any mention in opening statement, questioning of witnesses, closing argument or in any other way before the jury, of the following matters:

1. Any reference to the fact that Defendant made an objection to interrogatories or document requests, or asserted a claim of privilege, during the pretrial phase of this case.
2. Any reference to conversations not under oath between any witness and William A.L. Sibley, Jr.
3. Any reference to the circumstances leading up to or the death of William A.L. Sibley, Jr.
4. Any reference to the litigation history of Decide4Action, Inc. or Richard Bergeron.
5. Any reference to the fact Defendant/Third-Party Plaintiff filed this Motion in Limine to prevent the introduction of certain evidence at the trial of this case.
6. Any reference to settlement negotiations between Decide4Action, Inc. and William A.L. Sibley, Jr., before, and during the filing of this action, including mediation.
7. Any reference to the personal net worth of Richard Bergeron.
8. Any reference to the value of CC+I being more than Decide4Action paid.

Respectfully Submitted
this _____, _____ 2021.

TRULUCK THOMASON, LLC

s/ Kimberly Thomason
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s/Devon M. Puriefoy
Devon M. Puriefoy, S.C. Bar No. 102097
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Third-Party Plaintiff*

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

The Hon. Perry H. Gravely, Circuit Court Judge

Commons Pleas Case No. 2019-CP-23-02032
Appellate Case No. 2021-001177

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Nov 12 2021

SC Court of Appeals

Julia Sibley-Jones, as Personal Representative of the
Estate of William A.L. Sibley, Jr., Respondent,

v.

Decide4action, Inc., Appellant.

NOTICE OF CROSS-APPEAL

Respondent Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr., cross-appeals the Judgment of the Honorable Perry H. Gravely dated July 30, 2021 (attached). On August 9, 2021, Respondent timely filed a Rule 59(e), SCRCPP, motion to alter and amend the Judgment dated July 30, 2021, and received written notice of the Court's denial of same on October 13, 2021 (attached).

WYCHE, P.A.

s/ Gregory J. English
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November 11, 2021

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

The Hon. Perry H. Gravely, Circuit Court Judge

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Julia Sibley-Jones, as Personal Representative of the
Estate of William A.L. Sibley, Jr., Respondent,

v.

Decide4action, Inc., Appellant.

PROOF OF SERVICE

I hereby certify that I have served the foregoing Notice of Cross-Appeal on the above-named Appellant by Email and by depositing a copy of it in the U.S. mail, first class postage prepaid, addressed to their counsel of record as follows:

Kimberly T. Thomason, Esq.
Devon M. Puriefoy, Esq.
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Jun 14 2022

CERTIFICATE OF COUNSEL

SC Court of Appeals

Undersigned counsel hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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