

RECEIVED

Sep 09 2024

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.**

FINAL REPLY BRIEF OF APPELLANT

**s/Tony R. Megna
8906 Two Notch Road
Columbia, South Carolina, 29223
SC Bar No. 3930
tmegna@gmail.com
Mobile: 803-606-5983
Attorney for Appellant**

TABLE OF CONTENTS

Table of Authorities..... 3-4

APPELLANT’S REPLY TO RESPONDENT’S INITIAL BRIEF ARGUMENTS.....5-19

The Respondents did not appeal any of the findings of the trial court in its’ Amended Order filed July 28, 2021, (which superseded the July 2020 Order). (R. pp. 8-22,65-148). “[A]n un-appealed ruling, right or wrong, is the law of the case.” (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329 (2012)]. The un-appealed and uncontested findings of the trial court, with the additional information provided in Appellant’s brief, reply brief and the record on appeal are dispositive of the Respondents Issues.

I. RESPONDENT’S STATEMENT I OF ISSUE ON APPEAL.....5
A. APPELLANT’S REPLIES 1-5.....5-6

II. RESPONDENT’S STATEMENT II OF ISSUE ON APPEAL.....7
A. APPELLANT’S REPLIES 1-9..... 7-10

III. RESPONDENT’S STATEMENT III OF ISSUE ON APPEAL..... 10
A. APPELLANT’S REPLIES 1-3.....10-12

IV. APPELLANT’S REPLY TO RESPONDENTS ISSUE ON APPEAL IV.....12
A. APPELLANT’S REPLIES 1-3..... 12

V. ADDITIONAL MATTERS..... 13-18

Conclusion and Damages 19-21

Certificate of Service 22

TABLE OF AUTHORITIES

CASES

1. <i>Atl. Coast Builders & Contractors, LLC v. Lewis</i> , 398 S.C. 323, 329 (2012)	2,5
2. <i>Collins Entm't, Inc. v. White</i> , 363 S.C. 546, 562 (Ct. App. 2005)	11
3. <i>Curry v. Carolina Insurance Group of SC, Inc.</i> , 832 S.E.2d 760 (Ct. App. 2019)	16
4. <i>Dunbar v. Carlson</i> , 341 S.C. 261, 268 (Ct. App. 2000)	11
5. <i>Joseph v. Sears Roebuck & Co.</i> 224 S.C. 105, 111 (1953)	12
6. <i>Kincaid v. Landing Development Corp.</i> , 289 S.C. 89, 96 (Ct. App. 1986)	19
7. <i>Kennedy v. Columbia Lumber & Mfg. Co.</i> , 299 S.C. 335, 340-41 (1989)	20
8. <i>Maner v. Maner</i> , 278 S.C. 377 (1982)	21
9. <i>Mackey v. Judy's Foods, Inc.</i> , 654 F. Supp. 1465 (MD Tenn. 1987)	16
10. <i>McGee v. Bruce Hosp. Syst.</i> , 321 S.C. 340, 347 (1996)	11
11. <i>Mid-South Mgmt. Co. v. Sher Dev. Corp.</i> , 374 S.C. 588, 604-05 (Ct. App. 2007).....	20
12. <i>Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmtys., Inc.</i> , 397 S.C. 348, 358-60 (Ct. App. 2012)	20
13. <i>Oskin v. Johnson</i> , 400 S.C. 390, 397 (2012)	19
14. <i>Parks v. Morris Homes Corp.</i> , 245 S.C. 461, 471 (1965)	11,12
15. <i>Pertuis v. Front Roe Rests., Inc.</i> , 423 S.C. 640, 648 (2018)	19
16. <i>Pope v. Heritage Cmtys., Inc.</i> , 395 S.C. 404, 417-20 (Ct. App.)	20
17. <i>S.C. Dep't of Transp. v. First Carolina Corp. of S.C.</i> , 372 S.C. 295, 301-02 (2007)	10
18. <i>Springob v. Univ. of S.C.</i> , 407 S.C. 490, 495 (2014)	12
19. <i>Stoneledge I</i> , 425 S.C. 276, 299-300 (Ct. App. 2018)	20
20. <i>Truesdale v. Jones, Mayor, et al</i> , 78 S.E.2d 274 (S.C. 1953)	16
21. <i>Williams v. Addison</i> , 314 S.C. 35, 38 (Ct. App. 1994)	11

STATUTES:

1. UCC Section 2-104(3) 12
2. UCC Section 2-201(2) 12
3. SC Code Ann. § 34-31-20(A) 21
4. SC Code Ann. § 33-41-50 17
5. SC Code Ann. § 33-41-330 16
6. SC Code Ann. § 33-41-350 17
7. SC Code Ann. § 33-41-360 17,18
8. SC Code Ann. § 33-41-370(1) 17, 18

OTHER AUTHORITIES

1. 71 CJS. Pleadings § 59A, page 147 16

APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF ARGUMENTS

The Respondents did not appeal any of the findings of the trial court (Amended Order filed July 28, 2021, (which superseded the July 2020 Order). (R. pp. 8-22, 65-148), "[A]n un-appealed ruling, right or wrong, is the law of the case." (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329 (2012)]. The un-appealed and uncontested findings of the trial court, with the additional information provided in Appellant's brief, reply brief and the record on appeal plainly support the Appellant's position. Therefore, Appellant respectfully requests this Court enter judgment for Appellant as noted herein and in its initial Brief.

RESPONDENT'S STATEMENT I OF ISSUE ON APPEAL:

Did The Trial Court Properly Deny Appellant's Motion for A Directed Verdict As To The Liability Of The Partnership For The Unpaid Invoices For Gasoline Delivered By Appellant To The Convenience Stores On Hardscrabble And Percival Road?

Appellant's Reply Number 1: Trial court un-appealed finding No. 1: "In April 2007, Defendant Shinda Singh, Defendant Five Rivers, Inc., and Defendant Singh, Inc. together with Kabal Singh entered into a "verbal" partnership to operate two convenience stores in Columbia, S.C. The Respondents incorporated by reference the findings of fact by the trial court as to argument 1. ((July 2021 Trial Court Order) R. pp. 8-22, 11 ¶ 1)

Appellant's Reply Number 2: Trial court un-appealed finding No. 5: Due to Kabal Singh's inability to secure a loan, Shinda Singh is the sole shareholder of Singh, Inc. and Five Rivers Inc.

Appellant's Reply Number 3: Trial court un-appealed finding No. 8: On October 2, 2008, Five Rivers, Inc. entered into a Commercial Lease Agreement, as the Landlord, with Gill and Gas, LLC, as the Tenant, for the lease of the real property located at 2409 Percival Road;

Jessie Singh signed the Lease as President of Gill and Gas, LLC evidenced by Plaintiff's Exhibit 7. (R. pp. 525-531).

Appellant's Reply Number 4: Trial court un-appealed finding No. 9: On October 2, 2008, Singh, Inc. entered into a Commercial Lease Agreement, as the Landlord, with Gill and Gas No. 2, LLC, as the Tenant, (**not** Jessee Singh as the Respondents have implied) for the lease of the real property located at 4225 Hardscrabble Road; *Jessie Singh signed the Lease as President of Gill and Gas No. 2, LLC* evidenced by Defendant's¹ Exhibit 8. (R. pp. 450-452).

Appellant's Reply Number 5: Trial court un-appealed finding No. 16: "*Defendant Shinda Singh did not provide Blythewood Oil with copies of, nor any notice, of the leases (from Singh, Inc. to Gill and Gas, LLC and Five Rivers, Inc. to Gill and Gas II, LLC as evidenced by Plaintiff's Exhibit 7.*" (R. pp. 525-538). ((also, Shinda Singh's 2019 Trial Testimony) R. pp. 332-333).

Based on Appellant's Initial Brief arguments and the above stated items, the Trial Court improperly denied Appellant's Motion for a Directed Verdict as to the liability of the partnership for the unpaid invoices for gasoline delivered by appellant to the convenience stores on Hardscrabble and Percival Road.

¹ Corrected to state "Defendant's Exhibit" 8, not Plaintiffs to comply with the correct reference/cite.

RESPONDENTS STATEMENT II OF ISSUE ON APPEAL:

Did the trial court properly deny a verdict in favor of appellant as it pertains to any failure of the respondents to notify appellant of any changes of ownership, lease agreements, operational changes or otherwise to either Hardscrabble or Percival road AM/PM stores throughout the their business dealings between 2007 and march 2010 such that it would make respondents a general partnership so that the Singh-Singh partnership was, is and remains jointly and severally liable for the unpaid invoices for gasoline delivered by the appellant?

Appellant's Reply 1: The un-appealed finding by Respondents of the trial court's finding (No. 6) states: Blythewood Oil Co., Inc. delivered gasoline to the Hardscrabble Road and Percival Road convenience stores from the time the convenience stores opened in 2007 until the last delivery of gasoline to the stores occurring in January 2010. (R. pp. 23, 28 ¶ 6).

Appellant's Reply 2: The un-appealed finding by Respondents of the trial court finding (No. 6) states: Plaintiff [Appellant] continued to deliver gasoline to the Percival Road and Hardscrabble locations through January of 2010, [not March 2010 as the Respondents Statement of Appeal II states] (R. pp. 23, 28 ¶ 6).

Appellant's Reply 3: The trial court omitted Appellant's representative's, Larry Sharpe, testimony concerning the unacceptable checks. Larry Sharpe's testimony expressed that *many of the checks were "good" or satisfactory and Appellants were attempting to work out a payment plan/schedule for Respondents. (R. 409 ln 7-24, 415 ln 17-25). Respondents were making payments. (R. 409 ln 7-24, 415 ln 17-25). Prior to submitting the checks to the investigator, and after the last delivery of gasoline, all parties (including Shinda Singh) attempted to work out a payment plan, including, but not limited to payment for gasoline via inventory at the stores*). The Respondents' submitted no documentary evidence of record whatsoever to contradict Mr. Sharpe's testimony.

Appellant's Response 4: The un-appealed finding by Respondents of the trial court finding (No. 15-17) states: *"In March of 2010, two months after the last delivery of gasoline to the Respondents' Hardscrabble and Percival Road convenience stores in January 2010, Appellant's representative contacted the S.C. Attorney General's Office and Pete Logan began an investigating the circumstances."* (R. pp. 08, 12 ¶15, 13 ¶ 16 -18).

Appellant's Response 5: The un-appealed finding by Respondents of the trial court's finding (No. 12) states: *"On March 18, 2009, Jessie Singh [as President of the Hardscrabble and Percival Road AM PM convenience stores] (not by or on behalf of Gas and Gill, LLC or Gas and Gill 2, LLC) signed a Confidential Commercial Wholesale Credit Application provided by the Plaintiff for the purchase of gasoline from the Plaintiff for delivery to 2409 Percival Road, Columbia, SC 29223; Jessie Singh guaranteed payment for the gasoline [as President of the Hardscrabble and Percival Road AM/PM convenience stores]."* (Defendant's exhibit 2). (R. pp. 450-452, 525-531).

Appellant's Response 6: The representative of Blythewood Oil, Inc. (Larry Sharpe, Jr.) testified Respondents owe \$449,519.07 (R. pp. 462-521), plus costs and interest at the rate on the wholesale applications (R. pp. 450-452, 522-524) for the unpaid gasoline. The invoices and amounts remaining owed to Appellant by the Singh-Singh partnership was provided *without objection and admitted as uncontroverted evidence at trial*. (R. pp. 401 ln 9-22; 402 ln 1-19, 462-521). Documents 15 and 16 (R. pp. 462-521), on their faces, note that the invoices consistently delivered the unpaid gasoline to the same to convenience stores (Hardscrabble Road and Percival Road) at the same addresses with the same names during the entire time when the stores were opened by the Singh-Singh partnership in 2007 until the last delivery of gasoline by Appellant in 2010.

Appellant's Response 7: The un-appealed finding by Respondents of the trial court's finding (No. 12) states: "That the leases were unknown at any time to Blythewood Oil (R. pp. 23, 29 ¶ 11), and that Jesse Singh (*not by or on behalf of Gas and Gill, LLC or Gas and Gill 2, LLC*) signed 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)."

Appellant's Response 8: Shinda Singh's testified at trial:

- i. That he did not receive any gasoline bills/invoices from Appellant from the time the Singh-Singh partnership opened the stores in 2007 until 2010. However, on cross-examination Mr. Shinda Singh testified,
 1. That he had a verbal partnership with Kabal Singh (Gurpreet 'Jesse' Singh's father) to own and operate the Hardscrabble Road and Percival Road convenience stores, (R. pp. 356 ln 16-25)
 2. That all the bills were paid until he (Shinda Singh via Singh, Inc. and Five Rivers, Inc.) "leased" the stores to his partner's son, Jesse Singh and (R. pp. 378 ln 1-12, 389 ln 22-24)
 3. that the Singh-Singh partnership continued until March of 2010. (R. pp. 314 ln 23-25, 315 ln 1-2).

Mr. Singh's direct testimony that he never received any bills directly contradicts his cross-examination testimony that all the bills were paid prior to the purported lease of the stores to a third party, without notice to anyone,

Appellant's Response 9: The *de bene esse* testimony of Vic Parthania confirms that Shinda Singh knew Appellant was providing gasoline to the Hardscrabble and Percival Road convenience stores:

Q- So, from the very beginning, you called Blythewood Oil, Mr. Larry Sharpe, for oil?

A- Yes, yes.

Q- And they [Blythewood Oil] came and provided those stores with gasoline. Is that true?

A- Yes, sir, correct. Yes sir.

Q- Did Shinda ever tell you there was a problem with them providing gasoline?

A- No.

Q-Did Mr. Shinda Singh know that Blythewood Oil was providing gasoline to those stores?

A- Yeah, they know that they were providing gasoline.

Q- And you've told the truth. Is that correct?

Yes, yes.

(R. pp. 446 ln 1-12 & 25, 30 ln 1)

The trial court's conclusion directly contradicts the testimony of Vic Parthania — an employee hired by Shinda Singh (R. pp. 427 ln 1-25, 428 ln 11-16, 437 ln 1-7) — that Kabal Singh hired Mr. Parthania and operated the two stores with his son Jesse Singh since September 2007. (R. pp. 358 ln 15-23 (2019 Trial), 427 ln 1-14).

RESPONDENTS STATEMENT III OF ISSUE ON APPEAL:

Appellant's Response 9: The *de bene esse* testimony of Vic Parthania confirms that Shinda Singh knew Appellant was providing gasoline to the Hardscrabble and Percival Road convenience stores:

Q- So, from the very beginning, you called Blythewood Oil, Mr. Larry Sharpe, for oil?

A- Yes, yes.

Q- And they [Blythewood Oil] came and provided those stores with gasoline. Is that true?

A- Yes, sir, correct. Yes sir.

Q- Did Shinda ever tell you there was a problem with them providing gasoline?

A- No.

Q-Did Mr. Shinda Singh know that Blythewood Oil was providing gasoline to those stores?

A- Yeah, they know that they were providing gasoline.

Q- And you've told the truth. Is that correct?

Yes, yes.

(R. pp. 446 ln 1-12 & 25, 30 ln 1)

The trial court's conclusion directly contradicts the testimony of Vic Parthania — an employee hired by Shinda Singh (R. pp. 427 ln 1-25, 428 ln 11-16, 437 ln 1-7) — that Kabal Singh hired Mr. Parthania and operated the two stores with his son Jesse Singh since September 2007. (R. pp. 358 ln 15-23 (2019 Trial), 427 ln 1-14).

RESPONDENTS STATEMENT III OF ISSUE ON APPEAL:

Syst., 321 S.C. 340, 347, 468 S.E.2d 633, 637 (1996). It is a litigant's duty to bring to the court's attention to any perceived error, and the failure to do so amounts to a waiver of the alleged error. Parks v. Morris Homes Corp., 245 S.C. 461, 471 (1965). The Respondents did not file any motion for the trial court to consider the law of estoppel for the payment of funds owed to Blythewood Oil for unpaid gasoline delivered to the Hardscrabble and Percival Road convenience stores. It is well settled that an issue may not be raised for the first time in a post-trial motion. McGee v. Bruce Hosp. Syst., 321 S.C. 340, 347 (1996). It is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. Parks v. Morris Homes Corp., 245 S.C. 461, 471 (1965).

RESPONDENT'S STATEMENT IV OF ISSUE ON APPEAL:

Did the trial court properly conclude that Appellant Blythewood Oil, Inc. was not entitled to recovery from the respondents pursuant to claim unjust enrichment based upon quantum meruit, quasi-contract or implied contract by law?

Appellant's Response 1: In April 2007, Defendant Shinda Singh, Defendant Five Rivers Inc., and Defendant Singh, Inc. together with Kabal Singh entered a "verbal" partnership to operate two convenience stores in Columbia, S.C. (R. pp. 8, 11 ¶ 1). The partnership had no formal name.

Appellant's Response 2: The trial court is correct *with the omission stated in footnote 1 of the July 2021 Order, which states:*

South Carolina appellate courts have long held that if there is a possibility of contract performance within a year, the contract is not barred by the Statute of Frauds. The record shows that the contract for the delivery and purchase of gasoline from Blythewood Oil, Inc. was performed within the one-year period. Thus, the Court finds the Statute of Frauds is not applicable in the case at bar. See generally *Joseph v. Sears Roebuck & Co.* 224 S.C. 105, 111 (1953). *Springob v. Univ. of S.C.*, 407 S.C. 490, 495 (2014).

(R. pp. 5 (foot note 1))

Appellant's Response 3: The Respondents, as owners and operators of the AM/ PM Hardscrabble and Percival Road convenience stores, as merchants, did not object to the terms of the wholesale agreement signed by Jesse Singh *as President of the AM/PM Food stores at the same Columbia Hardscrabble Road and Percival Road locations - same names and same addresses*. UCC Section 2-201(2) and Section 2-104(3) state, "between merchants means in any transaction with respect to which both parties are chargeable with the knowledge or skills of merchants." (R. pp. 29 ¶ 12-13).

ADDITIONAL MATTERS

The trial court erroneously noted at finding of fact (20) that at no time prior to March 2010 (as opposed to January 2010), when Appellant delivered the last delivery of gasoline to the convenience stores owned and operated by the Singh-Singh partnership did the Plaintiff notify Shinda Singh, either individually or as President of Singh Incorporated, Inc. (Singh, Inc.), Five Rivers, Inc., or any partnership that Jessie Singh and his businesses owed large sums of money to the Plaintiff for gasoline that was delivered. (R. pp. 08, 13, 462-521).

- 1. The trial court's use of March 2010 in finding number 20 is incorrect.** The invoices addressed to the two Hardscrabble and Percival Road convenience stores AM/PM Food Mart stores, as admitted into evidence before the trial court with no objection by any party, note the names and addresses to where the invoices were mailed from during the entire time period of 2007 through ~~January~~ January 2010. There is no evidence of record that there was any break in the consistency of invoices being delivered and received in the same manner from 2007 to 2010. In fact, Respondent Singh admitted at trial that no one, including Appellant, was advised of any change in ownership of the two convenience

stores at any time during the time period of 2007-2010. (R.pp. 401 ln 9-22, 402 ln 1-19, 462-521). In addition, on Page 11 of Respondents brief, Respondents admitted “*In March of 2010*, [two months after the last delivery of gasoline by Appellant to Respondent’s convenience stores) Appellant’s representative contacted the S.C. Attorney General’s Office about the bad checks ...”

2. The representative of Blythewood Oil, Inc. (Larry Sharpe, Jr.) testified the invoices always had the same addresses and were made out to “AM/PM” food stores at the same addresses in 2010 as when the relationship first began (R. pp. 401 ln 9-22, 402 ln 1-19, 462-521). In addition, Mr. Sharpe’s testimony mirrored Respondent Singh’s testimony that neither Blythewood Oil, nor any other vendor (or anyone) was informed or notified in any manner whatsoever of any change in ownership. (R. 08 ¶ 8-11, 375 ln 25, 376 ln 378 ln1-7 & 25, 379 ln 1-14 (2019 Trial)) (R. 2nd Supp. 04 ln 21-25, 05 ln 1-11).
3. There was no evidence presented at trial or of record on appeal that supports Mr. Singh not knowing of funds owed to Appellant or any other merchant of the two AM/ PM food stores. In fact, Ms. Pathania testified that Respondent Shinda Singh made regular visits to the stores during the same time periods (2007-2009) to “check on things.” (429 ln 22-25, 430 ln 1-14).
4. ***Respondent Shinda Singh specifically admitted that in October 2008 Shinda Singh agreed with Kabal Singh that the Hardscrabble and Percival Road convenience stores would be "leased" to Kabal's son, Jessee Singh son, who he admittedly operated the two stores together when the stores were initially opened in 2007, because of Kabal's Singh's "credit problems in Illinois." (R. pp. 208 ¶ 21, See also 525-538). The trial***

court specifically found that that the leases referred to were unknown at any time to Blythewood Oil (R. pp. 29 ¶ 11).

5. Jesse Singh specifically signed guaranteed 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 who he admittedly operated together with his father (Kabal) when the stores were initially opened in 2007 under the same store names from 2007 the dissolution of the Singh-Singh partnership (*R. pp. 29 ¶ 12-13*).
6. Regardless of the trial court's findings (that were not appealed by any of the Respondents) the trial court determined Appellant was not entitled to recovery because of the November 2008 lease of the two AM/PM Food Mart to two LLCs (Gill and Gas, LLC and Gill and Gas II, LLC) were admittedly never provided to or otherwise given notice to Appellant.
7. The Appellant specifically plead, in detail, the formation and the operations of the *unnamed* partnership in the Third Amended Complaint granted by the Court. (*R. pp. 239 ¶ 1-4, 240 ¶ 10-11 & 13, 241 ¶ 14 & 17-18, 243 ¶ 24-25, 245 ¶ 35-36(a-d), 246 ¶ 37 & 39, 247 ¶ 40-46, 248 ¶ 47-50, 249 ¶ 52-55, 250 ¶ 56 & 59-61, 251 ¶ 251 ¶ 65-69, 252 ¶ 70-72, 253 ¶ 73-75, 254 ¶ 77-81, 255 ¶ 82-84 & 87* (paragraphs 37-93 were corrected to coordinate the correct numbers on pages 9-19).
8. In the March 21, 2017 Amended Answer and Counterclaim to [Plaintiff's] Third Amended Complaint (*R. pp. 188-200*), the Respondents in the case at bar specifically "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. (*R. pp. 188-200*). The initial Complaint (Case number 2013-CP-

40-0050) was filed in Richland County Court of Common Pleas the year following the lawsuit by Appellant. The case was against the same Respondents named in this appeal (Shinda Singh, Shinda Singh, Inc. and Five Rivers, Inc.). **Respondent's Answer, Counterclaim, and Third-Party Complaint in the Richland County case were admitted into evidence in the Fairfield County 2019 non-jury trial by consent of the parties.** ((R. pp. 08-09, 201-216), and detailed the terms of the oral Singh-Singh partnership (R. pp. 356 ¶ 12-25; 357 ¶ 1-25, 358 ¶ 2-16; 392 ¶ 9-25, 393 ¶ 1-13), making the following admissions:

i. 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. 202 ¶ 2, 376 ln 8-25).

ii. 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. 202 ¶ 2, 375 ln 14-25, 376 ln 1-2; 387 ln 15-25, 388 ln 1-6).

iii. 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. 211 ¶ 32).

iv. 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]." (208 ¶ 16, 386 ln 1-20).

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

vi. 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. 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 Ann. § 33-41-330. See *Mackey v. Judy's Foods, Inc.*, 654 F. Supp. 1465 (MD Tenn. 1987). Statements or admissions contained in 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.

9. 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. 07 ln 11-15) even though there was admittedly no name of a partnership to sue and SC Code Ann. § 33-41-370(1) clearly states that *all partners* are liable: (1) Jointly and severally for

everything chargeable to the partnership under SC Code Ann. § 33-41-350 and 33-41-360.

10. At the 2019 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. 450-452, 281-324, 42-64, 8-22, 453-461, 188-200, 462-524, 201-216, 532-538, 217-234). These documents included the Respondents Answer to the Third Amended Complaint Third (R. pp. 188-200).
11. As Appellant was and is an innocent third-party that was not a partner to the "Singh-Singh" enterprise. SC Code Ann. § 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.

12. 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. SC Code Ann. § 33-41-370. *Buffkin v. Strickland*, 312 S.E.2d 579 (Ct. App. 1984). The numerous admissions in the 2013 lawsuit by 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 continuing numerous grievances and disputes between the Singh-Singh partners. (R. pp. 42-64). Also, as noted by Shinda Singh's trial testimony, the Singh-Singh partnership was not dissolved until March 2010,

two months after the last delivery off gasoline to the stores by Appellant. (R. pp. 395 In 15-25).

13. SC Code Ann. § 33-41-360 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.

14. 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 partners without notice to Appellant is sufficient to establish the liability of the partnership to Appellant. Thus, the overwhelming evidence is that the trial court erred by failing to direct a verdict for Blythewood Oil, Inc. based on the trial testimony of Shinda Singh, the findings of the trial court itself, and as well as the S.C. partnership act.

CONCLUSION

A

The essence of this case is the refusal of partners of 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 Jesse Singh,

(and not as President of a new or successor corporation) relieved the responsibility of the Singh-Singh partnership from its obligation to Appellant. Moreover, the facts of the case at bar clearly evidence if the court determines there were successor corporations, (a) the successor company operated by Jesse Singh as "President" was a mere continuation of the operations of the AM/PM Food Stores; and (b) the purported 2008 "lease" transaction, admittedly entered into without notice to anyone except the partners, was entered into fraudulently to wrongfully defeat Appellant's claims against the Singh-Singh partnership. The 2009 guarantee of payment (Doc 1 and 20), using the stores' same names and addresses provides the proof.

Moreover, actions to pierce the corporate veil and to find a party responsible under the alter-ego theory, as the Plaintiff alleged in its Complaint, lie in equity. *Oskin v. Johnson*, 400 S.C. 390, 397 (2012). Likewise, an action to amalgamate parties, as the Plaintiff alleged in its Complaint, lies in equity. *See Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 648 (2018). (Noting equitable principles govern the application of amalgamation). Therefore, the standard of review in such instances is *de novo* and allows the Court to find facts in accordance with its view the preponderance of the evidence. *Oskin*, 400 S.C. 390 (2012). Our appellate court first recognized the theory of amalgamation in *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 96 (Ct. App. 1986), in which the court of appeals held "an amalgamation of corporate interests, entities, and activities . . . blur[red] the legal distinction between [three related] corporations and their activities. . . ." Since then, the Supreme Court and the Court of Appeals have discussed the theory on several occasions. *See Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 340-41 (1989); *Mid-South Mgmt. Co. v. Sherwood Dev. Corp.*, *Pope v. Heritage Cmtys., Inc.*, 395 S.C. 404, 417-20, 717 S.E.2d 765, 772-73 (Ct. App. 2011); *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmtys., Inc.*, 397 S.C. 348, 358-60; 725 S.E.2d 112, 117-18 (Ct. App. 2012).

(Formally recognized and refined theory in *Stoneledge*, supra (Opinion No. 28071 Dec. 8, 2021) 423 S.C. at 651 where the Court referred to the amalgamation theory as "the single business enterprise theory." 423 S.C. at 651 (SC 2021).

In the appeal at bar, there is more than a preponderance of evidence showing the operations of the stores were "the single business enterprise" as well as of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Stoneledge I*, 425 S.C. 276, 2(Ct. App. 2018). Moreover, the Respondents actually admitted in their "bad faith, abuse, fraud, wrongdoing, and injustices" in their trial testimony as well as the pleadings and their third-party answer in the Richland County case. (R. pp. 201-216 (Shinda Singh's February 2013 Answer, Counter Claim, and Third-Party Complaint), 217-234 (Shinda Singh's Response to Plaintiff and Third-Party Defendant's, Kabal Singh's, Interrogatories).

B

DAMAGES

As stated in its initial brief, 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 signed by Jessee Singh as President of the AM PM food Mart Stores, and thus on behalf of the Singh-Singh partnership, which includes all Respondents on appeal, as well as 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 Hardscrabble Road and Percival Road (and thus on behalf of the Singh-Singh partnership, which includes all Respondents) require, the Plaintiff is entitled to statutory prejudgment interest. SC Code Ann. § 34-31-20(A), as amended, and costs provided by law. This Court has long recognized the general concept that . . . 'Justice delayed is justice denied,'

with the same rationale applied to civil appeals cases. *Maner v. Maner*, 278 S.C. 377 (1982). The matters before the Court have been ongoing since the last deliveries of gasoline to the AM PM Hardscrabble and Percival Road since the Appellant delivered the last gasoline in 2010 while continuing to try to work with Respondents to assist the stores to remain open and Appellants and others were paid. In the final analysis, this case, and the business ethics of the Respondents epitomize the unfortunate frequency with which Appellant's suffered for years as a result of their acts to help all of Respondents' creditors in the first instance. In this instance, however, ~~are not~~ resigned to such a fate. Appellants respectfully request 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.

Respectfully submitted,

/s/ Tony R. Megna
Tony R. Megna
8906 Two Notch Road
Columbia, South Carolina, 29223
S.C. Bar No. 3930
tmegna@gmail.com
Attorney for Appellant

June 5, 2022.

RECEIVED

Sep 09 2024

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.**

Respondents.

CERTIFICATE OF SERVICE

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

The Honorable Jenny Abbot Kitchings Clerk, South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211 Via email to: ctappfilings@sccourts.org Via email to: sspencer@sccourts.org	Linda Jackson Jackson & Jackson P.O. Box 7065 Columbia, South Carolina 29202 S.C. Bar No. 2931 Via email to linbobjack@aol.com Attorney for Respondents
--	---

/s/ Tony R. Megna
8906 Two Notch Road
Columbia, South Carolina, 29223
S.C. Bar No. 3930
tmegna@gmail.com
Attorney for Appellant

June 05, 2022.

RECEIVED

Sep 09 2024

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

CERTIFICATE OF COUNSEL FOR FINAL REPLY BRIEF

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

s/Tony R. Megna
8906 Two Notch Rd.
Columbia, South Carolina, 29223
S.C. Bar No. 3930
tmegna@gmail.com
Attorney for Appellant

June 05, 2022