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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas, 13th Circuit

Perry H. Gravely, Circuit Court Judge

COMMON PLEAS CASE NO.: 2020-CP-23-01886

Appellate Case No. 2021-000851

Tiger Enterprises & Trading Company Inc., Bonnie Walker and Dwight Walker,

Appellants,

v.

ARO-D Enterprises, LLC, Rudy Dixon, T3 Aviation Inc., and Frank T. Gangi,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

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BONNIE WALKER AND DWIGHT WALKER

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES IN PETITION..... 1

STATEMENT OF THE CASE FOR PETITION 2

STANDARD OF REVIEW 5

BACKGROUND SUMMARY OF RELEVANT FACTS 5

ARGUMENT 7

CONCLUSION 15

TABLE OF AUTHORITIES

Cases

<i>Baughman v. At&T</i> , 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)	9
<i>Cranston/BVT Assocs. Ltd. P’ship v. Sleepy’s, LLC</i> , 2015 U.S. Dist. LEXIS 134098, *7 (D. R.I. 2015)	13
<i>Doe v. Wal-Mart Stores, Inc.</i> , 711 S.E.2d 908, 910 (2011)	5
<i>Fleming v. Rose</i> , 567 S.E.2d 857, 860 (2002)	5
<i>Hamdi Halal Mkt. LLC v. United States</i> , 947 F. Supp. 2d 159, 164 (D. Mass. 2013)	13
<i>Nucap Indus., Inc. v. Robert Bosch LLC</i> , 273 F. Supp. 3d 986, 998 (N.D. Ill. 2017)	12

Statutes

S.C. Code Ann. § 26-6-10 <i>et seq.</i>	4, 12
S.C. Code Ann. § 26-6-50(B)	12-11, 14
S.C. Code Ann. § 26-6-100(A)(2)(a)	13
15 U.S.C.A. § 7001	12

Rules

S.C. R. Civ. P. 56(c)	5
-----------------------------	---

Treatises

10A Wright & Miller, <i>Federal Practice and Procedure</i> § 2741, p. 543 (1983)	9
6 <i>Moore’s Federal Practice</i> para. 56.02[6], p. 56-39 (2d. ed. 1990)	9

STATEMENT OF ISSUE(S) FOR PETITION

- I. DID THE COURT ERR IN FINDING APPELLANT HAD AN ADEQUATE OPPORTUNITY TO CONDUCT DISCOVERY WHEN PLAINTIFF AND ITS PRINCIPAL, RUDY DIXON, REFUSED TO ATTEND THEIR SCHEDULED DEPOSITIONS, AND DIXON IS NOW DECEASED?
 - a. DID THE EVIDENCE IN THE RECORD, INCLUDING THE JUNE 10, 2020 AFFIDAVIT OF DWIGHT WALKER AND EXHIBITS 1-6, TOGETHER WITH RESPONDENT DIXON'S STATEMENTS AT THE SAME TIME (JULY / AUGUST 2019) TO RESPONDENT FRANK GANGI OF RESPONDENT T3 AVIATION, INC. THAT TIGER WAS HIS "CLIENT," CREATE A DISPUTED ISSUE OF FACT REGARDING THE EXISTENCE OF AN AGREEMENT WITH ARO-D OR ITS PRINCIPAL, RUDY DIXON?
 - b. DID THE COURT PROPERLY APPLY PROVISIONS OF THE S.C. UNIFORM ELECTRONIC TRANSACTIONS ACT, S.C. CODE ANN. § 26-6-50, IN VIEW OF THE PARTIES' OVERSEAS / ELECTRONIC COMMUNICATIONS IN JUNE AND JULY 2019 WHICH RESULTED IN THE SUBJECT "HAWKER 4000" AIRPLANE PARTS BEING SHIPPED BY DIXON FROM NIGERIA TO APPELLANT'S WAREHOUSE IN SOUTH CAROLINA ON JULY 31, 2019.
 - c. DID THE COURT VIEW THE EVIDENCE AND ALL INFERENCES TO BE DRAWN THEREFROM IN FAVOR OF APPELLANT?
- II. DID THE COURT ERR IN AFFIRMING SUMMARY JUDGMENT TO RESPONDENTS FRANK GANGI AND T3 AVIATION WITHOUT PROVIDING APPELLANTS AN ADEQUATE OPPORTUNITY TO CONDUCT DISCOVERY TO ESTABLISH THE TERMS OF THE "CLIENT" AGREEMENT WITH ARO-D AND / OR ITS PRINCIPAL, RUDY DIXON?

STATEMENT OF THE CASE FOR PETITION

Respondent ARO-D Enterprises, LLC (“ARO-D”) filed this lawsuit in the Greenville County Court of Common Pleas on March 27, 2020, naming Appellants Tiger Enterprises & Trading, Inc., (“Tiger”), Dwight Walker (“Dwight”) and Bonnie Walker (“Bonnie”) as Defendants. ARO-D brought claims as follows: (i) Bailment (now moot), (ii) Claim and Delivery (now moot), (iii) Unjust Enrichment / Restitution, (iv) S.C. Unfair Trade Practices Act, (v) Constructive Fraud, (vi) Negligent Misrepresentation, (vii) Constructive Trust as to Tiger, (viii) Accounting, (ix) Conversion against Tiger, and (x) Appointment of a Receiver. On April 9, 2020, ARO-D filed its motion for a preliminary injunction and / or receivership.

Tiger filed its Third-Party Complaint, Answer and Counterclaims on April 28, 2020, bringing counterclaims against ARO-D, and third-party claims against ARO-D’s principal Rudy Dixon,¹ and Respondents Frank Gangi and his company T3 Aviation, Inc., out of Massachusetts. Tiger’s claims consisted of the following: (i) Breach of Contract against Dixon and ARO-D (dismissed on partial summary judgment), (ii) Constructive Fraud against Dixon, ARO-D and Gangi, (iii) Fraudulent Inducement (Rescission) against Dixon and ARO-D, (iv) Promissory Estoppel against Dixon and ARO-D, (v) Interference with Contract against Gangi and T3 (dismissed on partial summary judgment), (vi) Interference with prospective Contractual relations against Gangi and T3, (vii) S.C. Unfair Trade Practices Act against all Respondents

¹ On or about December 14, 2023, Respondent Rudy Dixon passed away, which has been confirmed by counsel to Dixon and ARO-D- Enterprises LLC, Mr. Andrighetti, in his filings with the Circuit Court on Dec. 29, 2023 and Jan. 10, 2024. An order issued in the Circuit Court on January 16, 2024, staying the Circuit Court proceedings sixty (60) days to enable the soon to be formed estate of Mr. Dixon to continue to retain Mr. Andrighetti, or to retain new counsel.

(dismissed on partial summary judgment), (viii) Constructive Trust against Dixon and ARO-D, (ix) Civil Conspiracy against all Respondents, (x) Barratry against Gangi and T3.

On June 11, 2020, the trial court held a hearing on ARO-D's motion(s) for a preliminary injunction and / or receivership, filed April 9, 2020. The trial court denied ARO-D's above-identified motions by order filed June 11, 2020, stating, inter alia, as follows:

After review of the record and hearing argument of counsel, the Court finds that the Plaintiff has not established the required elements for a Preliminary Injunction or the Appointment of a Receiver. Therefore, Plaintiff's Motion is denied. In conjunction with the hearing, counsel for their respective parties did enter an agreement as follows: 1) No portion of the Hawker inventory as defined in Plaintiff's Motion shall be sold, rented or disposed of in any manner without the written consent of both parties-ARO D Enterprises, LLC and Tiger Enterprises & Trading Inc. 2) All proceeds from any sale, lease or disposal of the Hawker inventory shall be deposited in a trust account of one of the attorneys in this action as designated by the parties; 3) The parties shall actively market the Hawker inventory; and 4) In the event that any inspection is requested by any party, then such inspection shall be performed by Forensic Research Group, Inc. and its Director, Michael F. O'Shea and reports provided to all parties.

This agreement was placed on the record and is the Order of the Court.

It is so Ordered.

Id. at 2 of 3 (underline emphasis added).

After another round of motions by Respondents to dismiss for lack of jurisdiction and on other grounds were heard on August 19, 2020, and denied by three separate orders filed August 20, 2020. The orders stated, respectively, in relevant part as follows:

- Third-Party Motions of Gangi and T3 “under 12(b)(2), 12(b)(5), and 12(b)(6)” are denied;
- “Plaintiff [ARO-D] is allowed fifteen (15) days to review [Appellants’] Responses and notify the Court if the Motion needs to be revisited,” and
- “This matter comes before the Court pursuant to Plaintiff’s Motion for Rule to Show Cause. Plaintiff’s Motion as far as the contempt is denied. Court will allow parties to modify Judge Gravelly’s Order regarding the process for selling the

associated aircraft parts.”

Id.

On September 2, 2020, Respondents Gangi and T3 filed separate responsive pleadings, bringing counterclaims against Appellants for: (i) Declaratory Judgment, (ii) Malicious Prosecution, and (iii) Reservation of Rights. Appellants answered the claims of T3 and Gangi on October 7, 2020.

On April 16, 2021, the trial court issued an order granting partial summary judgment to Gangi and T3 on their motions to dismiss Appellants’ claims for Interference with Contract and the UTPA. Appellants filed a Rule 59 motion to reconsider, alter or amend on April 26, 2021, which was denied by order filed July 6, 2021.

Appellants’ Notice of Appeal in this matter, filed August 3, 2021, relates to the trial court’s two orders filed April 16, 2021 and order denying reconsideration filed July 6, 2021.

These orders stated in relevant part as follows:

- “Having concluded that a valid, enforceable agreement did not exist between Plaintiff and [Tiger] with regard to the aircraft parts at issue, it necessarily follows that [Tiger] cannot have a legally cognizable claim against T3 Aviation, Inc. and Mr. Gangi for tortious interference with that non-existent contract.” Id. at 4 of 6 (Order filed April 16, 2021 at 2:41 P.M.);
- “[Tiger] has not rebutted these deficiencies,” in granting summary judgment in favor of Gangi and T3’s on Tiger’s UTPA claim. Id. at 5 of 6 (Order filed April 16, 2021 at 2:41 P.M.); and
- “The [Appellants] have failed to provide any evidence or testimony claiming the existence of a contract or written, signed agreement between the parties.” Id. at 4 of 6 (Order filed April 16, 2021 at 2:42 P.M.).

Id.

The trial court’s orders that are the subject of this appeal did not address or mention the

S.C. Uniform Electronic Transactions Act (S.C. Code Ann. § 26-6-10 *et seq.*). The orders did not analyze whether or not the existence or extent of the “client” relationship Dixon referred to on Aug. 5, 2019, when communicating with Respondent Gangi. (R.168).

On May 29, 2021, the trial court issued an order granting in part Gangi’s Motion for a Protective Order from appearing for his deposition scheduled for June 2, 2021. Appellants were not able to take the deposition of Rudy Dixon prior to the above-described orders granting summary judgment on April 16, 2021, or before he passed away on Dec. 14, 2023.

The parties never altered the agreement entered by the trial court in its June 11, 2020 order, identified and block-quoted above “regarding the process for selling the associated aircraft parts.” *Id.*

STANDARD OF REVIEW

“When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court.” *Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 244, 711 S.E.2d 908, 910 (2011) (citing *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)).

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” *Doe*, 711 S.E.2d at 910 (citing Rule 56(c), SCRPC). “In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Id.* (citing *Fleming*, 567 S.E.2d at 860).

BACKGROUND / SUMMARY OF RELEVANT FACTS

The underlying lawsuit arises out of 40-plus year relationship between Dwight Walker

(“Walker”), an owner and principal of Appellant Tiger Enterprises and Trading, Inc. (“Tiger”), and Rudy Dixon (“Dixon”), owner of Plaintiff-Respondent ARO-D Enterprises, LLC. (r. 152, 157, 242 (line 3), and 271 at ¶ 4). Beginning as early as 2014, Walker and Dixon were in communications about the prospect of Walker and his company, Tiger, getting possession of used airplane parts from a crashed Hawker 4000 aircraft in Nigeria. (R.271). In June of 2019, these discussions commenced again between Walker and Dixon. (R.272-278). The communications leading up to the parts being shipped by Dixon / ARO-D to Tiger were almost exclusively electronic communications. (R.272-275). In late July 2019, those electronic communications resulted in Respondents Dixon and ARO-D arranging to ship some of the Hawker 4000 airplane parts to Appellant’s facilities in Greenville South Carolina, from Nigeria, at Appellant Tiger’s expense. (R.153).

Prior to even considering becoming involved in this transaction, on July 24, 2019, by email as all communications were required to occur between these parties on different continents, Appellants sent the required Letter Agreement to Respondents. (R.153, 164-165). The Letter Agreement stated, inter alia, “this program cannot be terminated as there are monies owed Tiger for the action It has taken.” (R.165). Respondents, at a minimum, agreed to the Letter Agreement when they subsequently arranged for the parts to be shipped to Appellant.

Respondents ARO-D via Dixon also stated in emails to Respondents T3 Aviation and Frank Gangi in electronic communications, as follows:

- **August 1, 2019**: stating to a third-party in Nigeria, I give “Tiger Enterprise full authorization to sell or trade any parts from the Hawker 4000 aircraft or engine APU,

airframes,”² (R.167);

- **August 5, 2019**: stating to Frank Gangi, “if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me,” (R.168);
- **August 1, 2019**: Dixon emails Walker regarding the subject, “Purchase Order and Invoice to ARO for freight,” which transactions occurred without objection at any time from ARO-D (R.275);

Dixon apparently remained in communication with Frank Gangi and T3 Aviation, the same parties he previously told on Aug. 5, 2019, “if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me,” and decided at some point in time he thought he could get a better deal for himself with Gangi / T3, instead of Appellant. (R.152, June 4-5, 2019). By October 15, 2019, ARO-D / Dixon and Frank Gangi / T3 aviation had enough of a common interest in the matter to be jointly represented at that time by present day counsel to ARO-D / Dixon. (R.154, 175). All four Respondents, despite the appearance of new counsel for Gangi / T3 as of June 15, 2020, continue to assert a common interest privilege and have refused to provide their communications after approximately Sept. 2019. Counsel to Gangi / T3 appeared and argued this appeal on December 7, 2023 on behalf of Respondents Gangi / T3 and Dixon and ARO-D.

ARGUMENT

This petition presents the unique situation whereby the Plaintiff, Respondent ARO-D

² The “remaining” Hawker 4000 engine and airframe were still in Nigeria and were party of Dixon’s promises to Tiger that they would be responsible for brokering / selling those valuable parts as well.

(and its sole member, Respondent Rudy Dixon) once told Respondent Frank Gangi, “if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me.” (R.168). This same Respondent Dixon refused to show up for his deposition multiple times and has since passed away. If this decision stands, the Court will be, in effect, viewing undisputed facts whereby one party tells another party Appellant is his client, and yet finds also that that party’s deposition could not possibly have led to facts which could be viewed in the light most favorable to Appellant that a contract existed between the parties.

What exactly was Mr. Dixon referring to when he represented to Respondent Gangi that Tiger was his client? Client means the existence of an agency relationship. When viewed in the context of the additional statement to respondent Gangi, “if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me,” (R.168), that alone is sufficient evidence for the factfinder to conclude an agreement existed between Respondent ARO-D / Dixon and Appellant.

By his own words, Respondent Dixon for Respondent ARO-D admits the existence of a “client” relationship with Appellant Tiger not for some unrelated matter, but on the very matter at issue in Respondent ARO-D’s lawsuit, namely the “Hawker 4000” airplane parts. (R.20, ¶¶’s 8-10), when he stated to respondent Gangi on August 5, 2019, “if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me.” (R.168).

I. SUMMARY JUDGMENT WAS PREMATURELY GRANTED

In the Opinion affirming the judgment of the lower court, the Court of Appeals states, “Appellants have not demonstrated further discovery would uncover additional, relevant evidence that would create a genuine issue of material fact.” *Id.* at 2 of 5. Next, the Opinion concludes, “In addition, we find Appellants had sufficient time to depose Dixon.” *Id.*

Dixon refused to attend a deposition, including hiding out in Nigeria and making countless excuses for why he would not appear for a deposition in the lawsuit that he filed in Greenville, South Carolina. (R.155 at ¶ 1, 200 at ¶ 2). The only evidence in the record establishes this. What could possibly be more prejudicial to a Counterclaim Defendant than to deny it the opportunity to depose a Plaintiff who has made such statements as the following:

- August 5, 2019, to Respondent Gangi, Tiger is my “client”. (R.275);
- “If you want buy any parts from the Hawker 4000 you have to go Tiger not me,” (R.275).

The above statements were made in the midst of this dispute that arose when Gangi could not get what he wanted from Tiger, as shown by his threatening email sent on July 30, 2019 at 1:28 P.M. (R.223).

In *Baughman v. At&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991), this Court stated:

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the **opposing party has had a full and fair opportunity to complete discovery**. 10A Wright & Miller, *Federal Practice and Procedure* § 2741, p. 543 (1983); 6 *Moore's Federal Practice* para. 56.02[6], p. 56-39 (2d. ed. 1990).

Id. (bold and underline emphasis added).

In *Baughman*, the parties had conducted extensive discovery, much of which was dominated by the defense’s extensive discovery. *Id.* at 544 (noting despite “two years into the litigation, Plaintiffs had not yet received satisfactory responses to their interrogatories regarding the substances emitted from the Nassau plant.”). Respondent Rudy Dixon, Respondent ARO-D’s sole owner and principal (now deceased), evaded being deposed during the entirety of this

litigation. (R. 155, 200). Even after the filing of this Notice of Appeal, on Oct. 25 2021, the undersigned counsel to Appellants was informed that Mr. Dixon “was still in the hospital as of 2 weeks ago and he was waiting on a room in a nursing home.” (not in the DOM). As was the case in Baughman, one party (the non-moving party) has been deprived of the opportunity to obtain necessary discovery from the other party (the moving party).

The record in this case, even if all that is considered is the June 10, 2020 Affidavit of Dwight Walker (R.270-279), establishes Appellant Tiger has done more than to “‘show there is some metaphysical doubt as to the material facts’ but [has] ‘come forward with ‘specific facts showing that there is a genuine issue for trial.’” Baughman at 545. When coupled with the statements from Dixon referenced above, sufficient evidence is already available for a jury to view the facts in the light most favorable to Tiger and conclude an agreement existed between Tiger and ARO-D on July 30, 2019 and also on August 5, 2019. Respondent Gangi’s threatening email dated July 30, 2019 (R.223), shows he was intent on ruining the existing relationship between ARO-D / Dixon and Tiger.

The June 10, 2020 Affidavit of Dwight Walker also sets forth evidence of an agreement between Appellant and ARO-D / Dixon. (R.270-279). Respondent Dixon himself subsequently confirms the existence of the parties’ agreement in his written communications with Frank Gangi and others, including stating in an email on July 31, 2019, that Tiger has “full authorization to sell or trade any parts from the Hawker 4000 aircraft.” (R.153, 167, 208, and 220).

Both the lower court orders and the Court of Appeals have, thus far, ignored the existence of the Letter Agreement. (R.165, 272). Despite this evidence in the record since June of 2020, the lower court order concluded that Appellant “Defendants have not provided any indication

that additional discovery would lead to admissible evidence that a written agreement exists.” (April 16, 2021 Order on Third-Party Defendant [Frank Gangi and T3 Aviation’s] Motion For Partial Summary Judgment, at 3 of 6).

Even viewed in the light not most favorable to Appellant, Tiger had a written agreement with Respondent Dixon / ARO-D at least until he showed up at their facility in South Carolina on or around August 27, 2019, and refused to sign the Consignment Agreement. Still further, as the Letter Agreement made clear, “this program cannot be terminated as there are monies owed Tiger for the action it has taken.” (R.165).

The evidence in the record, especially if viewed in the light most favorable to Appellant, is more than enough for a jury to conclude Respondents Dixon and ARO-D were being controlled by Respondent Gangi who became ARO-D’s source of funding for this litigation at least as early as Sept. 3, 2019, when Respondent Gangi starting funding this lawsuit with a wire of \$15,000.00 to Respondent Dixon. (R.154). What better way to interfere with a relationship than to begin providing money to one of the parties? That is what the evidence shows Respondent Gangi did here, just weeks after being told to deal with Tiger by Respondent Dixon, because Appellant Tiger was his “client.”

The email from present day counsel to ARO-D / Dixon, dated Oct. 15, 2019, shows, at a minimum, a factual dispute existed between the parties as to the existence of their written agreement. A jury would have every right to disbelieve Respondent Dixon’s ever changing stories and hold him to his words in late July, early August 2019 to Gangi that Tiger was his “client.”

I.A. **UNIFORM ELECTRONIC COMMUNICATIONS ACT**

The lower court did and the Court of Appeals did not consider S.C. Code Ann. § 26-6-10 *et seq.*, which is South Carolina’s version of the Uniform Electronic Transactions Act (“UETA”). The UETA provides in relevant part, “This chapter applies only to transactions between parties who agree to conduct transactions by electronic means.” S.C. Code Ann. § 26-6-50(B).

The UETA itself speaks to the existence of a disputed issue of fact, namely, did ARO-D / Dixon and Tiger “agree to conduct a transaction by electronic means.” *Id.* The UETA creates a means of establishing a written contract that did not exist prior to its enactment. Specifically, it states, “[w]hether [or not] the parties agree[d] to conduct a transaction by electronic means is [to be] determined from the context and surrounding circumstances, including the conduct of the parties.” *Id.* The evidence in the record already is sufficient for a jury to find that “the conduct of the parties” showed an intent to be bound by those communications. Certainly, Dixon had some “agreement” in mind when he represented to Gangi and others that Tiger was his “client.” (R.168).

Is there sufficient evidence in the record for a jury, viewing the evidence in the light most favorable to Appellants, to conclude that Respondent Dixon did not intend that his communications with Appellant Tiger in July 2019 were creating a binding agreement? Dixon’s comments that Tiger was his client do not speak just to the existence of an agreement, those statements “ratified” the existence of an agreement. *See Nucap Indus., Inc. v. Robert Bosch LLC*, 273 F. Supp. 3d 986, 998 (N.D. Ill. 2017) (stating with respect to the federal E-Sign Act, 15 U.S.C.A. § 7001 *et seq.*, “a reasonable fact finder could conclude that Bosch ratified the correspondence between Wilkes and Khokhar as an enforceable agreement, which counts as a signed, written agreement within the meaning of § 23.4 of the POTCs.”).

Respondent Dixon never took steps to deny or revoke the authority granted by his electronic communications. See e.g., S.C. Code Ann. § 26-6-100(A)(2)(a). In his August 5, 2019 email where Dixon refers to Tiger as his “client,” he e-signs it, “Thanks Rudy.” (R.168).

In Cranston/BVT Assocs. Ltd. P’ship v. Sleepy’s, LLC, 2015 U.S. Dist. LEXIS 134098, *7 (D. R.I. 2015), the district court analyzed the application of the UETA, and stated as follows:

Accordingly, so long as a party intends to sign an email with his or her signature, “a typed name on an electronic document suffices as a signature.” Hamdi Halal Mkt. LLC v. United States, 947 F. Supp. 2d 159, 164 (D. Mass. 2013). Magistrate Judge Sullivan correctly noted that whether Shaw intended to sign the emails is a disputed fact to be resolved by the fact finder. (citation to record omitted). BVT is not entitled to summary judgment on this alternative basis.

Id. (underline emphasis added); see also

Respondents ARO-D / Dixon’s communications with Appellant were from overseas. Dixon never indicated anything but an intention to conduct the “transaction by electronic means.” The lower court orders do not even mention the UETA, indicating that the facts and the law were not applied in the light most favorable to Appellant. The Court of Appeals opinion also does not substantively address the UETA, but instead dismisses it without analysis, stating “We find no merit to Appellants' argument regarding the application of the UETA. Appellants presented no evidence that the parties agreed to conduct their transactions by electronic means.” Id. at 3.

The subject Opinion further states, “We find Tiger's allegations that the parties' emails and letters evidenced a written agreement have no merit.” Id. at 3 of 5. Respectfully, it is not the responsibility of the Court of Appeals to make such declarations, particularly without the benefit of discovery from the actual Plaintiff / Respondent Dixon as to what he was referring to when he told third-parties Appellant Tiger was his “client.” The question is whether or not the evidence

could be viewed in the light most favorable to Appellant Tiger. People don't randomly tell third-parties another party is their client, particularly when the reference relates directly to the airplane parts which are the basis of the dispute in this lawsuit. What the lower court and the Court of Appeals have done here is to declare which evidence is to be credited, and which evidence is not to be credited, which is the province of the jury.

In addition, Appellant Tiger's evidence in opposition to the Rule 56 Motions was more than proper to be considered. An Affidavit of Dwight Walker. (R.270-279). Tiger did not rely on "mere allegations or denials of his pleading," as the Court of Appeals Opinion suggests on page 3 under heading no. 2.

In heading No. 3, the Court of Appeals again declares what the facts can and cannot establish with only a reference to S.C. Code Ann. § 26-6-50(B). This code section was enacted in 2004, and our courts, apart from this singular reference to Section 50 on page 3 of the subject Court of Appeals Opinion, have not interpreted this code section. When the legal requirement is to consider the "context and surrounding circumstances, including the conduct of the parties," respectfully, only a jury can make a proper fact finding based on these criteria. *Id.* (underline emphasis added).

Respondent Dixon himself believed he had an agreement with Tiger, his "client".
(R.168).

I. **IT WAS ERROR TO GRANT SUMMARY JUDGMENT TO RESPONDENTS GANGI AND T3.**

The conclusions and findings in the Court of Appeals Opinion under Heading No. 5 on page 5 of 5 are the same as those addressed above related to the existence of an agreement between Respondents ARO-D / Dixon and Appellant Tiger. Because Dixon himself not only

believed but told others he had an agreement with Tiger in 2019, Tiger’s claim for interference with that agreement by Gangi / T3 cannot be dismissed unless the undisputed facts are viewed in the light most favorable to Respondents.

CONCLUSION

For the reasons set forth herein, Appellant respectfully requests this petition³ be granted and the matters set forth above be reconsidered and reversed consistent with the legal principles set forth herein requiring parties have an opportunity to conduct adequate discovery and to have the limited facts already in the record viewed in the proper light, favorable to the non-moving Appellant.

Respectfully submitted,

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WALKER

Greenville, South Carolina
May 13, 2024

³ At oral argument on Dec. 7, 2023, Appellants conceded the claim and delivery issue was moot, and do not challenge here the decision of the Court in Heading No. 4 on page 4 of 5. Appellants reserve all rights to enforce the “agreement” of the parties as set forth in the lower court’s order dated June 11, 2020.

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