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Dec 16 2024

S.C. SUPREME COURT

THE SUPREME COURT OF SOUTH CAROLINA

ARO-D Enterprises, LLC, Respondent,

v.

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

Tiger Enterprises and Trading, Inc., Third-Party Plaintiff/Petitioners,

v.

Rudy A. Dixon, Frank T. Gangi, and T3 Aviation, LLC, Third-Party Defendants/Respondents.

Appellate Case No. 2024-000777

BRIEF OF APPELLANTS

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December 16, 2024

Greenville, South Carolina

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STATEMENT OF THE CASE

Pleadings and Initial Motions

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. (R. pp. 19-35). 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, which was denied by order dated June 11, 2020. (R. pp. 1-3).

Appellant 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. (R. pp. 36-61). Appellant 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

[1] On December 14, 2023, Respondent Rudy Dixon passed away. This was confirmed by counsel to Respondents Dixon and ARO-D Enterprises LLC, Mr. Andrighetti, in filings with the Circuit Court on Dec. 29, 2023, and Jan. 10, 2024. On July 25, 2024, the Circuit Court issued an order relieving Mr. Andrighetti as counsel to Respondents ARO-D and Rudy Dixon. Appellants maintain an estate for Respondent Rudy Dixon must be opened in Florida, where he was deceased, as this is necessary to address Dixon's and ARO-D's ownership of the airplane parts that are the subject of this action, and, specifically, the June 11, 2020 order. (R. pp. 1-3). Appellants are in the process of contacting Dixon's heirs for this purpose, otherwise, after notice to his heirs, a third-party will be appointed as Trustee / Personal Representative of his estate.

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 ("UTPA") against all Respondents (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. (*Id.*).

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. (R. pp. 1-3). The trial court order denied ARO-D's above-identified motions on 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 been 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).

In the middle of 2020, Respondents filed a second round of motions, for example, to dismiss for lack of jurisdiction and on other grounds. Those motions were heard on August 19, 2020, and denied by three separate orders filed August 20, 2020. (R. pp. 157, lines 10-15). The orders stated, 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 Gravely's Order regarding the process for selling the associated aircraft parts." (R. p. 157).

Id. (underline emphasis added)

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. (R. pp. 71-109). Appellants answered the claims of T3 and Gangi on October 7, 2020. (R. pp. 110-127).

Facts Regarding Airplane Parts

The discussions between Appellant Dwight Walker and Respondent Rudy Dixon surrounding the subject airplane parts in Nigeria began at least as early as 2014. (R. p. 271, ¶ 5). In June of 2018, Dixon asked Tiger to buy the parts for $685,000.00. (R. p. 271, ¶ 10). Tiger, however, "made it very clear that [it] was only interested in a Consignment Agreement arrangement, and [Tiger] sent over [its] first proposed Consignment Agreement to Mr. Dixon." (R. p. 272, ¶ 11). Tiger did not want to buy the parts, and certainly not without an opportunity to inspect in person, because, as the party owning airplane parts, you incur the risk that the parts may not be certifiable under FAA standards. (R. 26. P. 267, lines 9-14; *see also* R. . 133, ¶ 10, and p. 134, ¶ 14). Without certification, these types of airplane parts are not sellable / marketable.

A new round of discussions regarding the airplane parts between Tiger and Dixon / ARO-

D began in June and July 2019. (R. p. 272, ¶¶'s 12-15). At this point in time (July 2019), Dixon had obtained the rights and ability to ship the airplane parts out of Nigeria. (R. p. 133, ¶ 8, p. 135, ¶ 15, lines 2-3). The ultimate transmission of the parts by Respondent ARO-D from Nigeria to the United States to Appellant Tiger's warehouse was authorized by Dixon on or about July 24, 2019, and occurred between July 26-31, 2019. (R. p. 272, ¶ 16 to p. 273, ¶¶'s 17-20). On July 24, 2019, Tiger sent its Letter Agreement (R. p. 164-165) to Dixon via electronic means. (R. p. 272, ¶ 14).

Even before Tiger received any of these parts, on July 30, 2019, Respondent Gangi reached out to Tiger via email about buying some or all of the parts. (R. p. 273, ¶ 21).

On August 5, 2019, Respondent Dixon emailed Respondent Gangi, stating:

> Frank, good morning, I have seen read your email to me and Tiger Dwight, we want to let you know that we want to do business with you not in that kind of attitude to me are my client, I am not In the piece parts business, If you want buy any parts from the Hawker 4000 you have to go Tiger not me, those kind words I don't use I am a man love God and what I do Is all In respect to everyone,
> Thanks Rudy
> ARO ENTERPRISE

(R. p. 275, ¶ 24) (underline emphasis added).

On or about August 27-28, 2019, Dixon came to Appellant Tiger's facilities in South Carolina. (R. p. 276, ¶ 33). Dixon never signed the Consignment Agreement while he was in South Carolina, but when he left, he instructed Tiger to "keep selling" the airplane parts. (R. p. 277, ¶¶'s 34-37). By September / October 2019, all four (4) Respondents ARO-D / Dixon and Gangi / T3 had the same legal counsel and they asserted a common interest privilege over all their communications since that time, refusing to produce communications in discovery. (R. p. 158, lines 1-2).

Appellant was never able to take the deposition of Respondent Dixon. (R. p. 200, ¶ 3). Dixon also never gave any notice to Tiger that their "client" relationship had ended. (R. p. 132-135).

Dispositive Motions

On Dec. 30, 2020, Respondents ARO-D and Dixon filed their Motion for Partial Summary Judgment. (R. pp. 128-146). On Feb. 12, 2021, Respondents Gangi and T3 filed their Motion(s) for Partial Summary Judgment. (R. pp. 147-149).

On April 16, 2021, the trial court issued an order granting partial summary judgment to ARO-D and Dixon for claim and delivery of the airplane parts. (R. pp. 4-9). Also, on April 16, 2021, the trial court issued an order granting partial summary judgment to Gangi and T3 on their motions regarding Appellants' claims for Interference with Contract and under the UTPA. (R. pp. 10-15). Appellants filed a Rule 59 motion to reconsider, alter or amend on April 26, 2021 (R. pp. 150-168), which was denied by order filed July 6, 2021. (R. pp. 16-18, 297-299).

Appellants' Notice of Appeal in this matter, filed August 3, 2021, relates to the trial court's two orders filed April 16, 2021 and the order denying reconsideration of those orders filed July 6, 2021. (R. pp. 280-299). 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 (R. p. 13, lines 4-7);

- "[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 (R. p. 14, lines 7-9); 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 (R. p. 7, ¶ 3, lines 4-5).

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.*). (R. pp. 4-9, 10-15). The orders also did not analyze or consider the existence or extent of the "client" relationship Dixon referred to in his Aug. 5, 2019 email to Respondent Gangi. (R. p. 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. As noted above, Appellants were not able to take the deposition of Rudy Dixon prior to issuance of the orders granting partial summary judgment that are the subject of this appeal, or before he passed away on Dec. 14, 2023. (R. p. 155, ¶ 1, p. 200, ¶ 3). The parties never altered the agreement entered by the trial court in its June 11, 2020 order (R. pp. 1-3), identified and block-quoted above "regarding the process for selling the associated aircraft parts." (R. p. 157).

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), SCRCP). "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).

ARGUMENT

This appeal presents the unique situation whereby Plaintiff, Respondent ARO-D (and its sole member, Respondent Rudy Dixon) told Respondent Frank 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. p. 168). In that same email transmission, Dixon refers to Tiger as his "client." (*Id.*).

This same Respondent, Dixon, refused to show up for his deposition multiple times and has since passed away. Unless the Court of Appeals decision is reversed, the Court will be, in effect, viewing undisputed facts whereby one party tells another party Appellant is his "client," and yet also finds that that party's deposition could not possibly have led to facts which, when viewed in the light most favorable to Appellant, showed the existence of a genuine dispute of fact that an agreement existed between Respondent ARO-D and Appellant Tiger.

On August 5, 2019, the subject airplane parts were voluntarily shipped by Respondents ARO-D / Dixon to Appellant Tiger from Nigeria. (R. p. 236, line 13 to p. 237, line 3). Obviously, in his email to Respondent Gangi on August 5, 2019 referring to Tiger as his "client," Dixon is responding to an inquiry from Gangi about the airplane parts from Nigeria that he sent to Tiger. (R. pp. 168, 275). Appellant Dwight Walker (principal and owner of Appellant Tiger) is copied on the email. (R. pp. 168, 275). The term, "client," at minimum, shows the existence of an contractual / agency relationship. As can be seen from his emails, Respondent Dixon spoke his *own form of the English language*. Gangi is trying to buy Hawker 4000 parts at least as early as July 30, 2019. (R. p. 273, ¶ 22). When viewed in the context of the additional statement to respondent Gangi, "if you want buy any parts from the Hawker 4000 you have to go to Tiger not me," (R. p. 168), that alone is sufficient evidence for a factfinder to conclude an agreement

existed between Respondent ARO-D / Dixon and Appellant Tiger.

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. p. 20, ¶¶'s 8-10). Dixon's Affidavit (R. p. 132-135) does not dispute or take issue with the specific factual timeline laid out by Dwight Walker in his Affidavit, including with respect to his promise to sign the Consignment Agreement in person or the existence of the Letter Agreement. (R. p. 272, ¶ 14). Dixon's communication to Dwight Walker as he was leaving South Carolina in late August of 2019 ratified the 45 % commission term in the Consignment Agreement. (R. p. 277, ¶ 37).

I. SUMMARY JUDGMENT WAS PREMATURELY GRANTED

In its 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.* This first statement presumes knowledge of what Respondent Dixon's testimony would be. This second statement makes an unnecessary and unsupported statement as to what could have or should have already happened in the discovery process, involving a person that did not reside in the state of South Carolina and for a lawsuit moving forward in the midst of the Covid-19 pandemic.

In its order dated May 29, 2021, the trial court granted Respondent Gangi's Motion for a Protective Order from appearing for his deposition scheduled for June 2, 2021. Respondents Gangi and Dixon were not eager, or willing to be deposed short of a court order, yet the Court of

Appeals Opinion makes findings even the trial court did not make as to what discovery should have taken place prior to this appeal. Appellants agree, they should have been able to depose the Plaintiff (Respondent Dixon / ARO-D) before the trial court ruled on the subject motions for partial summary judgment.

Dixon, despite bringing this lawsuit in this state, simply refused to attend his deposition, including hiding out in Nigeria and making countless excuses for why he would not appear for a deposition in the forum County. (R. p. 155 at ¶ 1, p. 200 at ¶ 2). The only evidence in the record establishes this. The ability of a Plaintiff to file a lawsuit and evade being deposed is the epitome of prejudice to any Defendant, particularly when the existing record includes statements, as follows from that Plaintiff / Respondent ARO-D / Dixon:

- August 5, 2019, to Respondent Gangi, Tiger is my "client" (R. p. 168, 275);
- "If you want buy any parts from the Hawker 4000 you have to go Tiger not me," (R. p. 168, 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. pp. 223, 273, ¶ 22).

I.A. DIXON'S CONDUCT RATIFIED EXISTENCE OF AGREEMENT

These statements alone, which are indisputably in the record, are sufficient to establish a disputed issue if fact as to the scope and terms of the agreement between ARO-D and Tiger. The existence of an agreement between these parties is undisputed by Dixon's own words and actions. (R. p. 132-135).

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."). Here, 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 (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. p. 223, 273, ¶ 22), shows he was aware of and intent on ruining the existing relationship between ARO-D / Dixon and Tiger.

The June 10, 2020 Affidavit of Dwight Walker is evidence of an agreement between Appellant and ARO-D / Dixon. (R. pp. 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. p. 153, ¶ 6, pp. 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. p. 165, p. 272, ¶ 14). Despite this evidence in the record since June of 2020, the lower court order concluded, "[Appellants] 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). As noted herein, the lower court order also failed to address the existence and application of South Carolina's Uniform Electronic Transactions Act, S.C. Code Ann. § 26-6-10 *et seq*. The Court of Appeals Opinion even went so far as to conclude / declare, Appellant "presented no evidence that the parties agreed to conduct their transactions by electronic means." (*Id.* at 3, ¶ 3). This declaration of facts ignores the means by which the arrangements were made to ship the subject airplane parts from Nigeria to Tiger's facilities in South Carolina in late July 2019. (R. p. 272-273, ¶¶'s 14-17).

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. p.165). Even after referring to Tiger as his "client," in August 2019, Respondent Dixon never took any steps to advise that the "client" relationship was terminated. Note also in his threatening email to Dwight Walker dated July 30, 2019, Respondent Frank Gangi states, "I informed you weeks ago of our deal with Rudy …" (R. p. 273, ¶ 22). Yet, Respondent Dixon's communications repudiate the existence of any such "deal" with Respondent Gangi, while at the same time ratify the "client" relationship with Appellant Tiger, stating on August 5, 2019, "If you want buy any parts from the Hawker 4000 you have to go Tiger not me." (R. p. 275, ¶ 24).

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 sent a wire in the amount of $15,000.00 to Respondent Dixon. (R. p.154, ¶¶'s 5-6). 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 "go to Tiger not me," by Respondent Dixon, because Appellant Tiger was his "client."

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." (R. p. 275, ¶ 24).

I.B. UNIFORM ELECTRONIC TRANSACTIONS ACT

The lower court orders did not even mention South Carolina's version of the Uniform

Electronic Transactions Act ("UETA"), S.C. Code Ann. § 26-6-10 *et seq.* The Court of Appeals Opinion declared it inapplicable without considering application of its provisions. 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 inherently 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.* (underline emphasis added). 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. p. 168, p. 275, ¶ 24).

In addition, Dixon's "conduct" in sending the parts to Tiger's facilities in South Carolina shows he was ratifying the existence of an agreement with Tiger that he made via electronic transmissions. In his email dated August 1, 2019, (R. p. 220), Respondent Dixon's conduct further affirms the agency relationship with Tiger, when he states to a third-party, Mr. Graham, I give "Tiger Enterprise full authorization to sell or trade any parts from the Hawker 4000 aircraft or engine APU, airframes." (R. pp. 166-167).

There is sufficient evidence in the record for a jury, viewing the evidence in the light most favorable to Appellants, to conclude that Respondent Dixon intended his communications with Appellant Tiger in July 2019 to create 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, ARO ENTERPRISE." (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." S.C. Code Ann. § 26-6-50(B). 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.

The UETA defines "Agreement," as follows, "'Agreement' means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures giving the effect of agreements under law otherwise applicable to a particular transaction." S.C. Code Ann. § 26-6-20(1) (underline emphasis added).

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. pp. 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 its provisions. 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. p. 168).

II. SUMMARY JUDGMENT STANDARD NOT APPLIED

For all the reasons set forth above, even in the absence of the ability / inability of the Plaintiff to depose Dixon, the trial court and the Court of Appeals have viewed the facts in the light most favorable to the (moving party) Respondents, not the Appellants (non-moving parties).

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 should not have been dismissed unless the undisputed facts were viewed in the light most favorable to Respondents.

In addition, Appellants have not even been able to explore the frequency or extent of business conducted in this state by Respondents Gangi or T3. (R. p. 200, fn. 1). For this reason alone, a grant of partial summary judgment on the UTPA

claim was also premature.

CONCLUSION

For the reasons set forth herein, Appellant respectfully requests the opinion of the Court of Appeals affirming the trial court be reversed,[2] and the matters set forth above be remanded to enable the parties an opportunity to conduct adequate discovery.

Respectfully submitted,

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December 16, 2024

[2] At oral argument on Dec. 7, 2023, Appellants conceded the claim and delivery issue was moot, and no longer challenge the decision of the Court of Appeals 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. (R. pp. 1-3).