THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
In the Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2023-000600

Yonderfield, LLC,

Respondent,

v.

RI, Inc. And Seating Services, LLC;
Scott Suprina; and John Doe, Shareholders,
Defendants,

Of whom Scott Suprina is the Appellant.

FINAL BRIEF OF THE APPELLANT

Christopher D. Kennedy, S.C. Bar #79072
KENNEDY & BRANNON, LLC
Post Office Box 3254
Spartanburg, SC 29304
Telephone: 864-707-2020
FAX: 864-707-2030
Attorney(s) for Appellant

STATEMENT OF THE CASE / SUMMARY OF THE FACTS

This case was originally filed Yonder Field, LLC v. RI, Inc. et al in C.A. No. 2018-CP-38-0208 on March 8, 2018 alleging unfair trade practices, conversion, unjust enrichment, and collateral relief. In the Defendants' Answer, they alleged breach of contract, unfair trade practice, and other collateral relief. The original case was ultimately stricken from the docket via a consent order pursuant to SCRCP 40(j) on January 10, 2020, but then restored to the docket on July 23, 2020 in C.A. No. 2020-CP-38-0783. The case was ultimately tried before a jury in early January 2023.

RI, Inc., hereafter referred to as "Seating Solutions," is a New York corporation with an active Authority to Transact Business in South Carolina and an appropriately filed Adoption of a Fictitious Name.

Seating Services, LLC, hereafter referred to as "Seating Services," is a South Carolina Limited-Liability Company directly affiliated with Seating Solutions – NY and operated by the same family. However, Seating Services was never involved in any aspect of the agreement between the Defendant RI, Inc. and the Plaintiff. Plaintiff is a Limited-Liability Company organized in South Carolina with its principal place of business in Bowman, South Carolina located in Orangeburg County, South Carolina.

Scott Suprina, the appellant, is the owner Seating Solutions.

The Plaintiff had a need for seating and stands for a length of time as a rental for a concert and event venue in Orangeburg County, South Carolina. Seating Solutions primary area of business are as seating vendors and manufacturers.

By way of a signed quote, Stacie White, n/k/a Stacie Darr, employee of and duly authorized representative of the Plaintiff, entered into an agreement with the Seating

Solutions on January 24, 2017 in the total amount of $614,800.00 with a delivery date of April 1, 2017 and installation completed by April 28, 2017.

Between January 26, 2017 and March 1, 2017, the Plaintiff sent Seating Solutions $160,100.00 as an initial payment for seating production and rental pursuant to the agreement, and Seating Solutions reasonably began performance which included, but was not limited to, the purchase of materials and custom manufacturing.

However, and despite reliance and performance by Seating Solutions, the Plaintiff failed to comply with the payment terms of the agreement and attempted to renegotiate the agreement as well as delay delivery of rented equipment months.

After the failure of the Plaintiff to pay the required sums to the Seating Solutions and breaching the agreement, Seating Solutions had no option but to terminate the agreement. However, during the time frame from signing of the quote and payment by the Plaintiff to Seating Solutions, Seating Solutions could not rent, lease or otherwise dispose of the equipment that was the subject of the Parties' agreement with a delivery date of April 1, 2017, and installation completed by April 28, 2017.

STANDARD OF REVIEW

The Defendants, particularly Scott Suprina, challenge the verdict of the jury as a portion of this appeal in sections III. And IV. below. Pursuant *Townes Assoc., Ltd. V. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976), in an action at law, in an appeal of a case tried by a jury, the jurisdiction of the appellate court extends solely to the correction of errors of law, and factual findings of the jury will not be disturbed unless a review of the record shows that there is no evidence which reasonably supports the findings of the jury. However, "In a case raising a novel question of law, the appellate court is free to

decide the question with no particular deference to the lower court." *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *In re Oxner*, 430 S.C. 555, 561, 846 S.E.2d 365, 369 (Ct. App. 2020) (quoting *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 547, 819 S.E.2d 124, 126 (2018).

The Defendants, particularly Scott Suprina, appeal the Court's denial of their Motion to Dismiss pursuant to SCRCP Rule 3(a)(2) and permitting the Plaintiff to amend its pleadings pursuant to SCRCP Rules 15 and 25 and appellant review should be de novo in nature as an error of law. Additionally, the Defendants, particularly Scott Supina, argue that the value of the sale of his business entering into evidence by way of testimony was more prejudicial than probative and should not have been consider by the jury after objection by the Defendants.

ARGUMENT

I. The Circuit Court erred in allowing amendment and service of an amended complaint to add Scott Suprina and John Doe Beneficiary Shareholders as party Defendants in the action pursuant to SCRCP Rules 15 and 25.

While leave to amend pleadings pursuant to Rule 15 is liberally and freely given, in this instance adding new Defendants to the action was improper. The South Carolina Supreme Court, quoting the Supreme Court of the United States, stated "the Rule's 'freely given' provision was a 'mandate' that 'is to be heeded.'" *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222, 226 (1962)). This "mandate" was explicitly limited, however. The South Carolina Supreme Court continued:

> If the underlying facts or circumstances relied upon by a [movant] may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."

Id. at 490, 804 S.E.2d at 262 (again citing *Forman*, supra).

Further, "A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion." *Skydive Myrtle Beach v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). While a court's decision to deny a motion to amend should not be "based on the court's perception of the merits of an amended complaint," *Patton*, 420 S.C. at 490-91, 804 S.E.2d at 262, one reason a trial court may deny a motion to amend is if the "amendment would be clearly futile." *Skydive Myrtle Beach*, 426 S.C. at 182, 826 S.E.2d at 588 (citing *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (2010).

In the case at hand, the Plaintiff added Scott Suprina and John Doe Shareholders as new Defendants to the action. Such an amendment was highly prejudicial to Scott Suprina and John Doe Shareholders. Any allegations directed at the new Defendants was not timely and would be barred by the applicable statute of limitations or laches. Likewise, Plaintiff's claim that the amended pleading relates back was inaccurate. Relation back to original pleadings applies only when an existing party is changed, not when a new party is added. *Cline v. J.E. Faulkner Homes, Inc.* (Ct.App. 2004), 357 S.C. 169, 592 S.E.2d 296. As set forth above, Plaintiff was permitted to add new parties to the action. Although Mr. Suprina was familiar with the facts in the action and was acting on behalf of the company when these events occurred, he was not acting in his individual capacity nor was he subject to

personal liability. The Plaintiff naming him individually as to the causes of action that did not exist against him at the time the statute of limitations ran.

Moreover, pursuant to *Gause v. Smithers*, 384 S.C. 130, 681 S.E.2d 27 (Ct.App. 2009), wherein a police officer's naming of Son in an amended complaint as actual driver of the vehicle he stopped at the time that the officer was hit by second vehicle, the Court determined it amounted to the addition of a defendant and not the change of a party within the meaning of the relation back rule. As such the addition of the Son, while keeping the father in the case, did not relate back to the original complaint filed against father as owner and erroneously assumed driving of the stopped vehicle, for statute of limitations purposes. Through the Plaintiff's motion, the Plaintiff added Defendants rather than changed them.

Based thereon, Judge Dickson's *Order* dated April 23, 2021, was an error of law and the Complaint should not have been permitted to be add Mr. Suprina and John Doe Beneficiary Shareholders as Defendants to the action.

II. The Circuit Court erred in not dismissing the action pursuant SCRCP Rule 3(a)(2).

The Defendant filed a Motion to Dismiss Pursuant to SCRCP Rule 3(a)(2) on February 18, 2022, due to the fact that Scott Suprina was not served with the Amended Complaint within one hundred twenty (120) days of the date filing as it was outside of the Statute of Limitations. The Court issued an *Order Partially Denying Summary Judgment* on April 26, 2022.

Although there were reasons provided to the Court for not serving Mr. Suprina in accordance with the SCRCP, it was undisputed that he was not served pursuant to SCRCP Rule 3(a)(2). Based thereon, Judge Dennis' *Order Partially Denying Summary Judgment* was an error of law and Mr. Suprina should have been dismissed as a party to the action.

III. The Circuit Court erred entering the judgment of the verdict of the jury over the motions made by defense counsel for judgment notwithstanding the verdict and/or for a new trial.

The jury returned a verdict in this matter finding that the Defendants wrongfully converted the Plaintiff's funds for their own use and awarded the Plaintiff $160,100.00 for conversion. However, the jury also returned a verdict that stated that the Parties formed a contract and that the Plaintiff is the one who breached the Contract. See *Verdict Form (R. p.* 7) Counsel for the Defendants has researched for precedence involving whether a conversion the Defendant can occur when the Plaintiff is deemed to have breached the contract and not the Defendant. The Defendants verily believe that this is a novel question of law. As previously stated, "In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court." *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). Additionally, "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *In re Oxner*, 430 S.C. 555, 561, 846 S.E.2d 365, 369 (Ct. App. 2020) (quoting *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 547, 819 S.E.2d 124, 126 (2018). The Defendants verily believe that the Court should address these issues without deference to the lower court ruling and should rule that the Defendants were entitled to a judgment notwithstanding the verdict and/or for a new trial.

IV. The Circuit Court erred by entering a judgment against Defendant Scott Suprina when there was no evidence that would show a piercing of the corporate veil as defined by the Court's single business enterprise theory.

In *Pertius v. Front Roe, Inc.*, 423 S.C. 640, 817 S.E.2d. 273 (2018), the Court formally recognized single business enterprise theory. It stated as follows:

> We formally recognize today this single business enterprise theory, and in doing so, we acknowledge that corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that. For this reason, the single business enterprise theory requires a showing of more than the various entities 'operations are intertwined. Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions. As with other methods of piercing the corporate form that have previously been recognized in South Carolina, equitable principles govern the application of the single business enterprise remedy, and this doctrine "is not to be applied without substantial reflection." *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008) (quoting *Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984)). "If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." Id. "The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied." Id.

The contract that the jury found to be in place and breached by the Plaintiff was not between Mr. Suprina and the Plaintiff. The contract was between Seating Services, LLC and Yonder Field, LLC. Mr. Suprina, while being the principal of Seating Services, LLC, did not personally guarantee the contract, and he did not breach the contract. The fact that Mr. Suprina owned the company that was in existence at the time of the contract and subsequently sold it's assets does not pierce the corporate veil. He did not act with bad faith, abuse, fraud, wrongdoing, or injustice as contemplated by the Court in *Pertuis*. He did not comingle personal assets with the company. He simply sold his business. If the Court was to uphold any judgment, it is the Defendants' belief that it should be against his

business rather than him personally. However, Mr. Suprina maintains his appeals as itemized in sections I., II., and III above well.

V. The Circuit Court erred by permitting evidence of the value of Mr. Suprina's sale of his business over the objection by the Defendants.

During testimony of Mr. Suprina, opposing Counsel asked him about the value of the sale of his business, co-Defendant Seating Solutions. Over objection of Counsel, the amount of the sale of his business was permitted. (R. pp. 455-456). Pursuant to SCRCP Rule 403, there is no reason the jury should hear about the value of the sale of Mr. Suprina's business as it was highly prejudicial and in no way probative to the proceedings.

CONCLUSION

For the reasons stated herein, the Respondents respectfully request that the Court reverse the verdict of the jury and judgment entered by the Court and find for the Defendants, or in the alternative, remand the case for retrial.

Respectfully submitted,

June 3, 2024

Christopher D. Kennedy (SC Bar 79072)
N. Douglas Brannon (SC Bar No. 68798)
104 North Daniel Morgan Avenue (29306)
Post Office Box 3254
Spartanburg, South Carolina (29304)
Phone: (864) 707-2020
Fax: (864) 707-2030
Attorneys for the Appellant

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PROOF OF SERVICE

I hereby certify that I have served a copy of the Appellant's Final Brief on the below persons on this 3rd day of June 2024.

Skyler B. Hutto
Williams & Williams
1281 Russell St.
Orangeburg, South Carolina 29115
Phone: 803-534-5218
Email: skyler@williamsattys.com
Counsel for Respondent

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Christopher D. Kennedy, S.C. Bar #79072
KENNEDY & BRANNON, LLC
Post Office Box 3254
Spartanburg, SC 29304
Telephone: 864-707-2020
FAX: 864-707-2030
Attorney(s) for Appellant