

RECEIVED

Jan 07 2025

THE SUPREME COURT OF SOUTH CAROLINA

S.C. SUPREME COURT

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

APPENDIX VOLUME TWO

/s/Wesley D. Few
Wesley D. Few, LLC
Post Office Box, 9398
Greenville, SC 29604
(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR
APPELLANTS/PETITIONERS
TIGER ENTERPRISES & TRADING
COMPANY INC., BONNIE WALKER AND
DWIGHT WALKER

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

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001 to	301	4/28/2022	Record on Appeal
302 to	338	5/18/2022	Respondents' Final Brief
339 to	351	3/18/2022	Appellants' Final Brief
352 to	357	8/1/2022	Appellants' Final Reply Brief
358 to	362	2/4/2024	Court of Appeals Opinion (Affirmed)
363 to	382	3/7/2024	Appellants' Petition for Rehearing to Court of Appeals
383 to	384	4/12/2024	Order Denying Appellant's Petition for Rehearing

ARTICLE 19- INCOMPLETE SALES AT TERMINATION

Consignor will allow Consignee ninety (90) days from the date of receipt of notice of termination to complete delivery of any item(s) which are in repair facilities and which were sold prior to the receipt of notice of termination pursuant to Article 18 and sixty (60) days from the date of receipt of termination to complete delivery of all other items sold prior to the receipt of notice of termination pursuant to Article 18 herein.

ARTICLE 20- REGISTRATION OF INTEREST

Consignee shall do all acts and things necessary, give all consents and sign all documents required to be given or signed at Consignor's request so as to ensure that the Consignor's right to and interest in the Inventory is protected as against the present or potential claims of any third party, including but not limited to those of the Consignee's creditors, mortgagees, financiers, security holders and the Consignee's related/associated companies, businesses or individuals, including but not limited to any consents, statements or duly completed documents or forms required to register Consignor's interest in the Inventory in any State or Federal registry of interest in corporate, business or individual property, assets, stock in trade, shares or any other interest in property of any kind howsoever held. This obligation shall continue throughout the term hereof and any holding over.

ARTICLE 21- FORCE MAJEURE

Neither party shall be liable for damages for any delay or failure to perform their respective obligations under this Agreement which are due to causes beyond their control, including but not limited to, acts of God, acts of public enemies, acts of the Government (whether legal or illegal), fires, floods, epidemics, quarantine restrictions, industrial disputes, lock-outs, strikes, work slow-downs, freight embargoes, or unusually severe weather, provided

however, that the party seeking to rely on such causes shall within seven (7) days notify the other party in writing of the cause of any such delay and such party shall make all reasonable efforts to reduce the effect of such delay on the operation of this Agreement.

ARTICLE 22- CONFIDENTIALITY

Each party agrees (except with the prior written consent of the other party:

- (A) to prevent details of this Agreement from becoming known to third parties other than its financial and legal advisers, and;
- (B) to maintain confidentiality of all information exchanged between the parties, including pricing information and other proprietary knowledge, held as confidential between Consignor and its suppliers, and not to use such for the benefit of any third party.

ARTICLE 23- APPLICABLE LAW

This Agreement and all rights and obligations hereunder shall be governed and construed in accordance with the laws of the State of South Carolina.

The parties agree that this Agreement shall be deemed to have been made in the County of Greenville, the state of South Carolina and that any suit, action or proceeding arising out of or relating to this Agreement may be instituted in any State or Federal court having its sites within the county of Greenville, the state of South Carolina and each party hereby waives the personal service of any and all process and consent that all such service of process may be by certified mail, return receipt requested, directed to the address set forth herein for each party. Any such notice shall be effective and shall be deemed to have been given when received at, or after refusal to receive at the addresses set forth herein or at such other substitute addresses provided in accordance with this Article.

ARTICLE 24- BROKERS AND FINDERS

The parties agree that there are no third parties involved as brokers and finders in this transaction. Consignor indemnifies Consignee from liability for any fees, commissions or other claims made, including all legal costs, due to such claims caused by the indemnifying party.

ARTICLE 25- ASSIGNMENT

This Agreement shall not be assigned in whole or in part by either party without prior written consent of the other party.

ARTICLE 26- COSTS OF COLLECTION

In the event legal proceedings are instituted by either party to enforce this Agreement, then the prevailing party shall be entitled to collect costs, including attorney's fees incurred in said proceeding.

ARTICLE 27- NOTICES

All notices or requests under this Agreement shall be in writing and shall be deemed to have been adequately given when received by the party to whom such notice or request is given. Notices may be delivered personally, by first class mail, postage prepaid, by reputable courier, or by facsimile transmission and shall be addressed as follows:

CONSIGNEE: Tiger Enterprises & Trading, Inc.
512 John Ross Court
Pelzer, SC 29669
Attn: Bonnie Walker, President
Tel #: (864) 862-3838
Fax #: (864) 862-7848

CONSIGNOR: ARO Enterprises- Rudy Dixon
18906 Edinborough Way
Tampa, FL 33647
Tel (813) 928-6547

234-703-086-1947
Email: rdixon@arosales.net

Or to such other address as either party may designate, from time to time, by written notice to the other party.

ARTICLE 28- ALTERATIONS

This Agreement shall be effective only when duly signed by both parties hereto. This Agreement contains the entire understanding between the parties and may not be changed, modified or altered, nor any of its provisions waived, except by an Agreement in Writing signed by the parties hereto. All prior Agreements or understandings in connection with the subject matter of this Agreement between the parties are superseded and the waiver of any term or condition herein by either party shall not be deemed a waiver of any subsequent term or condition hereof.

ARTICLE 29- EXHIBITS

Any exhibits to this Agreement or side letters referring to this Agreement and duly agreed to by both parties in writing shall automatically become a part of this Agreement and unless specifically stated otherwise, the provisions of this Agreement shall prevail in the event of any inconsistency.

ARTICLE 30- SEVERABILITY

In the event any provision of this Agreement is rendered void, invalid, or unenforceable in a certain jurisdiction, then such provision (or part thereof) may be severed from this Agreement without affecting the remaining provisions hereof, as long as such severance does not have a material adverse affect on the performance of this Agreement.

ARTICLE 31 AND LAST- HEADINGS

The headings to the Articles of this Agreement are for the purpose of reference only and in no way define, limit or describe the scope or intent of this Agreement.

The relationship of both parties under this Agreement is non-exclusive. Both parties reserve the right to enter into Agreements with other parties for the provision of similar or identical services at any time during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto by their duly authorized officers have executed this Agreement in duplicate originals as of the day and year first above written.

CONSIGNEE:

TIGER ENTERPRISES & TRADING, INC.

BY: _____

NAME: Bonnie Walker
(PRINT)

TITLE: President

DATE _____

CONSIGNOR:

ARO Enterprise

BY: _____

NAME: Rudy Dixon
(PRINT)

TITLE: President

DATE _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 13TH JUDICIAL CIRCUIT

ARO-D ENTERPRISES, LLC,	)	
	)	
PLAINTIFF,	)	C.A. No.: 2020-CP-23-01886
	)	
V.	)	
	)	TIGER ENTERPRISES & TRADING,
TIGER ENTERPRISES & TRADING,	)	INC.'S REPLY IN SUPPORT OF
INC., BONNIE WALKER AND	)	RULE 59 MOTION AND IN
DWIGHT WALKER,	)	RESPONSE TO OPPOSITION
	)	BRIEFS FILED BY ARO-D / RUDY
DEFENDANTS/	)	DIXON AND FRANK GANGI / T3 ON
COUNTERCLAIMANTS.	)	JUNE 1, 2021
	)	
	)	
TIGER ENTERPRISES AND	)	
TRADING, INC.,	)	
	)	
3 RD PTY PLAINTIFFS,	)	
	)	
V.	)	
	)	
RUDY A. DIXON, FRANK T. GANGI,	)	
AND T3 AVIATION, LLC,	)	
	)	
3 RD PTY DEFENDANTS,	)	
	)	

TO: J.J. ANDRIGHETTI, ESQUIRE, COUNSEL TO PLAINTIFF ARO-D ENTERPRISES, LLC, AND 3RD PARTY DEFENDANT RUDY DIXON, AND STEPHEN E. BUCKINGHAM, ESQUIRE, ATTORNEY FOR 3RD PARTY DEFENDANTS FRANK GANGI AND T3 AVIATION, INC.:

In Tiger Enterprises & Trading, Inc. (hereafter "Tiger") Rule 59 Motion filed April 26, 2021, the bulleted chronology of events set forth on pages 3-5 identifies not only material facts in dispute, but facts in support of a motion for summary judgment in Tiger's favor on these very issues. These "facts" are not self-serving testimony from Tiger, but instead are emails sent from Mr. Dixon (owner of ARO-D) to Mr. Gangi and representatives of Tiger, referring to Tiger as his

“client,” and further stating, *inter alia* to Mr. Gangi, “if you want buy any parts from the Hawker 4000 you have to go Tiger not me.” *Id.* at 4 (email dated August 5, 2019) (Dwight Walker Affidavit, at ¶ 24, filed June 10, 2020).

Despite these email communications in the *deposition-less* record developed in discovery thus far, ARO-D argues to this Court that “no evidence” exists in support of any claim by Tiger that “email correspondence between the plaintiff and TET employees sufficient to constitute a signature under SCUETA.” *Id.* ARO-D also fails to set forth any explanation for how Tiger was its “client,” absent the existence of a contractual relationship. Dixon represented to Mr. Gangi on August 5, 2019 that he had a contractual / “client” relationship with Tiger related to the “Hawker 4000,” inventory.

Still further, Mr. Gangi was specifically advised of the contractual / client relationship by Dwight Walker and Rudy Dixon, and he immediately engaged in affirmative steps to interfere with it. This is shown by his “What’s App” communications to Dixon as set forth in and identified in Dwight Walker’s Affidavit at Para. 23, stating, *inter alia*, “sorry these crack head crackers at Tiger have caused a problem.” (Walker Aff., filed June 10, 2020). Mr. Gangi set forth his intentions early on with respect to Tiger in his email dated July 30, 2021, attached here as **Exhibit D**, previously referenced to this Court as Exhibit 3 to Dwight Walker’s Affidavit, filed June 10, 2020.

In this email exchange, Dwight Walker advises Mr. Gangi, *inter alia*, as follows: “Tiger [is] contracted to manage marketing and sales of [the ARO-D Hawker 4000] assets received.” *Id.* In response, Mr, Gangi stated as follows:

We will NOT under any circumstances, buy parts from you. Nor will any other 4000 owner we know. nor will any shop we trade with.

A quote like this indicates you see us as a mark, not a customer, or worse.

I informed you weeks ago of our deal with Rudy, your failure to allow us to come get those part he and I agreed we would take amounts to tortious interference in our business dealing and we will hold you liable for same.

FTG

Id. (underline emphasis added).

As noted in Tiger’s Rule 59 Motion at pp. 9-10 (quoting T3 / Gangi’s responses to specific “contention” requests), Mr. Gangi nor T3 had “deal with Rudy.” Id. (showing the factual basis of Gangi’s now-stayed Massachusetts lawsuit on allegations of his “agreement with ARO,” was false). However, this is not the first time a litigant or a Court has noted the propensity of Mr. Gangi to obstruct justice, make false representations to a Court, or to otherwise disrespect a Court’s authority. On October 17, 2017, the federal 1st Circuit Court of Appeals in Boston issued an opinion related to an ongoing receivership action to recover assets of Mr. Gangi, noting, *inter alia*, Mr. Gangi’s “truculence and dishonesty throughout these proceedings.” (**Exhibit E**, at p. 7 of 7).

Just as Tiger continues to rely on Baughman v. AT&T, 410 S.E.2d 537, 543-544 (1991), which provides “summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery,” ARO-D and T3¹ continue to evade discovery, cancel depositions and refuse to answer discovery in good-faith. As a prime example, Rudy Dixon’s deposition has been scheduled to occur on: (i) Jan. 8, 2021, (ii) April 14, 2021, and most recently, (iii) June 28, 2021. Each of these three depositions have been unilaterally cancelled by counsel on short notice.

On March 25, 2021, Tiger served its First Request for Admission (“RFA”) to Plaintiff ARO-D, attached here as **Exhibit A**. As shown, the email which Tiger sought verification of authenticity was produced by Tiger in this lawsuit as a forwarded email at Tiger_00013 to 00014. S.C. R. Civ. P. Rule 36(a) provides, “[a] denial shall fairly meet the substance of the requested admission, and when

¹ This Court issued an order dated June 1, 2020, requiring Mr. Gangi to attend his deposition, which has also been unilaterally cancelled by his counsel, Mr. Buckingham, on or before July 31, 2021. A similar order will apparently also be necessary to get Mr. Dixon, as representative of the Plaintiff ARO-D, to be deposed in his own lawsuit.

good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder.”

Id.

As shown in **Exhibit B**, on April 26, 2021, ARO-D denied this First RFA. Tiger has sent a consultation to ARO-D counsel on this response, and has also served a new RFA to Rudy Dixon, which is attached here as **Exhibit C**, and includes “native” copies of the subject email sent by Mr. Dixon, provided electronically in *.eml and *.mhtml formats, as well as a copy of the printed email as RFA No. 3. Mr. Dixon’s response to those RFA are due on July 2, 2021.

The S.C. Uniform Electronic Transactions Act, S.C. Code Ann. § 26-6-10 *et seq.*, does not require that all persons being bound by its provisions have read the Act. Such a proposition would be absurd. Opposing counsel have taken the deposition testimony of Dan Hansen and have represented it to this Court as a statement by Tiger, as if it were part of an identified Rule 30(b)(6) deposition topic on the existence of a contract. It was not that and despite consultations with opposing counsel since March 11, 2021, requesting that they identify at least one “matter of examination” for the Rule 30(b)(6) deposition they have now agreed by Tiger to occur on July 28, 2021, not a single topic / “matter of examination” has been identified.

Dan Hansen testified he was not involved in the Hawker 4000 program negotiations. That was handled by Dwight Walker. For example, in his deposition, he testified as follows:

16 Q. Were you involved in any negotiations
17 regarding that payment?
18 A. No.
19 Q. Were you involved in accounting for that
20 payment on any purchase orders?
21 A. No.
22 Q. Okay. Do you recall ever reviewing any
23 consignment -- proposed consignment agreements
24 between Tiger and ARO?
25 A. I'm sorry?

- 1 Q. Do you recall reviewing or negotiating any
- 2 consignment agreements between Tiger and ARO?
- 3 MR. FEW: Object to the form.
- 4 THE WITNESS: No.

Id. at 120:16 to 121:4.

The fact that Mr. Dixon refused to sign the Consignment Agreement in August 2019 is not dispositive of the existence of a valid and enforceable contract between ARO-D and Tiger, particularly not when his many other representations to Tiger and Mr. Gangi (and others) show he knew he had a contract with Tiger (*i.e.*, his “client”). Mr. Dixon also advised Mr. Gangi on August 5, 2019, “if you want buy any parts from the Hawker 4000 you have to go Tiger not me.” (Walker Aff., at ¶ 24).

As noted in *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 780 S.E.2d 263, 275-276 (Ct. App 2015), “[t]he cause of action for claim and delivery is governed by South Carolina Code sections 15-69-10 to 210 (2005).” Id. Nowhere in the pleadings, proposed order submitted by counsel to ARO-D, or the order granting summary judgment on ARO-D’s claim and delivery claim is any part of this code section cited or referenced.

CONCLUSION

For the reasons set forth herein and otherwise in the record and in the Rule 59 Motion, Tiger respectfully requests an order or orders altering or amending this Court’s orders granting summary judgments, filed April 16, 2021, and allowing the parties to complete discovery on these issues.

[signature on next page]

Most Respectfully submitted,

WESLEY D. FEW, LLC

s/Wesley D. Few/
 Wesley D. Few, S.C. Bar No. 15565
 P.O. Box 9398
 Greenville, South Carolina 29604
 864-527-5906 | wes@wesleyfew.com

ATTORNEYS FOR TIGER ENTERPRISES
 & TRADING, INC., DWIGHT WALKER AND
 BONNIE WALKER

June 25, 2021
 Greenville, South Carolina

TABLE OF EXHIBITS

Ex A – March 26, 2021 1st RFA to ARO-D from Tiger (enclosing Tiger_00013-14, August 1, 2021, email from Dixon to Dwight Walker);

Ex B – April 26, 2021 ARO-D Response to Tiger's 1st RFA (denying same);

Ex C – June 2, 2021 1st RFA to Rudy Dixon from Tiger (enclosing native emails in *.eml and *.mhtml format,² as well as a printout of the same email from Mr. Dixon to Tiger);

Ex D – July 30, 2019 threat emails from Frank Gangi (knowledge of contract with ARO-D);

Ex E - *PPUC Pa. PUC v. Gangi*, 874 F.3d 33, 39 (1st Cir. 2017) (noting further that “[t]he receivership began in 2010 and both this Court and the district court have made findings that Gangi has obstructed it throughout. This Court found the receivership has been, "hampered by Gangi, who, among other stratagems seemingly designed to conceal or protect his assets, apparently had transferred ownership of his \$400,000 Porsche to a ten-year old child.”)

² Counsel will provide native versions of this email to the Court, specifically in *.eml and / or *.mhtml format, via email, as necessary. In the event Mr. Dixon denies these June 2, 2021, RFA, Tiger will obtain a forensic analysis to verify authenticity of the subject August 1, 2019 email from Mr. Dixon.

WESLEY D. FEW, LLC

Attorney at Law

P.O. Box 9398, Greenville, South Carolina 29604

www.wesleyfew.com | wes@wesleyfew.com

O: 864-527-5906 | M: 864-404-7792

March 25, 2021

Via U.S. Mail and/or Email

J.J. Andrighetti, Esq.
Culbertson Andrighetti, LLC
114 Manly Street
Greenville, South Carolina 29601
jj@palmettolawfirm.com

RE: ARO-D Enterprises, LLC v. Tiger Enterprises & Trading Company, Inc. et al
Action No.: 2020-CP-23-01886
Our File No.: 00264-002

Dear J.J.,

Enclosed and served upon you, please find Tiger Enterprises & Trading, Inc.'s First Set of Requests for Admission to Plaintiff ARO-D Enterprises, LLC with Exhibit A, along with the certificate of service for same.

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/ekm

CC: Steve Buckingham, Esq.
Bonnie and Dwight Walker

ELECTRONICALLY FILED - 2021 Jun 25 2:27 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301886

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 13TH JUDICIAL CIRCUIT

ARO-D ENTERPRISES, LLC,)
PLAINTIFF,)

C.A. No.: 2020-CP-23-01886

V.)

TIGER ENTERPRISES & TRADING,)
INC., BONNIE WALKER AND)
DWIGHT WALKER,)

**TIGER ENTERPRISES AND
TRADING, INC., 1ST REQUEST FOR
ADMISSION TO PLAINTIFF
ARO-D ENTERPRISES, LLC**

DEFENDANTS/)
COUNTERCLAIMANTS.)

TIGER ENTERPRISES AND)
TRADING, INC.,)

3RD PTY PLAINTIFFS,)

V.)

RUDY A. DIXON, FRANK T. GANGI,)
AND T3 AVIATION, LLC,)

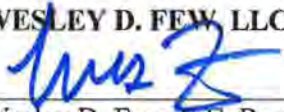
3RD PTY DEFENDANTS,)

TO: J.J. ANDRIGHETTI, ESQ., COUNSEL TO PLAINTIFF ARO-D ENTERPRISES, LLC:

PLEASE TAKE NOTICE that Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, you are hereby requested to admit, for purposes of the pending action only, the truth of the following statements or opinions of fact, or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents are served with the request.

1. Admit that the document attached here as Exhibit A is a true and correct copy of an email from Rudy Dixon, dated July 31, 2019.

WESLEY D. FEW, LLC



Wesley D. Few, S.C. Bar No. 15565

Post Office Box 9398

Greenville, South Carolina 29604

864-527-5906 | wes@wesleyfew.com

ATTORNEYS FOR DEFENDANTS,
COUNTERCLAIMANTS, AND THRID-PARTY
PLAINTIFFS TIGER ENTERPRISES & TRADING,
INC., BONNIE WALKER AND DWIGHT WALKER

March 25, 2021
Greenville, South Carolina

Dwight Walker

From: Dwight Walker
Sent: Thursday, August 1, 2019 7:46 AM
To: Dan Hansen
Subject: Fwd: HAWKER ENGINE PCE CD 0100, INVOICE

Sent from my iPhone

Begin forwarded message:

From: Rudy Dixon <rdixon@arosales.net>
Date: August 1, 2019 at 5:21:36 AM EDT
To: "dwalker@tigerenterprises.com" <dwalker@tigerenterprises.com>
Subject: FW: HAWKER ENGINE PCE CD 0100, INVOICE

Subject:
HAWKER ENGINE S/N. PCE CE 0099,

Mr. Graham
7/31/2019.

on the moving of the engine and packing of the detail parts inlet tailpipe, please advise how the cost, I will discuss with you this early morning tomorrow. Once arrival of the crate it will be ship from Warri to the USA,
the Broker in Warri and the detail he want to do the clearing
Please let me know what else you need so we can expedite,

THIS IS CONFIDENT TO YOU

7/31/2019

I Rudy Dixon, ARO ENTERPRISE LLC

**Given Tiger Enterprise full authorization to sell or trade
any parts from the Hawker 4000 aircraft or engine APU,
airframes. Until the sign agreement is complete with
TIGER**

Your Rudy Dixon

Thanks

A handwritten signature in black ink, appearing to be 'RD' followed by a flourish.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

ARO-D Enterprises, LLC,

Plaintiff,

vs.

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

Defendants/Counterclaimants.

Tiger Enterprises & Trading, Inc.,

3rd Party Plaintiffs,

vs.

Rudy A. Dixon, Frank T. Gangi, and T3 Aviation,
LLC,

3rd Party Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No: 2020-CP-23-01886

CERTIFICATE OF SERVICE

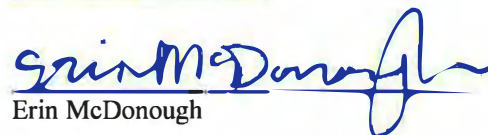
I, Erin McDonough, on behalf of the law office of Wesley D. Few, LLC, attorneys for the Defendants/Counterclaimants in this action, do hereby certify that I have served the below parties by Email and / or U.S. Mail as set forth below on this date in this action with a copy of the document(s) listed below.

1) Tiger Enterprises & Trading, Inc.'s First Set of Requests for Admission to Plaintiff ARO-D Enterprises, LLC

2) Exhibit A to the Requests for Admission

J.J. Andrighetti, Esq.
114 Manly Street
Greenville, South Carolina 29601
jj@palmettolawfirm.com

Steven E. Buckingham, Esq.
16 Wellington Ave.
Greenville, SC 29609
seb@buckingham.legal


Erin McDonough

March 25, 2021
Greenville, South Carolina



April 26, 2021

Wesley D. Few, Esq.
Wesley D. Few, LLC
PO Box 9398
Greenville, SC 29604

Re: *ARO-D Enterprises, LLC v. Tiger Enterprises & Trading, Inc., et al.*
C.A. No. 2020-CP-23-01886

Dear Mr. Few:

Enclosed and served upon you please find Responses by Plaintiff ARO-D Enterprises, LLC to Tiger Enterprises and Trading, Inc.'s First Request for Admission. Thank you.

Sincerely,

CULBERTSON ANDRIGHETTI, LLC

Myra Culbertson
Legal Assistant
myra@palmettolawfirm.com

Enclosure (as stated)

**CULBERTSON
ANDRIGHETTI, LLC**

114 Manly Street,
Greenville, SC 29601

P: 864.370.8222
F: 864.370.8227

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ARO-D Enterprises, LLC,

Plaintiff,

v.

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

Defendants/Counterclaimants,

Tiger Enterprises and Trading, Inc.,

Third-Party Plaintiff,

v.

Rudy A. Dixon, Frank T. Gangi, and T3
Aviation, LLC,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-01886

**RESPONSES BY PLAINTIFF ARO-D
ENTERPRISES, LLC TO TIGER
ENTERPRISES AND TRADING, INC.'S
FIRST REQUEST FOR ADMISSION**

COMES now Plaintiff responding to Third-Party Plaintiff Tiger Enterprises and Trading, Inc.'s First Request for Admission and responding as follows:

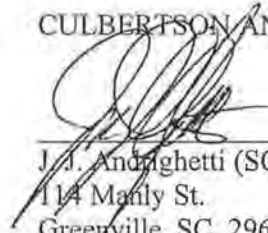
Request to Admit

1. Admit that the document attached here as Exhibit A is a true and correct copy of an email from Rudy Dixon, dated July 31, 2019.

RESPONSE: DENIED.

Respectfully submitted,

CULBERTSON ANDRIGHETTI, LLC



J. J. Andrighetti (SC Bar # 72741)

114 Manly St.

Greenville, SC 29601

P: 864-370-8222 F: 864-370-8227

jj@palmettolawfirm.com

Attorney for Plaintiff

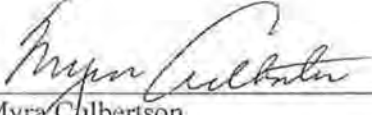
Greenville, South Carolina

April 26, 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of April, 2021, she mailed a copy of the attached **RESPONSE TO REQUEST TO ADMIT** by U. S. Mail, addressed to the persons hereinafter named with sufficient postage affixed, at the address stated below:

Wesley D. Few, Esq.
Wesley D. Few, LLC
PO Box 9398
Greenville, SC 29604



Myra Culbertson
Legal Assistant

WESLEY D. FEW, LLC

Attorney at Law

P.O. Box 9398, Greenville, South Carolina 29604

www.wesleyfew.com | wes@wesleyfew.com

O: 864-527-5906 | M: 864-404-7792

June 2, 2021

Via U.S. Mail, Email and Hand Delivery

J.J. Andrighetti, Esq.
Culbertson Andrighetti, LLC
114 Manly Street
Greenville, South Carolina 29601
jj@palmettolawfirm.com

RE: ARO-D Enterprises, LLC v. Tiger Enterprises & Trading Company, Inc. et al
Action No.: 2020-CP-23-01886
Our File No.: 00264-002

Dear J.J.,

Enclosed and served upon you, please find Tiger Enterprises & Trading, Inc.'s First Set of Requests for Admission to Rudy Dixon with Exhibits A-C, along with our certificate of service for same.

These documents are being served to your office via hand delivery, email and U.S. Mail.

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/ekm

CC: Steve Buckingham, Esq.
Bonnie and Dwight Walker

ELECTRONICALLY FILED - 2021 Jun 25 2:27 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301886

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) 13TH JUDICIAL CIRCUIT

ARO-D ENTERPRISES, LLC,)

PLAINTIFF,)

V.)

TIGER ENTERPRISES & TRADING,)
INC., BONNIE WALKER AND)
DWIGHT WALKER,)

DEFENDANTS/)
COUNTERCLAIMANTS.)

TIGER ENTERPRISES AND)
TRADING, INC.,)

3RD PTY PLAINTIFFS,)
V.)

RUDY A. DIXON, FRANK T. GANGI,)
AND T3 AVIATION, LLC,)

3RD PTY DEFENDANTS,)

C.A. No.: 2020-CP-23-01886

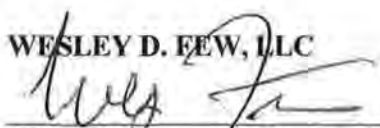
**TIGER ENTERPRISES AND
TRADING, INC., 1ST REQUEST FOR
ADMISSION TO RUDY DIXON**

**TO: J.J. ANDRIGHETTI, ESQ., COUNSEL TO PLAINTIFF ARO-D ENTERPRISES,
LLC, AND RUDY DIXON:**

PLEASE TAKE NOTICE that Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, you are hereby requested to admit, for purposes of the pending action only, the truth of the following statements or opinions of fact, or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents are served with the request.

1. Admit that the document attached here as Exhibit A is a true and correct copy of an email from Rudy Dixon (in *.eml format),¹ dated August 1, 2019.
2. Admit that the document attached here as Exhibit B is a true and correct copy of an email from Rudy Dixon (in *.mhtml format),¹ dated August 1, 2019.
3. Admit that the document attached here as Exhibit C is a true and correct copy² of an email from Rudy Dixon, dated August 1, 2019.

WESLEY D. FEW, LLC



Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
864-527-5906 | wes@wesleyfew.com

ATTORNEYS FOR DEFENDANTS,
COUNTERCLAIMANTS, AND THRID-PARTY
PLAINTIFFS TIGER ENTERPRISES & TRADING,
INC., BONNIE WALKER AND DWIGHT WALKER

June 2, 2021
Greenville, South Carolina

¹ Exhibits A and B are duplicates of the same files sent to counsel to Rudy Dixon via email, dated May 20, 2021, and labeled as TIGER_00530 and 00531.

² Exhibit C is a PDF print out of the *.mhtml format email from Exhibit B.

Exhibit A to 1st Request for Admission to Rudy Dixon

*(provided electronically in *.eml format)*

Exhibit B to 1st Request for Admission to Rudy Dixon

*(provided electronically in *.mhtml format)*

Exhibit C to 1st Request for Admission to Rudy Dixon

(attached, one page)

From: Rudy Dixon <rdixon@arosales.net>
Sent: Thursday, August 1, 2019 5:22 AM
To: Dwight Walker
Subject: FW: HAWKER ENGINE PCE CD 0100, INVOICE

Subject:
HAWKER ENGINE S/N. PCE CE 0099,

Mr. Graham
7/31/2019.

on the moving of the engine and packing of the detail parts inlet tailpipe, please advise how the cost, I will discuss with you this early morning tomorrow. Once arrival of the crate it will be ship from Warri to the USA, the Broker in Warri and the detail he want to do the clearing

Please let me know what else you need so we can expedite,

THIS IS CONFIDENT TO YOU

7/31/2019

I Rudy Dixon, ARO ENTERPRISE LLC

**Given Tiger Enterprise full authorization to sell or trade any parts from the Hawker 4000 aircraft or engine APU, airframes. Until the sign agreement is complete with TIGER
Your Rudy Dixon**

Thanks



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

ARO-D Enterprises, LLC,

Plaintiff,

vs.

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

Defendants/Counterclaimants.

Tiger Enterprises & Trading, Inc.,

3rd Party Plaintiffs,

vs.

Rudy A. Dixon, Frank T. Gangi, and T3 Aviation,
LLC,

3rd Party Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No: 2020-CP-23-01886

CERTIFICATE OF SERVICE

I, Erin McDonough, on behalf of the law office of Wesley D. Few, LLC, attorneys for the
Defendants/Counterclaimants in this action, do hereby certify that I have served the below parties by Email
and / or U.S. Mail as set forth below on this date in this action with a copy of the document(s) listed below.

1) **Tiger Enterprises & Trading, Inc.'s First Set of Requests for Admission Nos. 1-3 to Rudy
Dixon**

2) **Exhibits A-C to the Requests for Admissions**

J.J. Andrighetti, Esq. (hand delivery)
114 Manly Street
Greenville, South Carolina 29601
jj@palmettolawfirm.com

Steven E. Buckingham, Esq.
16 Wellington Ave.
Greenville, SC 29609
seb@buckingham.legal


Erin McDonough

June 2, 2021
Greenville, South Carolina

Dwight Walker

To: Frank Gangi
Cc: Dan Hansen; Wes Few; Bonnie Walker
Subject: RE: Hawker 4000 material

Frank,

First of all, I would appreciate a professional approach together as we are not the problem. Your statements seem very aggressive on a response to an open quote that you requested with an opened ended remark to have a discussion. Market pricing is always fluid.

Your concerns on the material off the aircraft are between you and Rudy and not with Tiger. We have not interfered as we have worked with Rudy for three years on this aircraft and you have just communicated with him from our knowledge over the last month. Tiger is in no way involved at this point in any transaction directly with you nor have we interfered in any transaction you might have had with ARO Enterprise.

I also don't appreciate threats from an individual or company we have never dealt with on disparaging Tiger in the market when we have not created any conflict nor performed any deed to deserve such threats.

I am sorry if Rudy has mis-lead you (but Tiger hasn't) as I cannot speak to that. We will gladly honor any direction from the owner or if you have a contract that preceeds our contractual and/or written arrangements we have with ARO Enterprise.

You must appreciate the fact that we are working on Rudy's (the owner) direction and not any potential buyers that have contacted Rudy in the past.

Due to your threats of slander, disparagement of Tiger in the industry and comments of tortious interference, I have directed our team not to communicate any further at this time. Please direct any communication to our attorney, Wes Few (wes@weslyfew.com).

I hope you can settle your disagreement with Mr. Dixon.

Regards,

Dwight Walker

CEO

Tiger Enterprises & Trading, Inc.

512 John Ross Court, Pelzer, SC 29669

864.862.3838 office | 864.414.3244 cell | 864.862.7848 fax

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All items purchased by Tiger Enterprises must be approved by Tiger management beforehand. All items purchased must have either FAA/FAA/CAA/EASA/DOJ/DOE etc. type approved/appropriate trace and condition documentation, any export/import license (when applicable) or approvals, and HAZMAT documentation (if applicable). Tiger Enterprises is a 2013-2015 ASA-100 and FAA AC 00-56A approved company.

From: Frank Gangi <franktgangi@gmail.com>

Sent: Tuesday, July 30, 2019 1:28 PM

To: Dwight Walker <dwalker@tigerenterprises.com>; Rudy Dixon <rdixon@arosales.net>

Subject: Re: Hawker 4000 material

We will NOT under any circumstances, buy parts from you. Nor will any other 4000 owner we know. nor will any shop we trade with.

A quote like this indicates you see us as a mark, not a customer, or worse.

I informed you weeks ago of our deal with Rudy, your failure to allow us to come get those part he and I agreed we would take amounts to tortious interference in our business dealing and we will hold you liable for same.

FTG

On Tue, Jul 30, 2019 at 12:57 PM Dwight Walker <dwalker@tigerenterprises.com> wrote:

Frank,

I am communicating with you in respect of the Hawker 4000 program that Tiger has been involved in with Mr. Rudy Dixon since the aircraft became available several years ago. Our 42 year relationship with the current owner of this aircraft puts Tiger in a trusting relationship together as demonstrated by the material being shipped to Tiger who is now contracted to manage marketing and sales of assets received.

Please be advised that we are ready to quote the Hawker 4000 parts that have arrived at Tiger. The attached quote is our first position on sell prices which for AR material at 50% of 2018 catalog value. We will gladly review market information on pricing or manage repairs upon request and supply parts in SV condition.

Cc: Dan Hansen <dhansen@tigerenterprises.com>
Subject: Hawker 4000 material

Frank,

I am communicating with you in respect of the Hawker 4000 program that Tiger has been involved in with Mr. Rudy Dixon since the aircraft became available several years ago. Our 42 year relationship with the current owner of this aircraft puts Tiger in a trusting relationship together as demonstrated by the material being shipped to Tiger who is now contracted to manage marketing and sales of assets received.

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Please feel free to contact us with any interest.

Regards,

Dwight Walker

CEO

Tiger Enterprises & Trading, Inc.

512 John Ross Court, Pelzer, SC 29669

864.862.3838 office | 864.414.3244 cell | 864.862.7848 fax

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Please feel free to contact us with any interest.

Regards,

Dwight Walker

CEO

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User Name: Wesley Few

Date and Time: Wednesday, June 23, 2021 1:27:00 PM EDT

Job Number: 146822966

Document (1)

1. [PPUC Pa. PUC v. Gangi, 874 F.3d 33](#)

Client/Matter: -None-

Search Terms: truculence w/3 dishonesty

Search Type: Terms and Connectors

Narrowed by:

Content Type
Cases

Narrowed by
Court: Federal > 1st Circuit



Positive

As of: June 23, 2021 5:27 PM Z

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PPUC Pa. PUC v. Gangi

United States Court of Appeals for the First Circuit

October 17, 2017, Decided

No. 16-1048

Reporter

874 F.3d 33 *, 2017 U.S. App. LEXIS 20261 **, 2017 WL 4639471

PPUC PENNSYLVANIA PUBLIC UTILITY COMMISSION; QUALITY SPEAKS, LLC; AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD.; GLOBAL NAPS, INC., Plaintiffs, CARL F. JENKINS, Receiver, Appellee, v. FRANK T. GANGI, Defendant, Appellant, VERIZON NEW ENGLAND, INC., d/b/a Verizon Massachusetts; MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS & ENERGY; PAUL B. VASINGTON, in his capacity as Commissioner; JAMES CONNELLY, in his capacity as Commissioner; W. ROBERT KEATING, in his capacity as Commissioner; DEIRDRE K. MANNING, in her capacity as Commissioner; EUGENE J. SULLIVAN, JR., in his capacity as Commissioner; FERROUS MINER HOLDINGS, LTD.; GLOBAL NAPS NETWORKS, INC.; GLOBAL NAPS NEW HAMPSHIRE, INC.; GLOBAL NAPS REALTY, INC.; 1120 HANCOCK STREET, INC.; CHESAPEAKE INVESTMENT SERVICES, INC.; REYNWOOD COMMUNICATIONS, INC., Defendants.

Prior History: [****1**] APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. Hon. Rya W. Zobel, U.S. District Judge.

[Global Naps, Inc. v. Verizon New Eng., Inc., 2015 U.S. Dist. LEXIS 192749 \(D. Mass., Mar. 10, 2015\)](#)

Core Terms

receivership, district court, receiver, fiduciary, moot, equitably, buyers, approving, parties, argues, best interest, sales

Case Summary

Overview

HOLDINGS: [1]-The receiver showed that the sale was complex, required regulatory approval, involved

disparate assets, and took months to close, but these challenges did not mean that the sale had moved beyond practicable annulment, and the receiver failed to show that relief would result in any harm to innocent third parties; [2]-The receiver did not have a stake in the transaction, and there was no reason to think that any of the sales agents were fiduciaries; [3]-The sale was appropriate given the difficulty finding other buyers, the need to quickly wind-up the receivership, the owner's obstinacy, and the lack of evidence that the marketing agent abused its position; [4]-The receiver did not sell to himself and the other parties were not fiduciaries; [5]-The relationship between the parties was sufficiently disclosed by the receiver before the sale was approved.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Bankruptcy Law > ... > Judicial Review > Standards of Review > Clear Error Review

HN1 [] Standards of Review, Clear Error Review

Equitable mootness is rooted in the court's discretion in matters of remedy and judicial administration not to determine a case on its merits. Equitable mootness is appropriate where, in the absence of a stay, a sale has progressed so far that relief would be impracticable.

Bankruptcy Law > ... > Judicial Review > Standards of Review > Abuse of Discretion

Bankruptcy Law > Administrative Powers > Estate Property Lease, Sale & Use > Sale of Estate

Property

Bankruptcy Law > ... > Judicial Review > Standards of Review > Clear Error Review

Bankruptcy Law > ... > Judicial Review > Standards of Review > De Novo Standard of Review

[HN2](#) Standards of Review, Abuse of Discretion

The appellate court reviews the order approving the sale for an abuse of discretion. Any subsidiary findings of fact are reviewed for clear error, and holdings of law are reviewed de novo.

Bankruptcy Law > Administrative Powers > Estate Property Lease, Sale & Use > Sale of Estate Property

[HN3](#) Estate Property Lease, Sale & Use, Sale of Estate Property

It is true that a full-fledged fiduciary, such as a trustee or court-appointed receiver may not normally sell estate property to himself even if the terms are fair.

Bankruptcy Law > Administrative Powers > Estate Property Lease, Sale & Use > Sale of Estate Property

[HN4](#) Estate Property Lease, Sale & Use, Sale of Estate Property

The central reason for disqualifying the fiduciary as a buyer is that there is no one else who can similarly protect the estate's interest.

Bankruptcy Law > Administrative Powers > Estate Property Lease, Sale & Use > Sale of Estate Property

[HN5](#) Estate Property Lease, Sale & Use, Sale of Estate Property

A blanket prohibition applies to fiduciaries because, the main assurance that the estate will be maximized is the zeal of the seller to secure the best price, and that zeal is likely to be tempered if the seller is selling to himself.

Bankruptcy Law > Administrative Powers > Estate Property Lease, Sale & Use > Sale of Estate Property

[HN6](#) Estate Property Lease, Sale & Use, Sale of Estate Property

Judgments as to disqualification of a non-fiduciary purchaser should be made on a case by case basis, taking account of all of the surrounding circumstances. The district court has wide discretion in judging whether a receiver's sale is fair in terms and result and serves the best interests of the estate.

Bankruptcy Law > Administrative Powers > Estate Property Lease, Sale & Use > Sale of Estate Property

[HN7](#) Estate Property Lease, Sale & Use, Sale of Estate Property

The district court has an obligation to carefully monitor the sale process and assure that there is full disclosure and good faith.

Counsel: Donald H.C. Libbey, with whom Donald H.C. Libbey PC, Steven J. Marullo, and Law Office of Steven J. Marull were on brief for appellee.

Eric Charles Osterberg, with whom Osterberg LLC, Andrew Good, and Good Schneider Cormier & Fried were on brief for appellant.

Judges: Before Torruella, Lynch, Kayatta, Circuit Judges.

Opinion by: LYNCH

Opinion

[*35] **LYNCH, Circuit Judge.** Frank Gangi ("Gangi") appeals from the district court's December 30, 2015 order approving a sale of his assets and the assets of entities owned by him, recommended by the receiver, Carl Jenkins ("Jenkins"), whom the court appointed to sell those assets for the benefit of Gangi's creditors. Gangi, on appeal, primarily argues that the assets were sold to a fiduciary of the receivership estate, and the sale was prohibited as a result. In the alternative, Gangi

argues that the sale was improper and unfair.

Jenkins counters that this appeal should not be heard on the merits because it is equitably moot, and that, in any event, the assets were not sold to a fiduciary and the sale was appropriate. The district court rejected Gangi's contentions as without merit; agreed with the receiver's contentions; and concluded that the sale was fair, reasonable, and in the best interest of the receivership. The court also described the different categories of assets and found that the allocations as to purchase price were fair and reasonable. We hold this appeal is not equitably moot, and affirm the sale order because there was no abuse of discretion.

I. Background

The litigation that has resulted in the receivership and this apparently final order of sale is in its fifteenth year. **[**2]** It began in 2002, when Global Naps, Inc. ("GNAPs") sued Verizon New England, Inc. ("Verizon"). See [Global Naps, Inc. v. Verizon New Eng., Inc.](#), 603 F.3d 71, 79 (1st Cir. 2010). Verizon counterclaimed, and won a \$58 million judgment. *Id.* at 79-80. We bypass here a description of the business relationships, which are amply described in that opinion and other opinions. On remand, the district court found that Gangi, the owner of GNAPs, was jointly and severally liable for the \$58 million judgment because GNAPs was merely an alter ego for Gangi. *Id.* at 81.

[*36] In 2010, the district court placed the assets of many entities owned by Gangi into receivership and appointed Jenkins receiver. The district court empowered Jenkins to "take any actions to identify, safeguard and preserve the assets of the Judgment Debtors, to make all business decisions over the assets and operations of Judgment Debtors, and to implement, satisfy and enforce" the receivership order. Over the years, the receiver did just that. The district court judge here had approved prior sales of assets by the receiver and had extensive experience with this case at the time this sale occurred.

Pursuant to these duties, on March 28, 2013, Jenkins entered into an exclusive agreement with Hilco IP Services LLC ("Hilco") to market **[**3]** internet protocol addresses ("IP addresses") owned by the estate.¹

Hilco's marketing agreement did not extend to any other receivership assets. Between the engagement of Hilco and the sale at issue, Jenkins accepted only two offers to purchase blocks of IP addresses. Both sales were through Hilco. In one of these sales, Jenkins sold 65,536 IP addresses to Mid-Continent Communications for \$376,832.

On March 10, 2015, the district court made it clear that the receivership should be brought to an end through prompt disposition of the remaining assets. In an order, it stated: "In the spirit of bringing this case to an end, the receiver shall file a status report within 30 days of this order giving a preliminary accounting In that report, the receiver shall also propose a timeline for filing his final accounting." On December 3, 2015, Jenkins filed a motion requesting an order approving a sale of the remaining receivership assets to Northeast Technology Solutions, LLC ("Northeast") for \$525,000. The property included, "five (5) lots of vacant land located in Las Vegas, NV"; "several domain names registered to GNAPs entities"; "telephone number blocks"; and four blocks of IP addresses, **[**4]** for a total of 114,688 addresses. For reasons having to do with the resolution of other litigation, the price had to be allocated to its different components. The receiver, by agreement of the parties to the sale, allocated \$50,000 of the purchase price to the real property in Las Vegas, \$275,000 to a block of 65,536 IP addresses, and \$200,000 collectively to the remaining IP addresses, domain names, and telephone numbers.

A footnote to Jenkins's motion for an order approving the sale stated: "Northeast has a relationship with HilcoGlobal, and any fee otherwise due to HilcoGlobal under any agreement with the Receiver has been waived." The receiver also posted the motion and information about the sale on his website.

Gangi filed an opposition to the sale order, making arguments that the price was too low and the sale was prohibited because "Hilco acted as the exclusive marketing agent with respect to the very assets at issue." But he did not contest the accuracy of the receiver's representations. Jenkins filed an extensive point-by-point reply justifying the sale price as to each of the categories of assets sold. He elaborated on the relationship between Northeast and Hilco, stating, **[**5]** "Northeast's relationship with Hilco is one of an associated entity that purchases various assets for later

¹"An Internet Protocol address, or 'IP address,' is a unique number corresponding to a particular computer accessing the internet." [Doe v. Gonzales](#), 500 F. Supp. 2d 379, 387 n.8

[\(S.D.N.Y. 2007\)](#). The estate included the registration rights to thousands of IP addresses.

marketing and sale by Hilco."

The district court entered an order approving the sale on December 30, 2015. The court found that the sale of the estate's [*37] remaining assets would "allow for the orderly wind-up of the Receivership" and that "[t]he wind-up and completion of the Receivership as soon as possible is in the best interest of all parties involved in the Receivership." The order found that the sale was "in the best interest of the Receivership." It rejected Gangi's objections, finding them to have no merit on the record before it, and found that the terms and conditions of the asset purchase agreement, including the sale price, were "fair and reasonable under the circumstances." Gangi appealed.

II. Equitable Mootness

Despite Jenkins's arguments, we believe the appeal is not equitably moot. [HN1](#) [↑] Equitable mootness is "rooted in the 'court's discretion in matters of remedy and judicial administration' not to determine a case on its merits." [In re Pub. Serv. Co. of N.H.](#), 963 F.2d 469, 471 (1st Cir. 1992) (quoting [In re AOV Indus., Inc.](#), 792 F.2d 1140, 1147, 253 U.S. App. D.C. 186 (D.C. Cir. 1986)). We have said that equitable mootness is appropriate where, in the absence of a stay, a sale has progressed so far that relief would [*6] be impracticable. [Id.](#) at 473.

Jenkins argues the appeal is equitably moot because the sale would be difficult to unwind. In [In re Public Service Co. of New Hampshire](#), the court looked to the following three factors to determine whether an appeal was equitably moot: (1) whether the appellant "pursue[d] with diligence all available remedies to obtain a stay of execution of the objectionable order," [id.](#) at 473 (citation omitted); (2) whether the challenged plan proceeded "to a point well beyond any practicable appellate annulment," [id.](#) at 473-74; and (3) whether providing relief would harm innocent third parties, [id.](#) at 475.

Gangi failed to appeal the denial of a stay, so the diligence factor weighs against him in the analysis. The other two factors weigh strongly against Jenkins. Jenkins shows that the sale was complex, required regulatory approval, involved disparate assets, and took months to close. These challenges do not mean that the sale has moved beyond practicable annulment. Jenkins does not state that Northeast no longer has the assets in question. Jenkins also fails to show that relief would result in any harm to innocent third parties.

Jenkins relies heavily on [In re Stadium Management Corp.](#), 895 F.2d 845 (1st Cir. 1990), to argue that an appeal is moot where a bulk sale of assets [*7] has been completed. That case pertains only to statutory mootness under [11 U.S.C. § 363\(m\)](#), which does not apply here.

III. Approval of Sale

[HN2](#) [↑] We review the order approving the sale for an abuse of discretion. [Fleet Nat'l Bank v. H&D Entm't, Inc.](#), 96 F.3d 532, 540 (1st Cir. 1996) (citation omitted). Any subsidiary findings of fact are reviewed for clear error, and holdings of law are reviewed de novo. [Id.](#) There was no abuse of discretion, and Gangi's arguments to the contrary are without merit.

A. The Fiduciary Argument

[HN3](#) [↑] It is true that "a full-fledged fiduciary, such as a trustee or court-appointed receiver . . . may not normally sell estate property to himself even if the terms are fair." [Id.](#) But Gangi presented no evidence that Hilco, a mere sales agent, was a fiduciary, or that Northeast, through Hilco, was a fiduciary, and there is no reason to think they were. The district court implicitly rejected Gangi's argument that Hilco was a fiduciary, and it was correct to do so.

Hilco, contrary to Gangi's argument, is not a "full-fledged fiduciary," and so is not [*38] subject to automatic disqualification from purchasing receivership assets. [HN4](#) [↑] "The central reason for disqualifying the fiduciary as a buyer is that there is no one else who can similarly protect the estate's interest." [Id.](#) at 541 [*8]. Here, it was Jenkins who had control over the receivership assets and protected the estate's interests.

[HN5](#) [↑] A blanket prohibition applies to fiduciaries because, "the main assurance that the estate will be maximized is the zeal of the seller to secure the best price, and that zeal is likely to be tempered if the seller is selling to himself." [Id.](#) at 540. Jenkins is the seller here, not Hilco. Hilco's relationship did not create a risk that Jenkins's "zeal . . . to secure the best price" would be "tempered." [Id.](#) To the extent Gangi asserts that Jenkins is self-dealing by selling to his own agent, that argument goes nowhere on these facts. There is no evidence that Jenkins, the receiver, had a stake in the transaction.

Gangi attempts to rely on [Martin v. Feilen](#), 965 F.2d 660 (8th Cir. 1992), but that case is factually distinguishable.

The court there found that accountants were fiduciaries to a retirement plan where "they recommended transactions, structured deals, and provided investment advice to such an extent that they exercised effective control over the [plan's] assets." *Id.* at 669 (emphasis added). Hilco did not have effective control over the estate's IP addresses; it was merely responsible for marketing them. Gangi argues that Hilco negotiated **[**9]** deals with potential buyers and "secured the offer for at least one of the prior sales." That is what Hilco had been hired to do -- find buyers for the property.

In *Fleet National Bank*, we highlighted the dangers of extending the "circle of automatic disqualification" too far. *96 F.3d at 541*. Disqualification of too many buyers risks harming the estate by disqualifying a would-be highest bidder. *Id.* This danger is especially pronounced where, as here, "the universe of serious buyers is likely to be small." *Id.* Finding buyers for the IP addresses was difficult, and Jenkins had only accepted two offers over almost two years.

B. Propriety of Selling to Northeast

HN6  "[J]udgments as to disqualification of a non-fiduciary purchaser should be made on a case by case basis, taking account of all of the surrounding circumstances." *Id.* at 540. The district court has "wide discretion in judging whether a receiver's sale is fair in terms and result and serves the best interests of the estate." *Id.* The district court took the circumstances of the sale into account, including Hilco's relationship with Northeast (disclosed by the receiver), the purchase price for each of the assets, and the importance of quickly winding up the **[**10]** receivership.

Gangi is incorrect that this sale was improper under *Fleet National Bank*; that case undercuts his argument. A receiver there sold a radio station to an accounting firm that had performed accounting services related to those radio stations.²*Id.* at 535-36. The accounting firm had been "merely hired by the fiduciary to perform a discrete and narrow function unrelated to the sale," and the sale was approved. *Id.* at 541. Under *Fleet National Bank*'s fact-specific analysis, the sale here was appropriate given the difficulty finding other buyers, the

need to quickly wind-up the receivership, Gangi's obstinacy, and the lack of evidence that Hilco abused its position as marketing agent.

[*39] As the district court held, "[t]he wind-up and completion of the Receivership as soon as possible is in the best interest of all parties involved in the receivership." The receivership began in 2010 and both this Court and the district court have made findings that Gangi has obstructed it throughout. This Court found the receivership has been, "hampered by Gangi, who, among other stratagems seemingly designed to conceal or protect his assets, apparently had transferred ownership of his \$400,000 Porsche **[**11]** to a ten-year-old child." *Global Naps, Inc. v. Verizon New Eng., Inc.*, *706 F.3d 8, 11 (1st Cir. 2013)*. The district court noted, in response to Verizon's request for sanctions, that Gangi's behavior throughout this litigation had been troubling and may warrant sanctions. The district court chose not to pursue sanctions because, "[t]he interests of justice strongly favor resolution, not additional litigation about sanctions." This transaction liquidated the last of the receivership assets, allowing Jenkins to provide a final accounting.

C. Fairness of the Sale

Gangi argues we should unwind the sale, asserting Jenkins did not produce evidence indicating the sale price was fair, but Gangi provided no reliable evidence and did not contest the receiver's factual representations. The only evidence Gangi provided on whether the sale of real property was undervalued was an out-of-date assessment from 2000, when the parcels of land in Las Vegas were more valuable than they were in 2015. Jenkins, in fact, provided a more current assessment of the value of the property, showing that Gangi's evidence was outdated. The real estate market in that location had collapsed, as the receiver noted. As to the IP addresses, Gangi gestured toward the higher per-address price in the **[**12]** prior sale to Mid-Continent in August of 2015, but that does not indicate the sale price to Northeast was unreasonably low under the circumstances. Gangi did not provide any evidence related to the value of the phone numbers or domain names.

The district court did have information relevant to the sale. It knew the price the receiver had previously attained for IP addresses, the length of the receivership, and the importance of completing the receivership. In addition, the district court was familiar with Jenkins. Jenkins had been receiver for five years when this sale was approved, and the district court had already

² Gangi claims the accounting firm in *Fleet National Bank* was "uninvolved with the assets to be sold," but this is incorrect. The accounting firm provided accounting services related to the radio stations, but the services they provided were unrelated to the sale of the radio stations. *Id.* at 535.

approved several sales Jenkins had arranged. Gangi appears to have been the only party who believed sale property was undervalued. The creditors to whom the sale proceeds would eventually go offered no objection that the amount realized was too low.

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In the absence of reliable evidence indicating that the sale was unfair, the district court relied on the business judgment of the receiver who had worked with it for five years, over Gangi's unsupported objections. This was not an abuse of discretion, particularly given Gangi's truculence and dishonesty throughout these proceedings. **[**13]**³

Gangi argues Jenkins was required to prove that the sale was fair because the fiduciary bears the burden of proving the fairness of a sale. In re Access [*40] Cardiosys., Inc., 404 B.R. 593, 691 (Bankr. D. Mass. 2009). The burden in that case only applies if a fiduciary is selling to himself. This burden does not apply here because Jenkins did not sell to himself and Hilco was not a fiduciary, nor was Northeast.

D. Required Disclosure and Good Faith

HNZ The district court has an obligation to "carefully monitor the sale process and assure that there is full disclosure and good faith." Fleet Nat'l Bank v. H & D Entm't, Inc., 926 F. Supp. 226, 245 (D. Mass. 1996).⁴ The court did so here. The relationship between Hilco and Northeast was sufficiently disclosed by the receiver before the court approved the sale. Jenkins made it clear that Northeast was an affiliate of Hilco, and explained Northeast's purpose.

The details of the sale were disclosed. Gangi has not cited any case law indicating that the district court was required to elicit more evidence from the parties about the prudence of the sale before approving it.

We affirm. Costs are awarded to Jenkins.

³Gangi argues the sale order was improper because the district court failed to make specific factual findings. He does not cite any relevant case law or, in the absence of case law support, develop an analysis indicating such findings were required, so his argument is waived. United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990). He relies on Thermo Electron Corp. v. Schiavone Constr. Co., 915 F.2d 770 (1st Cir. 1990), which concerns Fed. R. Civ. P. 52(a) and is inapplicable.

⁴Gangi also perfunctorily argued that there should have been a hearing prior to the sale order. This argument was not **[**14]** developed, so it is waived. Zannino, 895 F.2d at 17.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2020-CP-23-01886
COUNTY OF GREENVILLE	)	
	)	
ARO-D ENTERPRISES, LLC	)	
PLAINTIFF/COUNTERCLAIM	)	
DEFENDANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TIGER ENTERPRISES & TRADING,	)	
INC., BONNIE WALKER and	)	
DWIGHT WALKER,	)	
DEFENDANT/COUNTERCLAIM	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
TIGER ENTERPRISES & TRADING,	)	
INC.,	)	
THIRD PARTY PLAINTIFF/THIRD	)	
PARTY COUNTERCLAIM DEFENDANT,	)	
	)	
vs.	)	
	)	March 9, 2021
RUDY A. DIXON, FRANK T. GANGI,	)	Via Web Conferencing
and T3 AVIATION, LLC,	)	
THIRD PARTY DEFENDANTS.	)	
	)	

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE

A P P E A R A N C E S:

JASON JAMES ANDRIGHETTI, ESQ.
Attorney for the Plaintiff

STEVEN EDWARD BUCKINGHAM, ESQ.
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WESLEY D. FEW, ESQ.
Attorney for Defendant Tiger, Walker

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 10:37 a.m.)

THE COURT: This is ARO-D Enterprises vs. Tiger Enterprises, et al, Civil Action 2020-CP-23-1886.

I have, let's make sure, plaintiff's motion for summary judgment, I guess partial summary judgment, Defendant Tiger motion to compel, third-party defendant Gangi and T3 motion to compel, another Gangi motion to compel discovery, and then Gangi -- am I pronouncing that right? Gangi?

MR. BUCKINGHAM: That's correct.

THE COURT: All right. Motion for partial summary judgment.

So I think the first one I have is plaintiff's motion for partial summary judgment, so I'll hear that one first.

MR. ANDRIGHETTI: Your Honor, that's me, I think. My client and I will ---

THE COURT: And identify yourself. Make sure you identify for the record, please.

MR. ANDRIGHETTI: I apologize. Yes this is J.J. Andrighetti, attorney for ARO-D Enterprises, the plaintiff in this matter. I also represent Rudy Dixon personally, who I believe there are counterclaims filed against in this matter as well.

And, Your Honor, you actually have previously been

1 involved in this. We had a motion hearing last summer, so
2 I won't go into too much depth, but just to give a quick
3 brief background on the facts of this case. My client,
4 ARO Enterprises, it's a single member LLC, sole member is
5 Mr. Rudy Dixon. He's an elderly man in his 80s. He has
6 been in the aviation industry for the entirety of his
7 career. And essentially, what he does at this point is he
8 identifies planes that are kind of out of commission
9 around the world, buys them, reconstructs them and then
10 sells the parts or ships them to someone who will then
11 sell the parts and earns his money that way.

12 In this case he identified a plane several years ago
13 in the presidential fleet in Nigeria but had some wing
14 damage. Took some time but finally negotiated a purchase
15 after a couple of years, and in 2019, that summer,
16 traveled to Nigeria to begin deconstruction of the plane.

17 Leading up to that, I believe, over potentially two
18 years, he was in negotiations or discussions with a number
19 of different people and entities about warehousing the
20 parts or even potentially selling them on his behalf. One
21 of those parties was Tiger Enterprises, the defendant in
22 this matter. They proposed a consignment agreement. He
23 never signed the consignment agreement. He went to
24 Nigeria, began deconstruction of the parts. And once he
25 began deconstruction, he did agree to ship them back to

1 Tiger, which has a warehouse. And after he had
2 deconstructed a significant portion of the plane, returned
3 -- that occurred in July of 2019. He returned in August
4 of 2019, went to their office and their warehouse, asked
5 them to make an offer on the parts. He was unhappy with
6 the offer. Asked for his parts to be released to him.
7 They refused, and this case ensued.

8 The reason why this motion for partial summary
9 judgment is in front of you is because, at this point in
10 time, we believe that the defendants have admitted, as
11 outlined in my motion, that they don't have any ownership
12 claim to these parts. There is no contract. They've
13 admitted as much in their deposition. And when I say
14 "their deposition," I mean Dan Hansen's deposition.

15 And just so Your Honor is aware, Mr. Hansen was the
16 supervisor of what they call the Hawker 4000 program. The
17 Hawker 4000 program was essentially what they called my
18 client's project. He deconstructed a Hawker 4000, which
19 is a business jet. And so Dwight Walker and Bonnie
20 Walker, who are the owners of Tiger and Hansen's their
21 employee, they directed my client to speak with Dan Hansen
22 about this. And Dan Hansen, in his deposition has, I
23 again outlined in my motion, clearly admitted that there
24 is no contract in place, and that the only reason that
25 they're holding these parts now is as collateral. So

1 essentially, they are engaged in a prejudgment attachment
2 of these parts without having done any of the -- any of
3 the procedural -- having gone through any of the
4 procedural requirements to obtain a prejudgment
5 attachment.

6 And just to kind of speak to that a little bit, let
7 me just say once my client demanded the parts, which was
8 in late August/early September of 2019, the parts -- the
9 parties continued to exchange emails and conversations for
10 a few weeks. Initially, Tiger sent, on September 17th of
11 2019, an invoice to my client saying he owed them \$84,000
12 and some change for all the work they had done to
13 warehouse the parts, identify the parts and for a few
14 commissions on the sale of the parts. They later admitted
15 on October 17th, one month later, matter of fact, he
16 didn't owe any of those commissions, and the total amount
17 he owed to receive his parts back was \$16,855. They put
18 that in an invoice to my client on October 17th.

19 The parts they're holding are worth in excess of a
20 million dollars according to their own value, we think
21 closer to \$2 million, over a \$16,855 invoice. More
22 importantly, they admit they don't own them. Dave Hansen
23 admitted that, Dwight Walker admitted that in
24 correspondence with civil aviation authorities who are
25 responsible for certifying the Tiger business,

1 essentially.

2 So if they've got no claim to ownership of these
3 parts, they don't have a contract by their own admission,
4 that there is no reason for these parts to remain in their
5 hands. There is no claim under law that they have to the
6 ownership or possession of these parts. Accordingly, we
7 request the return of them.

8 And let's just be clear here. My client has his
9 life's work tied up in this plane. And the reason we're
10 holding onto these things two years later is simply to
11 bleed him out. If there's no basis in law, factually
12 speaking, it is very prejudicial to my client, and as
13 such, we think partial summary judgment at this time is
14 appropriate as to contract claim. Without a contract,
15 they've admitted there can be no breach of contract, and
16 without that contract, they cannot retain these parts.

17 So our position is the parts need to be released
18 immediately, the contract claims need to be dismissed.
19 There are plenty of other claims that will survive this,
20 and we'll take those up in due time. But that's the
21 plaintiff's position as of today.

22 THE COURT: Mr. Few? You're muted.

23 MR. FEW: I'm not sure. Y'all must be doing that to
24 me. I thought I had unmuted it.

25 Your Honor, simply put, if the Court looks at the

1 Baughman vs. AT&T case, 1991, which says that summary
2 judgment shall not be granted until a party has had a full
3 and fair opportunity to conduct discovery, that's my
4 number one argument for why this is premature. We
5 scheduled the deposition of Mr. Dixon for January the 8th
6 of this year while he was in Nigeria. J.J. got to me, I
7 think, December 30th and said something to the effect of
8 he only had 3G over there. And then J.J. emailed me on
9 January 7th and said they couldn't get the video
10 conference to work. We've not been able to take
11 Mr. Dixon's deposition.

12 Further, Your Honor, and I'm trying to be brief on
13 this because this is extremely premature, Mr. Dixon was
14 deposed on August the 14th of this year. My client has, I
15 think, four employees: Bonnie and Dwight Walker; Dan
16 Hansen, who is a vice president and, I think, a part
17 owner; and then they have another person that does one
18 other job. And they've had a few more than that, but
19 that's how many employees they have. That was not a
20 30(b)(6) deposition. I want to make that clear.

21 In addition, Your Honor, the affidavit that Dwight
22 Walker, who is here with me today, that we filed with the
23 Court on June the 10th, which was just prior to the last
24 hearing before Your Honor when Your Honor denied the
25 motion for injunction, so this is just a further attempt

1 by these fine gentlemen that, by the way, are working
2 together.

3 When I first got an email from Mr. Andrighetti, it
4 was dated September 15th of '19. And he says: I
5 represent Rudy Dixon and ARO-D and Frank Gangi and T3,
6 which is Frank Gangi's company. Since that time -- so
7 it's our position that Mr. Gangi was directing that
8 litigation, which was filed in 2019 as Case Number
9 2019-CP-23-06666. We had a hearing on our motion to
10 dismiss because the only party that was named to that was
11 ARO-D, which was a dissolved company for a period of nine
12 years in Florida. Judge Stilwell dismissed that case on
13 March 25th of last year. They refiled this case two days
14 later. Then we ended up in front of Your Honor for a
15 second motion for receivership to get control of these
16 parts.

17 But more specifically, as one might imagine in
18 today's environment, there is more to the story. And I
19 would also note that my fine colleague, Mr. Andrighetti,
20 just went through a litany of facts that are way beyond
21 what would be included in any affidavit that they've
22 submitted to the Court. And their affidavit that they
23 submitted is the same one they submitted in April of last
24 year.

25 But let me just direct the Court's attention to

1 paragraph 14 of the Dwight Walker affidavit filed on June
2 the 10th at 7:13 p.m. He says -- and prior to this, he
3 had been in negotiations with Mr. Dixon since 2014.
4 That's in the affidavit. He refers to a letter agreement
5 which was attached to the affidavit as Exhibit 2. In
6 looking at the record this morning, Your Honor, it appears
7 that I may not have filed the exhibits to this affidavit,
8 but I do know that we served them on the parties at that
9 time.

10 So there's a letter agreement, Your Honor, which was
11 Exhibit 2, which, among other things -- and just really
12 simply, I don't need to go into the details of the
13 agreement. The letter agreement was sent July the 24th,
14 and two days later Mr. Dixon ships the parts to my client
15 here in the United States. So my client has licenses that
16 allow them to bring these parts into the country. We are
17 not in the warehouse business, Your Honor. We never were
18 in the business of -- if they wanted a warehouse, they
19 could have gone over to Easy Storage over on Laurens
20 Road. But that's not the business that my client is in.
21 Then paragraph 15 goes into more detail about the letter
22 agreement.

23 So the statement in Mr. Andrighetti's motion where
24 they want to take the testimony of Mr. Hansen, we
25 stipulate -- we'll stipulate that Rudy Dixon did not sign

1 the consignment agreement after he said he would. We had
2 this letter agreement. There's numerous emails that went
3 back and forth, so that the statement that there is no
4 factual dispute is simply not true. The statement that
5 there is no letter agreement is not true.

6 And we've not had the opportunity to depose Mr.
7 Dixon. There's going to be a language barrier. All three
8 of the lawyers were on the phone yesterday afternoon.
9 Having now had experience with these Zoom depositions,
10 I've concluded that, unfortunately, you know, it's -- he
11 brought this lawsuit in Greenville County, he's going to
12 have to come to Greenville County and be deposed.

13 Now, J.J. can rightly say that we have not zippity
14 split rescheduled the deposition because everybody's
15 really busy, but we have not taken his deposition. And
16 we'll get into the other motions. Mr. Buckingham, I got
17 his discovery yesterday.

18 So, Your Honor, as far as the motions that are on the
19 roster for summary judgment that I have on the roster as
20 Numbers 5 and 9, our argument is -- and, as usual, Your
21 Honor, I've said more than Your Honor wants to hear. But,
22 you know, it's premature under the Baughman case. We have
23 not had an opportunity to depose these people. We haven't
24 gotten complete discovery responses from them. And make
25 no mistake about it to the Court, these gentlemen are

1 working together. Their clients are working together.
2 They have claimed a common interest privilege over their
3 communications. I'm fairly certain of that. If I've
4 misspoken, then, by all means, correct me.

5 And further, the first communication I get from
6 Mr. Andrighetti is that he represents both of these
7 people, and they're suddenly united against my client as
8 is evidenced by just looking at the pleadings.

9 And also, one more thing by way of background, Your
10 Honor. We also agreed to let Mike O'Shea go out and do an
11 inventory while the lack of jurisdiction lawsuit was
12 pending. Mr. O'Shea, who's a licensed private
13 investigator, took a gentlemen in the airline business out
14 to my client's facility on or about January 30th of 2020,
15 conducted an inventory, provided it to us. That was
16 submitted to the Court when we were before you last June.
17 Then they wanted to redo it. Then Mr. O'Shea does another
18 inventory at the end of August. All of the parts still
19 there. But nothing is missing. It's been verified by an
20 independent party twice.

21 Then, not only are we on the second lawsuit here, but
22 Mr. Gangi brought another lawsuit against my clients in
23 Massachusetts, which we had to retain counsel up there,
24 remove it to Federal Court, and we got a motion for a stay
25 based on the fact that everything up there was a

1 compulsory counterclaim down here. And we actually had a
2 motion pending on that in this case, but I think all the
3 parties kicked those down the road when none of us had
4 answered each other's discovery.

5 So we have three different lawsuits. We've allowed
6 the inventory to take place. It's just way premature for
7 summary judgment on any claims because we have not even
8 had the chance to review their discovery. They are
9 essentially one party. If we had to have it before the
10 Court under Rule 17 or something, you know, they would be
11 -- they are one party. So it's my client against the two
12 of them.

13 THE COURT: All right.

14 MR. FEW: And one final thing, Judge. And this is --
15 I can't remember if this my client's affidavit. My client
16 only agreed to do all this because they were also going to
17 get an opportunity to sell the tail and the engine of this
18 particular plane that was in Nigeria. The engine is worth
19 -- we believe that Mr. Dixon sold the first engine for
20 somewhere in the neighborhood of a quarter to a half a
21 million dollars. So that was all part of the inducement
22 to get my client to even deal with this matter in the
23 first place, and then we paid to ship the stuff here so
24 that we could start to sell it. We used our resources to
25 conduct an inventory of it and started marketing it, and

1 we did that pursuant to Your Honor's order from last June.
2 And, unfortunately, not a single sale has been able to
3 transpire due to the inability of the parties to
4 communicate.

5 THE COURT: All right. Mr. Andrighetti?

6 MR. ANDRIGHETTI: A brief response, Your Honor.
7 First of all, a majority of that is irrelevant to the
8 issue before you, which is a motion for partial summary
9 judgment. The few things that are relevant to you I will
10 just point -- or I believe are relevant to the argument,
11 I'll point out the argument, that it's premature. I
12 didn't bring up the old case, but thankfully, Mr. Few did.
13 This case, you know, in one form or another has been
14 pending since December or November of 2019. So the notion
15 that this is premature seems a bit of a stretch here.
16 This exact case has been pending almost 365 days now. It
17 was filed at the end of March last year.

18 My client was available for a deposition through
19 November of last year, and I, again, made my client
20 available for a deposition in late January of this year.
21 It hasn't -- it hasn't happened. But more importantly,
22 it's irrelevant to the limited purpose of this motion,
23 which is a partial motion for summary judgment as to the
24 issue of the contract.

25 My clients provided an affidavit, which is before

1 this court, stating unequivocally there was no contract.
2 Their client has stated unequivocally in their deposition
3 there was no contract.

4 The second point that he raises is this letter
5 agreement. This letter agreement that isn't before your
6 court, I will -- before the Court, I will gladly describe
7 to the Court it is an unsigned letter unilaterally issued
8 by one party, which obviously is not a binding agreement.
9 But calling it a letter agreement does not make it so. It
10 is simply a letter which appears to be Mr. Walker trying
11 to bully his way into an agreement now that we're seeing
12 how it's used for the Court. So I don't believe those two
13 issues that he's raised are enough to challenge the
14 undisputed fact that there is no written agreement, that's
15 not enforceable, and that they are withholding these parts
16 as they -- not pursuant to an agreement but because they
17 consider them collateral. It's just a prejudgment
18 attachment. It's improper, and considering they have no
19 agreement, I think summary judgment is proper at this
20 time.

21 THE COURT: All right. Any additional brief
22 response, Mr. Few, to that?

23 MR. FEW: Your Honor, I've already noted that that
24 was not a 30(b)(6) deposition. Mr. Hansen was only
25 involved on the tail end of this after Mr. Walker was the

1 sole person in communication with Mr. Dixon during all
2 this time period leading up to July of 2019 when he
3 decided to ship us the parts.

4 And further, there's a great deal of misunderstanding
5 amongst many lawyers, including myself, about what exactly
6 constitutes an electronic signature under South Carolina
7 Code 26-6-10 et seq, which is our version of the Uniform
8 Electronic Transactions Act. And there is an abundance of
9 electronic communications back and forth between the
10 parties including, Your Honor, an August 4 email that is
11 specifically detailed in my client's affidavit at page 25
12 where Mr. Dixon states to Mr. Gangi: Frank, good morning.
13 I have seen, read your email to me and Tiger Dwight. We
14 want to let you know that we want to do business with you
15 not in that kind of attitude to me or my client. So
16 clearly, he's ratified the fact that he's working with us,
17 then he agreed to work with us, and then all of that
18 changed sometime after that.

19 So there is an abundance of electronic
20 communications, and as set forth in this affidavit, there
21 are multiple agreements on specific parts that occurred
22 after this time period that he -- that he was in the
23 process of refusing to sign the consignment agreement. So
24 the fact that he didn't sign the consignment agreement,
25 these are the same issues that we were here on a year ago,

1 same affidavit, same facts. They just want to extrapolate
2 the fact that he bait and switched my client and refused
3 to sign the consignment agreement to get the parts back,
4 which, by the way, this is really an attack on an order of
5 the Court on Your Honor's order of June the ---

6 THE COURT: Oh, I get attacked all the time, Mr. Few.

7 MR. FEW: This is a collateral attack on an existing
8 order that Your Honor signed on June the 11th denying the
9 motion for an injunction which in and of itself states
10 that they had no likelihood of success on the merits. And
11 so even though they had no likelihood of success on the
12 merits, now they're back before the Court claiming there's
13 no dispute of material fact. There's clearly an abundance
14 of material disputes on fact.

15 And as far as Mr. Andrighetti filing the first
16 lawsuit, it's not my fault that he filed a case on behalf
17 of an entity that didn't exist.

18 THE COURT: All right. Let's talk about discovery
19 issues. I think you have a motion to compel.

20 MR. FEW: Yes, Your Honor. And I think Your Honor
21 maybe skipped. There's a 10 on the roster that I have
22 that is a motion that Mr. Andrighetti filed that I guess
23 the Court will also deal with. But we were on the phone
24 yesterday, myself and both of these gentlemen, and I think
25 6 and 7, my client -- and I want to be clear on this. We

1 responded -- and because I've made clear also I believe
2 that these are the same parties. We're responding to
3 multiple sets of discovery from parties that are actually
4 acting together.

5 THE COURT: Because my numbers may be different than
6 what you're talking about there. So I have plaintiff's
7 motion for summary judgment we just talked about. And I
8 have Number 6 is defendant's motion to compel.

9 MR. FEW: Yes, sir. I'm talking about 6 and 7 right
10 now. I was jumping ahead to 10 because I don't think Your
11 Honor mentioned that one a minute ago. 6 and 7, we
12 provided the remainder of our responses on Friday. We
13 have already produced 529 pages of documents that were at
14 -- during the deposition of Mr. Hansen back in August,
15 about the time we had these hearings in front of Judge
16 Kinlaw in which he denied ---

17 THE COURT: What is still outstanding on your motions
18 to compel? All right. 6 and 10. I see that.

19 MR. FEW: On my motion, Your Honor, I've got --
20 Mr. Buckingham provided me with responses yesterday at
21 sometime after 4 p.m. via Dropbox. I have not put one
22 single eyeball on them yet. My staff has downloaded them.
23 He acknowledged to me on the phone yesterday that there'll
24 probably need to be some supplement. So I would ask for
25 -- you know, however the Court wants to handle it -- 15 to

1 30 days to allow us to review his responses. And, I mean,
2 we can -- but I wouldn't -- I don't want to have to refile
3 my motion because we just -- I mean, this is discovery
4 that we served in September, Your Honor.

5 THE COURT: What do y'all say about that?

6 UNIDENTIFIED: So I guess my name is Mitchen Rice
7 [phonetic]. I can go.

8 Mr. Few was -- he's exactly right. I got my
9 discovery responses to him yesterday afternoon. And I --
10 I've got no problem if the Court wants to continue this
11 and allow Wes time to look at what's in there and hope
12 that we can discuss about what needs to be provided. I'm
13 going to have the same issues with my motion to compel
14 against him, so I've got no problem with that.

15 THE COURT: Do we have -- and I don't mind doing that
16 to give y'all a chance to see what's out there so we don't
17 beat our head against the wall, and it's not something
18 that we need to do anyway. So that is -- does that cover
19 -- that covers 6 and 10. How about ---

20 MR. FEW: Actually, Your Honor, I think that was 6
21 and 7.

22 THE COURT: I've got a different -- mine's got a
23 different -- okay. 4 is Gangi's motion to compel. Okay.
24 It is the same there now. All right. So that's 6 and 7.
25 We'll continue that for 30 days.

1 MR. FEW: And I think -- okay. 30 days, Your Honor.

2 THE COURT: Will that give y'all enough time? Okay.

3 Let's say 30 days.

4 MR. FEW: And then you'll put in the order, I guess,
5 that if we have issues, we just follow up with the Court
6 to request a follow-up hearing or something to that
7 effect.

8 THE COURT: Yeah. All right.

9 UNIDENTIFIED: Your Honor, Motion Number 8 is -- in
10 my order of things, is Mr. Buckingham's motion to retake
11 the deposition of Dan Hansen.

12 THE COURT: Right. Okay. And then 9 would be
13 Gangi's motion for partial summary judgment. And 10 is
14 your motion to compel. Is 10 also -- needs to be
15 continued?

16 MR. ANDRIGHETTI: That's me, Your Honor, I believe.
17 And I would ask that it not be continued. It's a fairly
18 limited issue.

19 THE COURT: Oh, okay. That is the plaintiff's. It
20 said defendant's on my -- I mean, but that is Mr. Few.
21 Well ---

22 MR. ANDRIGHETTI: We can take about two minutes, I
23 think, Your Honor.

24 THE COURT: Let's get over -- okay. So I guess we do
25 need to hear Number 8, which is the -- whether we need to

1 schedule another part of a deposition; is that correct?

2 That is Mr. Buckingham's motion.

3 MR. BUCKINGHAM: Yes, Your Honor.

4 THE COURT: All right. I'll be glad to hear from
5 you.

6 MR. BUCKINGHAM: Yeah. And this will be brief. I
7 think I requested two minutes to argue this motion, and I
8 plan on strictly abiding by that. So ---

9 THE COURT: All right. I'm pushing the clock. Go
10 ahead.

11 MR. BUCKINGHAM: That's right. I'm on the clock.

12 So the issue here is that Mr. Hansen was previously
13 deposed. At the time of his deposition, my clients
14 Mr. Gangi and T3 Aviation, Inc. was -- has been
15 misidentified as LLC, they were contesting personal
16 jurisdiction in South Carolina. I did not want to
17 prejudice my position on that by showing up and
18 participating in that deposition.

19 Mr. Hansen's deposition lasted four hours.
20 Mr. Andrighetti conducted that. So it wasn't a full day.
21 We would request the ability to have two hours to depose
22 Mr. Hansen. The issues that I presume the deposition will
23 be confined to are the damages in this case. I'm going to
24 get to that more on my motion for partial summary
25 judgment.

1 But if we're going to have a hope of resolving this
2 case, we've actually got to know what Tiger's damages are.
3 And so we would request that opportunity to conduct just a
4 limited deposition of Mr. Hansen from my client's
5 perspective. And I would also note that when
6 Mr. Andrighetti took Mr. Hansen's deposition, it's my
7 understanding that there were 500 documents produced by
8 Tiger that were supposed to be produced in advance of that
9 deposition that got produced the day of the deposition.
10 Mr. Andrighetti left the deposition open so that he can
11 review those documents and resume it later. And that
12 still is yet to happen.

13 So it seems like the simple thing is just to allow me
14 to tack onto that resumed deposition. But I don't think
15 that we've got an agreement on that.

16 THE COURT: All right. Mr. Few?

17 MR. FEW: Your Honor, Mr. Buckingham's client, as I
18 mentioned, has been involved in this matter since as early
19 as September 15th of 2019. Actually, earlier than that as
20 outlined in my client's affidavit that he contacted my
21 client about buying ---

22 THE COURT: Go ahead. Why shouldn't he be able to
23 depose for two hours?

24 MR. FEW: Because they -- they sought to take
25 Mr. Hansen's deposition despite his limited involvement.

1 He's probably been deposed in this matter for the same
2 length of time that he spent working (audio interference)
3 the parts arriving. His involvement was after the fact in
4 marketing the parts, okay?

5 Secondly, Your Honor, and it's not my business to
6 tell Mr. Buckingham how to run his practice, but if he
7 wants a damages testimony, he should do a 30(b)(6)
8 deposition. Mr. Hansen is merely an employee of my
9 client.

10 Secondly, Your Honor, they insisted on going forward
11 with that deposition on August the 14th. Mr. Buckingham
12 had what, frankly, were frivolous jurisdictional arguments
13 given his numerous -- his client's numerous contacts with
14 this -- with the State of South Carolina in this matter
15 including buying parts that my client shipped to him in
16 August of 2019. Judge Kinlaw disposed of that motion on a
17 Form 4 and denied it August 20th. So this is, frankly,
18 gamesmanship to require us to bring the man to come back
19 and sit for another deposition. Mr. Andrighetti did an
20 excellent job, thoroughly deposed him. Mr. Buckingham
21 strategically chose not to participate, relying on his
22 jurisdictional arguments which failed, and they failed
23 with -- they didn't fail on a scintilla, Your Honor.

24 THE COURT: Okay. But keep to the motion we're on.

25 MR. FEW: And so the Rules of Civil Procedure --

1 Rules of Civil Procedure say you take somebody's
2 deposition one time. And he knew he was going to be going
3 in this lawsuit. He sent suit to us in Massachusetts.
4 And so, you know, it's just gamesmanship, Judge. Let's
5 get on with discovery. They can -- Mike Walker, he's the
6 one that's got the most to do with this. They've already
7 deposed Mr. Hansen.

8 THE COURT: All right. Were there documents that
9 were not available at the time of the deposition?

10 MR. FEW: Your Honor, we produced documents the day
11 before and a few documents afterwards. If they want to do
12 a limited deposition on the documents, and there's a clear
13 record between myself and Mr. Andrighetti about which
14 documents were not provided, but, see, the thing is, this
15 is not so much -- this is not even Mr. Andrighetti's
16 motion. Once again they're working together. It's
17 Mr. Buckingham's motion, because they want to make Dan
18 Hansen come back and sit for another deposition.

19 THE COURT: I believe, Mr. Buckingham, if I'm not
20 mistaken looking through the papers, you've agreed to do
21 this by Zoom.

22 MR. BUCKINGHAM: Yeah. I'll do whatever's
23 convenient.

24 THE COURT: All right. I'm going to allow the
25 deposition for two hours by Zoom. So . . .

1 MR. FEW: Thank you, Your Honor.

2 THE COURT: All right. Now Number 9, Gangi's motion
3 for partial summary judgment.

4 MR. BUCKINGHAM: Yes, Your Honor. And I know I
5 explained this just a moment ago, but for the sake of a
6 complete record, the folks that I represent are T3
7 Aviation, Inc. and Frank Gangi.

8 With regard to T3, it has been misidentified.
9 Hopefully, at some point we can correct the caption to
10 where it will be identified as the proper party.

11 With regards to Mr. Gangi, I think it is wise and
12 responsible of me to note that we are not waiving any
13 objection of personal jurisdiction. In the event that
14 this case survives trial and we go to appeal it, the
15 personal jurisdiction issue will be raised again there.

16 So in any event, with that being said, let me just
17 turn very briefly to my motion for partial summary
18 judgment. Mr. Gangi and T3 Aviation are located in the
19 Northeast. They have a sincere interest in buying this
20 aircraft, the parts of this aircraft that are at issue in
21 this case. As Mr. Andrighetti explained, all the parts of
22 this torn-down aircraft are located at Tiger's facility in
23 Pelzer. We have been sued on a variety of causes of
24 action including tortious interference with contract,
25 violation of the Unfair Trade Practices Act.

1 I -- you know, there have been many benefits to
2 COVID, I suppose, in addition to a lot of complications.
3 One of the benefits of COVID is I've had a little bit of
4 time to reflect back on what is it I'm trying to do with
5 my career. And I am mindful of trying to keep in mind,
6 particularly as I go forward and become an older lawyer,
7 about what is actually at stake in the cases that I
8 litigate. And I, honest to God, believes that this is a
9 \$25,000 lawsuit that has been escalated into a million
10 dollar plus lawsuit because of the parts that are being
11 withheld. And the involvement of my clients into this
12 situation are that they service the very type of aircraft
13 at issue.

14 And just so you know, this aircraft is pretty rare.
15 This Hawker 4000, it's a business jet. It's kind of like
16 a contender to a Lear jet. Something like only 60 were
17 ever made. And the market for these parts off of aircraft
18 so that you can service ones that are continuing to be in
19 people's fleets and in operation, it is extremely,
20 extremely lucrative.

21 So in that connection, my clients wanted to buy these
22 parts. And they have worked out -- or are close to
23 working out and papering up an arrangement with Mr. Dixon
24 to do so. But as long as these parts are being held in
25 Tiger's warehouse, nothing can be done with them. These

1 parts can't be sold. The parties are cooperating to sell
2 them.

3 And so as we look at what -- what is the core of this
4 case, and then building out from it, what are all the
5 other things that the lawyers are letting on top of this.
6 The core of this case, I think, is very simple: Who owns
7 these parts. And I don't perceive that if anyone will be
8 candorous, I don't perceive there's any dispute about
9 this.

10 THE COURT: Well, it's your motion though, your
11 motion for summary judgment.

12 MR. BUCKINGHAM: Sure. Of course. But this ties
13 into that.

14 So it's Mr. Dixon that owns the parts. It's Tiger
15 that's holding them. And all my guy -- my clients wanted
16 to do was buy the parts. And they have been sued for
17 tortious interference.

18 Mr. Andrighetti spent the bulk of his argument saying
19 that there is no contract between his client and Mr. Few's
20 client, and that is the contract that we have been sued
21 upon, that we have tortiously interfered with. It's a
22 pretty basic proposition, Your Honor. If there is no
23 contract, there is no contract to interfere with. And it
24 sounds like there's acknowledgment today on this call that
25 there is no written contract between the parties, and in

1 the absence of a contract with regard to these parts that
2 are being held at Pelzer, there's nothing for us to
3 interfere with. We ought to have summary judgment granted
4 in our favor against that claim brought against my clients
5 by Tiger.

6 In that same connection, I brought a declaratory
7 judgment action as part of my counterclaims, and the
8 declaratory judgment action was very simply to declare
9 there is no contract. I don't perceive there to be a
10 dispute about the fact that there is no contract between
11 ARO-D and Tiger Enterprises. And if there is no contract,
12 then judgment, as a matter of law on my declaratory
13 judgment action, is appropriate, in addition to the fact
14 that there's no contract that can be tortiously interfered
15 with.

16 The final aspect of my motion for partial summary
17 judgment pertains to Mr. Few's claim against my clients
18 for violation of the Unfair Trade Practices Act. As you
19 know, you see these all the time, the Unfair Trade
20 Practices Act prohibits wrongful conduct in the conduct of
21 trade or commerce that affects the public interest.
22 There's no impact on public interest here. This is a
23 private relationship between two parties that we have been
24 roped into. So in the absence of a public interest
25 element, there is no violation of the Unfair Trade

1 Practices Act.

2 And specifically, with regard to the assertions that
3 were made in the complaint against my clients that they
4 have committed -- that they have made false statements
5 that Tiger relied upon and have caused Tiger damages,
6 well, this is why I wanted to depose Dan Hansen
7 specifically about the amount of Tiger's damages. I think
8 that they are exceedingly slight compared to what is now
9 presently at stake because of these parts being wrongfully
10 withheld.

11 And as far as the false statements go, again, we have
12 no idea what false statements we could have made to Tiger
13 that they could have relied upon that would form a
14 predicate for an unfair trade practice. And we think that
15 ought to be out. Ultimately, we've just got to chisel
16 this case down to what matters, to make what matters
17 matter, and that's what we're trying to do through this
18 motion.

19 If you have any questions, I'm glad to answer them.

20 THE COURT: All right. Mr. Few?

21 MR. FEW: Your Honor, due to the arguments before,
22 this is premature. And since Mr. Buckingham has had the
23 liberty to provide the Court with his characterization of
24 this case in view of his career, I'll just let the Court
25 know exactly what he said to me on August the 19th after,

1 I believe, Judge Kinlaw indicated he was denying all of
2 the motions that they filed together that day. We met in
3 the conference room outside, I think, Courtroom 7. I was
4 told by Mr. Buckingham that he has a blank check for
5 Mr. Gangi to litigate this thing, and I was a little taken
6 aback by that. But I've diverged enough, maybe not quite
7 as much I normally do with Your Honor, but I also heard
8 Mr. Buckingham quote the testimony of Mr. Andrighetti that
9 there is no contract. Well, we dispute that. We don't
10 dispute that the man did not sign the consignment
11 agreement that was sent to him that he said he would sign.
12 But we have all kinds of correspondence. The existence of
13 the agreement between the parties is an issue that is
14 materially in dispute as is plain from my client's
15 affidavit that was filed in June of last year.

16 So, Your Honor, and also I'll bring one more thing.
17 Mr. Buckingham goes to lengths, and they keep referring to
18 like how these parts are worth so much money. But
19 Mr. Andrighetti, I served a very limited set of discovery,
20 and they produced 76 emails between Mr. Dixon and
21 Mr. Gangi that were taking place at the same time my
22 client was negotiating to get these parts. Mr. Dixon made
23 the choice to send these parts to my client and let my
24 client pay for it even though Mr. Buckingham is telling
25 the Court that his client knew that they're basically

1 priceless. Well, he could have bought them, but he
2 didn't. And so, you know, Your Honor, nothing that he has
3 said that has been presented today shows that any of these
4 parties are ready for summary judgment, and certainly not
5 anything that Mr. Buckingham has added to it. Is that a
6 question for another day? It surely may be.

7 And -- so but at this point, we haven't deposed
8 anybody, just their responses. I've answered
9 Mr. Buckingham's discovery in great detail laying out all
10 the things that we allege are false statements from his
11 clients, many of which are set forth in my client's
12 affidavit, one of which the foundation of the lawsuit that
13 they brought in Massachusetts. Mr. Gangi claims that he
14 has an agreement with Mr. Dixon. And we've been trying to
15 get our hands on that since September of last year when
16 they filed the lawsuit alleging that we were interfering
17 with his agreement for which we had no knowledge of
18 because we didn't know who the man was until he contacted
19 us the day after the parts arrived at our facility.

20 So for all those reasons, we would ask that that
21 motion be denied, the same as Mr. Andrighetti's motion for
22 summary judgment should be denied, and the primary reason
23 being that there's material issues of fact in dispute, and
24 it's extremely premature.

25 THE COURT: All right. Mr. Buckingham?

1 MR. BUCKINGHAM: Yeah. Just very quickly. I hate
2 discovery. It is complicating this case. There is one
3 document that matters in this case, and that document is
4 whether or not ARO-D had a contract with Tiger. If they
5 did, we're in one set of circumstances. That contract has
6 not been produced. It does not exist. And any claim
7 based off a contract must necessarily fail. We've been at
8 this for long enough to know whether or not there's a
9 contract, and it doesn't exist.

10 But the core of this boils down to who owns these
11 parts, and why are they in Tiger's possession. There's no
12 dispute that ARO-D owns these parts. There's no dispute
13 about that. And there is a substantial question about why
14 Tiger continues to hold these parts. And until we resolve
15 that, I don't -- I don't know how we can get this entire
16 case resolved. But we've got to at least have that based
17 on the understanding that Tiger does not own these parts
18 and can't withhold someone else's property as security
19 from this case.

20 THE COURT: All right. And finally, I guess,
21 Mr. Andrighetti, your motion to compel.

22 MR. ANDRIGHETTI: Yes, Your Honor. Very briefly.
23 We'd sought discovery last spring that was produced as
24 noted just the day prior to Mr. Hansen's deposition, and,
25 again, some more was produced after the deposition. In

1 those discovery responses, a number of items as identified
2 in my motion included redacted information. Just so
3 you're aware, of the parts that were shipped to -- of the
4 Hawker 4000 inventory that was shipped to Tiger, several
5 items were sold to third parties, interestingly, not
6 pursuant to the alleged consignment agreement. That said,
7 those transactions are what we're trying to find out
8 about.

9 Now, the redaction was not complete, so I was able to
10 figure out who a couple of those third parties were, and I
11 issued subpoenas. They're two companies based in Iowa. I
12 issued subpoenas to them and was able to get responsive
13 documents to demonstrate that the parts were sold for
14 double what they paid Mr. Dixon for -- or ARO for.
15 Unfortunately, I've not been able to sleuth out who that
16 third party was yet. I think that these items are
17 extremely relevant to the case, potentially prejudicial to
18 the defendant which is why they're being withheld.

19 The defendant raised some concerns that we were doing
20 this either for purposes of harassment or that this was,
21 you know, important commercial information. We've had
22 this information from two of them for approximately a
23 month now or maybe even a little bit longer. We haven't
24 done anything untoward with this information. The
25 defendant has suffered no prejudice by us learning of

1 those transactions.

2 In order for us to understand what happened and how
3 the defendant was acting and whether or not they think an
4 agreement's in place, we need to know how these
5 transactions occurred. So that's why we want to know who
6 they were.

7 THE COURT: All right. Mr. Few?

8 MR. FEW: Your Honor, as set forth in my client's
9 affidavit at Paragraphs 27, 28, and 29, these parts were
10 purchased by my client from Mr. Dixon. So what we did
11 with them after he agreed on the purchase price for which
12 is very clear in the affidavit was outside the arrangement
13 of the consignment agreement whereby my client would have
14 been paid a percentage of the sale pursuant to the
15 consignment. Mr. Dixon must have needed the money, and he
16 agreed to release these parts. It's well documented in
17 our affidavit.

18 THE COURT: Why is he entitled to the discovery of
19 it? And then we can argue. I'm sure we'll have another
20 hearing on whether it's relevant at some point anyway.

21 MR. FEW: We gave them all the discovery they need,
22 Your Honor. All we did was redact the name of the parties
23 because we believe that that is our confidential
24 information. They have the amount. Mr. Hansen testified
25 that, you know, he did not have the specific amount in

1 front of him, but all they're trying -- this is all part
2 of their theory that we took these things and sold them
3 for a million dollars after we bought them from Mr. Dixon.
4 But the thing is, these are not handled under the
5 consignment agreement. These were separate agreements
6 that were handled whereby my client took ownership of the
7 parts.

8 And Mr. Andrighetti and I have gone over this, and
9 I've been learning a lot about the airline business. When
10 you own a part, if you ship it to somebody and it doesn't
11 pass like an FAA inspection, they send it back to you.
12 And so once you become the owner of the part, you bear the
13 risk that that part is going to be certified eventually,
14 or perhaps the cost of getting it certified.

15 So what happened here is these -- these are just
16 third-party transactions. My client could have bought
17 these parts from Mr. Andrighetti's client, and they could
18 have put them around their swimming pool if they have one.
19 But ---

20 THE COURT: Well, that's fine. We're just talking
21 about discovery here, and I'm going to allow them to get
22 that information.

23 MR. FEW: Well, Your Honor, can I say one more thing?
24 We've given them the amounts. We've given them the
25 invoice. They know ---

1 THE COURT: They're entitled to the information.

2 MR. FEW: They're entitled to go and harass our --
3 our customers.

4 THE COURT: I mean, you said there's all these
5 documents. I mean, you've got to figure out what this
6 contract, what it all involves. I think, based on what
7 you said, that there's no way to figure it out until you
8 get everything on the table. So they're entitled to the
9 identification of the third person, I guess the unredacted
10 information just to make sure as to what they've got. So
11 all three items shall be provided to them.

12 MR. FEW: Thank you, Your Honor.

13 MR. ANDRIGHETTI: Thank you.

14 THE COURT: All right. Anything else?

15 MR. ANDRIGHETTI: I don't believe so.

16 THE COURT: I didn't pause that long. So I didn't
17 mean -- all right. Well, I'll take a look at all this and
18 let y'all know what I come up with.

19 (WHEREUPON, proceedings concluded at 11:28 a.m.)
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on the
14 9th day of March, 2021.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 April 26, 2021
19
20

21 Cheryl A. Smith
22 Cheryl A. Smith, CVR-M
23 Court Reporter
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
13TH JUDICIAL CIRCUIT

ARO-D ENTERPRISES, LLC,
PLAINTIFF,
V.
TIGER ENTERPRISES & TRADING,
INC., BONNIE WALKER AND
DWIGHT WALKER,
DEFENDANTS/
COUNTERCLAIMANTS.

C.A. No.: 2020-CP-23-01886

**AFFIDAVIT OF
DWIGHT WALKER**

TIGER ENTERPRISES AND
TRADING, INC.,
3RD PTY PLAINTIFFS,
V.
RUDY A. DIXON, FRANK T. GANGI,
AND T3 AVIATION, LLC,
3RD PTY DEFENDANTS.

1. I am Dwight Walker. I am over eighteen (18) years old and I am competent to give this sworn testimony in this Affidavit under oath.
2. I am the Chief Executive Officer of the Defendant, Counterclaimant and Third-Party Plaintiff Tiger Enterprises & Trading, Inc. ("Tiger").
3. I have known Rudy Dixon since approximately 1977.

4. In or around October 2014, Rudy began communicating with us about his access and / or ownership of an inventory of parts from a Hawker 4000 aircraft, which we understood to be parts from a damaged airplane that were located in Nigeria.

5. On or about October 22, 2014, as I recall, Mr. Dixon was trying to get Tiger to buy the Hawker 4000 plane from the Nigerian government. As I understood it at that time, Mr. Dixon needed funds, and we were working with a third-party partner that had access to large amounts of capital, and we were considering the purchase, if we could do it with or through the partner.

6. At that time, Rudy had a partner named Peter Oxbjorn, and his company name was Danish Turbine, and we were communicating with both of them in our attempts to investigate and / or negotiate a possible purchase of the Hawker 4000.

7. In or around 2017, Tiger prepared and presented to Rudy Dixon and Peter Oxbjorn three different versions of offer letter(s) for some or all of the Hawker 4000 aircraft. We understood at that time that all such offers were rejected. The last offer was in July 2017.

8. We later learned that on or about October 30, 2017, the Nigerian government executed a purchase / sale agreement with ARO Enterprises (Rudy Dixon) for the entire Hawker 4000 aircraft.

9. In 2018, while Mr. Dixon / ARO / ARO-D already had the above-referenced 2017 Purchase / Sale Agreement with the Nigerian government, he was continuing to request Tiger to make offers on the entire aircraft.

10. In June of 2018, Mr. Dixon asked that Tiger make an offer for \$685,000.00 for the entire Hawker 4000 aircraft.

DW

11. In or around November of 2018, after finally learning that Mr. Dixon had the Hawker 4000 tied up in the above-referenced Purchase / Sale Agreement with the Nigerian government, we made it very clear that Tiger was only interested in a Consignment Agreement arrangement, and we sent over our first proposed Consignment Agreement to Mr. Dixon.

12. In or around June 25, 2019, on behalf of Tiger, we sent Mr. Dixon the Consignment Agreement, attached here as Exhibit 1, along with Purchase Order Nos. 403435, 403436 and 403437, as "zero cost" purchase orders to manage the Consignment Agreement and establish a chain of custody.

13. On information and belief, in or around July of 2019, Mr. Dixon, a/k/a ARO Enterprises, a/k/a ARO-D Enterprises, LLC, sold one of the engines from the Hawker 4000 for approximately \$400,000 to \$500,000, and used the proceeds from that sale to pay the Nigerian government for the purchase of the Hawker 4000.

14. We remained in communication with Mr. Dixon after sending the Consignment Agreement to him on June 25, 2019, and ultimately, on July 24, 2019, in consideration of his promise that he would sign the Consignment Agreement when he came to the United States, we sent him the letter agreement attached here as Exhibit 2.

15. Based on the letter agreement as set forth in the communications in Exhibit 2, Mr. Dixon released the Hawker 4000 parts to be shipped to Tiger on July 26, 2019. Tiger advanced the costs of shipping in an amount of approximately \$4,500.00.

16. On or about July 26, 2019, as shown on a Delivery Order from AIT Worldwide Logistics, 7350 South Kyrene Road, Suite 101, Tempe, AZ 85283, via their Shipment No. S00372475, the Hawker 4000 parts were sent to Tiger at their address known as 512 John Ross Court, Pelzer SC 29669.

du

17. On or about July 31, 2019, Tiger received the Hawker 4000 aircraft parts, consisting of one crate of materials about 4' x 4' x 5', and it also included one cardboard box approximately 30" x 30" x 30" on top of the crate. The parts included on the crate were wrapped in trash bags and piled on top each other. The parts were not packed in accordance with industry specifications, such as Air Transport Association specifications.

18. Upon receipt of the parts, Tiger began to conduct a receiving inspection of the inventory.

19. This inventory of over eighty (80) parts, has required Tiger to do approximately eighty (80) plus hours of labor to properly categorize and identify these parts for sale into the marketplace.

20. Mr. Dixon was obviously unwilling or incapable of paying to ship these parts from Nigeria to the United States, and had also made it clear to me that he was in need of cash to keep his business / life going.

21. On or about July 30, 2019, Tiger was contacted by Frank Gangi to request a quote for parts from the Hawker 4000 inventory. See emails dated July 30, 2019, attached here as Exhibit 3.

22. As shown in these initial emails with Mr. Gangi, who is now named as a third-party Defendant in this lawsuit, responded as follows:

We will NOT under any circumstances, buy parts from you. Nor will any other 4000 owner we know, nor will any shop we trade with.
A quote like this indicates you see us as a mark, not a customer, or worse.
I informed you weeks ago of our deal with Rudy, your failure to allow us to come get those part he and I agreed we would take amounts to tortious interference in our business dealing and we will hold you liable for same.
FTG

23. Around this same time, Mr. Gangi was communicating with Rudy Dixon via WhatsApp, which is similar to text messages, as shown below:

FROM: FRANK GANGI To: RUDY DIXON

➡ Forwarded

Rudy, I thought I would have heard back from you by now.

2:01 AM

➡ Forwarded

I am disappointed, I have enjoyed working with you. Sorry these crack head crackers at Tiger have caused a problem.

2:01 AM

24. Mr. Dixon forwarded the above messages to me, and around that same time, on or about August 5, 2019, Mr. Dixon sent an email to Mr. Gangi and copied me, stating as follows:

Dwight Walker

From: Rudy Dixon <rdixon@arosales.net>
Sent: Monday, August 5, 2019 1:39 AM
To: Frank Gangi
Cc: Dwight Walker
Subject: FW: Say Thank You

AUG 4/2019

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

From: Frank Gangi <frankgangi@gmail.com>
Sent: Thursday, July 11, 2019 10:14 AM
To: Rudy Dixon <rdixon@arosales.net>
Subject: Say Thank You

25. On August 6, 2019, Mr. Dixon sent an email to me, stating as follows:

-----Original Message-----

From: Rudy Dixon <rdixon@arosales.net>
Sent: Tuesday, August 6, 2019 11:52 AM
To: Dwight Walker <dwalker@tigerenterprises.com>
Subject: FW: Scan from Tiger Enterprises

DWIGHT

**I RUDY DIXON, I EXCEPT THE ORDER ATTACH FROM TIGER ENTERPRISE
 8/6/19 Thanks**

26. On or about August 1, 2019, in an email chain sent and received from approximately 12:12 P.M. to 2:37 P.M. (attached here as Exhibit 4), and based on the July 24, 2019 Letter Agreement, Tiger sent Mr. Dixon the following two items for approval: (i) Invoice No. ARO-1001 in an amount of \$4,500.00 representing the freight costs advanced by Tiger for shipping the Hawker 4000 inventory from Nigeria, and (ii) PO-403442, representing the sale of two items described as "822-0101-002 R/T ARINC 429 HIRF H," also known as Receivers,

priced at \$7,250.00 each for a total Purchase Order amount of \$14,500.00. These two (2) items are also identified in Exhibit 6 in red as Item Nos. 34 and 35.

27. On or about August 6, 2019, in an email sent at approximately 12:47 P.M. (attached here as Exhibit 5), and based on the July 24, 2019 Letter Agreement, Tiger sent Mr. Dixon the following two (2) purchase orders for approval: (iii) PO-403443, and (iv) PO-403444.

28. Purchase Order 403443 represents the purchase by Tiger of two (2) items identified in Exhibit 6 in red as Item Nos. 39 and 40, also known as couplers.

29. Purchase Order 403444 represents the purchase by Tiger the item identified in Exhibit 6 in red as Item No. 48, also known as a temp probe.

30. On or about August 8, 2019, Tiger wired funds to Rudy Dixon in an amount of \$5,000.00, as he was borrowing this money against future sales of the Hawker 4000 inventory, and told us he needed this money to contract for a company to tear down the Hawker 4000 airframe.

31. On or about August 19, 2019, Tiger arranged for the shipping of the remaining Hawker 4000 engine from Nigeria.

32. Shortly thereafter, we learned that the engine could not be shipped because Mr. Dixon had not paid for the warehouse costs for storing the engine.

33. On or about August 27, 2019, Mr. Dixon came to the Tiger facility in Pelzer, presumably for the purpose of signing the June 25, 2019 Consignment Agreement, as he had promised. We showed him where the parts were located in our warehouse, and we discussed the engine and the airframe for the Hawker 4000 that were still located in Nigeria and were also promised to us, as we had already arranged shipping on August 19, 2019, for these additional very valuable parts.

34. On that first day of his visit to the Tiger facility, Mr. Dixon was very evasive and refused to sign or talk much about the Consignment Agreement, but he said he promised us he would sign the Consignment Agreement first thing the next morning.

35. That evening, my wife and President of Tiger, Bonnie Walker, had taken Mr. Dixon to our home which is also in Pelzer, and before dinner, he got a phone call, which he walked outside to take. As he was talking on the phone to a person we are pretty sure was Frank Gangi, Bonnie overheard Mr. Dixon talking about how he would try to divert the inventory out of Tiger to him, and / or sell him as much of the airplane as he could.

36. One of the last things Mr. Dixon said when he left our facility in Pelzer on August 28, 2019, was to "keep selling," the Hawker 4000 inventory.

37. On or about August 28, 2019, as Mr. Dixon was leaving the Greenville area on a plane, Mr. Dixon called and asked that we ship parts to Mr. Gangi, also known as T3 Aviation. As part of this conversation, Mr. Dixon promised to pay Tiger a 45% commission consistent with the Consignment Agreement.

38. On or about August 30, 2019, via Purchase Order No. 403452, Tiger purchased the item known and shown in Exhibit 6, as item no. 3, also known as an Internal Reference System.

39. On or about September 1, 2019, Tiger shipped the parts identified on Exhibit 6 below as Item Nos. 12, 29, 30 and 57 to Frank Gangi / T3 Aviation.

38. As shown in Exhibit 4 and 5, Mr. Dixon replied and approved all of these invoices and purchase orders on or before August 6, 2019, and he received credits and / or funds from Tiger from these sales.

DW

39. On or about November 18, 2019, via our counsel Mr. Few, we accepted service of the prior lawsuit brought by ARO-D Enterprises, known as 2019-CP-23-06666.

40. In or around January of 2020, we had discussions with counsel to ARO-D through our counsel, Mr. Few, and we agreed to give access to Mike O'Shea to come onto our property and conduct an inventory of the parts from the Hawker 4000 on January 27, 2020. Attached here as Exhibit 6, is a spreadsheet that shows the ninety-two (92) parts that were identified or were not identified.

41. On or about January 28, 2020, I received a message through my counsel that counsel to ARO-D Enterprises, LLC and Mr. Dixon had requested by email, as follows:

Wes – my client has authorized Frank Gangi of T3 Aviation to pick up a few parts as we previously discussed. However, Frank wants to inspect the parts to make sure they're in good condition. Could we arrange a time for him to come in with Mike or Ray to look at the parts next week? Would that be ok with you Mike?

42. On this spreadsheet (Exhibit 6), the following four (4) item numbers shown in green as nos. 12, 29, 30 and 57 were shipped to Frank Gangi on or about September 1, 2019.

43. On this spreadsheet, the following six (6) item numbers shown in red as nos. 3, 34, 35, 39, 40, and 48 were the subjects of the approved Purchase Orders sent to Mr. Dixon on or before August 6, 2019.

44. On this spreadsheet, the following four (4) item numbers shown in yellow as nos. 36, 43, 47, and 53 were listed on an inventory sheet provided with the shipment to Tiger, but were not included in what we received.

45. On this spreadsheet, the following four (4) item numbers shown at the end of the spreadsheet as nos. 89-92, were identified by Tiger, even though they were not identified anywhere in the information provided with the shipped materials. Based on my experience and my research of the present market value of these item nos. 89-92, it is estimated that these item

nos. 89-92 could have been sold within 6-24 months and generate between \$70,000 and \$150,000 in revenue.

FURTHER AFFIANT SAYETH NOT.

Dwight Walker
DWIGHT WALKER

Pelzer, South Carolina
June 10, 2020

Sworn to and subscribed before me
this _____ day of ___, 2020.

A Notary Public
of the State of South Carolina

My Commission expires: _____

OR

Dwight Walker
DWIGHT WALKER

Pelzer, South Carolina
June 10, 2020

Certification in Lieu of Affidavit. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Table of Exhibits

- Ex. 1 – June 25, 2019, Consignment Agreement, Parts List and Purchase Orders
- Ex. 2 – July 24, 2019, Letter Agreement to ship parts from Nigeria
- Ex. 3 – July 30, 2019, threatening emails from Frank Gangi
- Ex. 4 – August 1, 2019, emails, Invoice and Purchase Order approved by Rudy Dixon
- Ex. 5 – August 6, 2019, emails, Invoice and Purchase Order approved by Rudy Dixon
- Ex. 6 – Hawker 4000 Parts Received, Sold and Shipped (provided to Mr. O'Shea)

WESLEY D. FEW, LLC

Attorney at Law

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O: 864-527-5906 | M: 864-404-7792

August 4, 2021

Via U.S. Mail and/or Email

The Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: ARO-D Enterprises, LLC v. Tiger Enterprises & Trading Company, Inc. et al
Civil Action No.: 2020-CP-23-01886
Our File No.: 00264-002

Dear Ms. Kitchings:

Enclosed for filing is an original and one copy of Defendant/ Appellant Tiger Enterprises & Trading, Company, Inc.'s Notice of Appeal relating to Judge Perry H. Gravely's Orders of April 16, 2021, and July 6, 2021. Also enclosed for filing are the three orders being appealed, our firm's Certificate of Service, and check number 10109 in the amount of \$250.00 for the filing fee. Please return a clocked-in copy to our office, a self-addressed, postage paid envelope is enclosed.

By copy of this letter, and as indicated on the Certificate of Service, we are hereby serving a copy of this Notice of Civil Appeal upon counsel to Respondents and the Greenville County Court of Common Pleas. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/ekm

CC: J.J. Andrighetti, Esq. (via U.S. Mail and email)
Steven E. Buckingham, Esq. (via U.S. Mail and email)
Greenville County Court of Common Pleas (via e-file)
Bonnie and Dwight Walker (via email)

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

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

Appellant,

v.

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

Respondents.

NOTICE OF APPEAL(S)

Appellant Tiger Enterprises & Trading Company, Inc. ("Tiger"), hereby gives notice of appeal of the judgments entered by this Court's orders, identified as follows: (i) Order on 3RD-Party Defendant's Motion for Partial Summary Judgment (filed at 2:41 PM on April 16, 2021), (ii) Order on Plaintiff's Motion for Partial Summary Judgment (filed at 2:42 PM on April 16, 2021), and (iii) Form 4 order dated July 6, 2021 denying Tiger's Motion¹ to Alter or Amend Under Rule 59 Two Orders Granting Partial Summary Judgment. The undersigned counsel certifies that this appeal is timely filed within 30 days of receipt of notice of the order identified as (iii) above.

¹ Appellants' referenced Rule 59 motion was timely filed on April 26, 2021.

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
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ATTORNEYS FOR APPELLANT TIGER
ENTERPRISES & TRADING, INC., BONNIE WALKER
AND DWIGHT WALKER

Greenville, South Carolina
August 3, 2021

Appellant has below identified counsel of record in the underlying matter, who will be for Respondents in this appeal, each of which is being served in accordance with S.C. ACR 203:

James Jason Andrighetti, Esquire, S.C. Bar No. 72741
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ATTORNEY FOR PLAINTIFF ARO-D ENTERPRISES, LLC AND 3RD PARTY
DEFENDANT RUDY A. DIXON

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ATTORNEY FOR 3RD PARTY DEFENDANTS FRANK T. GANGI AND T3
AVIATION, INC.

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

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

Appellant,

v.

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

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¹ Appellants' referenced Rule 59 motion was timely filed on April 26, 2021.

WESLEY D. FEW, LLC

s/Wesley D. Few/
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ATTORNEYS FOR APPELLANT TIGER
ENTERPRISES & TRADING, INC., BONNIE WALKER
AND DWIGHT WALKER

Greenville, South Carolina
August 3, 2021

Appellant has below identified counsel of record in the underlying matter, who will be for Respondents in this appeal, each of which is being served in accordance with S.C. ACR 203:

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DEFENDANT RUDY A. DIXON

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ATTORNEY FOR 3RD PARTY DEFENDANTS FRANK T. GANGI AND T3
AVIATION, INC.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ARO-D Enterprises, LLC,
Plaintiff,

v.

Tiger Enterprises & Trading, Inc., Bonnie
Walker and Dwight Walker,
Defendants/Counterclaimants.

Tiger Enterprises and Trading, Inc.,
Third-Party Plaintiffs,

v.

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

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-01886

**ORDER ON THIRD-PARTY
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

THIS MATTER came before the Court on a Motion for Partial Summary Judgment filed by T3 Aviation, Inc. and Frank T. Gangi. A virtual hearing on this Motion—which was heard at the same time as several other motions filed in the case—was held on Tuesday, March 9, 2021. Present at the hearing were the following: (1) for Third-Party Defendants T3 Aviation, Inc. and Frank T. Gangi, Steven Edward Buckingham, Esq.; (2) for Defendants and Third-Party Plaintiff, Wesley D. Few, Esq.; and (3) for Plaintiff and Third-Party Defendant Rudy A. Dixon, J.J. Andrighetti, Esq. Upon due consideration of the written submissions of the parties, as well as the arguments of their

counsel, the Motion for Partial Summary Judgment of T3 Aviation, Inc. and Frank T. Gangi is **GRANTED**.

Because the Court is entering a separate order on a motion for partial summary judgment submitted by ARO-D Enterprises, LLC, which has a more complete discussion of the facts pertinent to the disposition of this motion, the Court will here be brief.

The long-and-short of the matter is this: Plaintiff and Defendant Tiger Enterprises & Trading, Inc. ("TET") were engaged in a business relationship that fell apart before a contract could be formed. It seems undisputed that Plaintiff, who participates in the aircraft industry buying and selling decommissioned aircraft, purchased a passenger plane from a foreign government. The plane could not be sent back to the United States as one piece; instead, it had to be torn down piece-by-piece then shipped to the United States. As the Court understands the situation, as Plaintiff was able to remove parts from the aircraft, those parts were sent back to TET's warehouse in Greenville County.

It seems that, early on in this arrangement, there were discussions between Plaintiff and TET about TET buying parts from the aircraft, or perhaps the aircraft as a whole; later, it seems that the discussion shifted to where the parties were contemplating Plaintiff entering into some form of a consignment agreement with TET with regard to parts of the plane. However, it does not appear that any agreement was ever entered into between Plaintiff and TET before their relationship soured. As the Court understands the situation, whatever arrangement the parties were previously operating under had ended by September 2019, when Plaintiff demanded that TET release the parts of the aircraft that TET was still in possession of and TET refused. This exchange seems to have prompted the initiation of legal action, which has devolved into the present tangle of counterclaims and third-party claims.

For purposes of resolving the immediate motion, however, there are only a few salient facts the Court needs to acknowledge. In considering these facts, the Court is mindful of the familiar standards of review. 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. Rule 56(c), SCRCP. When determining if any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. See, e.g., Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997). The Court has carefully considered the merits of the instant motion, and, despite Rule 56's predisposition toward non-moving parties, finds that the partial summary judgment requested by T3 Aviation, Inc. and Mr. Gangi is warranted.

The first issue on which T3 Aviation, Inc. and Mr. Gangi have requested summary judgment pertains to TET's third-party claim against them for tortious interference. According to the allegations of the third-party complaint, T3 Aviation, Inc. and Mr. Gangi are alleged to have tortiously interfered with a contract between Plaintiff and TET. However, T3 Aviation, Inc. and Mr. Gangi, through their counsel, have been adamant that no contract ever existed between Plaintiff and TET. In their motion for partial summary judgment, T3 Aviation, Inc. and Mr. Gangi explained that it is the undisputed testimony of TET's vice-president that TET never had a contract with Plaintiff, and that this is corroborated by an affidavit filed by Plaintiff's owner. TET, for its part, was unable to rebut these assertions. When pressed at the hearing on these motions whether a valid, enforceable agreement existed between Plaintiff and TET with regard to TET's claim to ownership or possession of the parts at issue, TET was unable to present even a scintilla of admissible evidence to the Court to establish that such an agreement did, in fact, exist. Accordingly, to the extent that any action is predicated on the existence of a valid, enforceable agreement between Plaintiff and TET, that action must necessarily fail as a matter of law.

This determination affects not only the sufficiency of legal actions between Plaintiff and TET, which are addressed in a separate order. It also affects T3 Aviation, Inc. and Mr. Gangi. As these parties have pointed out, they have been sued by TET for tortious interference with contract. The foundational element of an action for tortious interference is the existence of a valid contract. See, e.g., Camp v. Springs Mortg. Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). Having concluded that a valid, enforceable agreement did not exist between Plaintiff and TET with regard to the aircraft parts at issue, it necessarily follows that TET cannot have a legally cognizable claim against T3 Aviation, Inc. and Mr. Gangi for tortious interference with that non-existent contract. Consequently, summary judgment is granted in T3 Aviation, Inc.'s and Mr. Gangi's favor on that third-party cause of action.

Moreover, the Court understands that T3 Aviation, Inc. and Mr. Gangi filed counterclaims against TET seeking, among other things, a declaratory judgment that no valid, enforceable contract existed between TET and Plaintiff capable of sustaining claims for tortious interference against them. To the extent that such actions for declaratory relief seek to establish that judgment, that is also necessarily granted.

The final matter that T3 Aviation, Inc. and Mr. Gangi have sought partial summary judgment on pertains to TET's third-party claim against them for violation of the South Carolina Unfair Trade Practices Act. S.C. Code § 39-5-10 et seq. To recover in an action under SCUTPA, the plaintiff must show that: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive acts. See, e.g., Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 498 (Ct. App. 2006).

According to the allegations of the third-party complaint against T3 Aviation, Inc. and Mr. Gangi, these defendants made false statements of fact to TET by which TET was deceived. However, in their motion for partial summary judgment, T3 Aviation, Inc. and Mr. Gangi asserted that TET has failed to identify what false statements were made by either of them to TET, how TET has sustained any damages in reliance on those statements, and how this matter—a dispute among private parties to a single commercial transaction—is within the scope of protection afforded by SCUTPA. TET has not rebutted these deficiencies. Accordingly, as a matter of law, summary judgment must be entered in favor of T3 Aviation, Inc. and Mr. Gangi as to TET's SCUTPA action.

Accordingly, for the foregoing reasons, and to the extent described above, the motion for partial summary judgment submitted by T3 Aviation, Inc. and Mr. Gangi is **GRANTED**.

It is **SO ORDERED**.

Judge Gravely's E-Signature Page to Follow



Greenville Common Pleas

Case Caption: ARO D Enterprises LLC , plaintiff, et al vs. Tiger Enterprises & Trading Inc , defendant, et al
Case Number: 2020CP2301886
Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-04-16 12:43:31 page 6 of 6

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-01886

ARO-D Enterprises, LLC,

Plaintiff,

v.

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

Defendants/Counterclaimants.

**ORDER ON PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Tiger Enterprises and Trading, Inc.,

Third-Party Plaintiffs,

v.

Rudy A. Dixon, Frank T. Gangi, and T3
Aviation, LLC,

Third-Party Defendants.

This matter came before the Court on Plaintiff's Motion for Partial Summary Judgment. On March 9, 2021, a hearing was held on this motion along with several other motions filed in this case. Plaintiff and Third-Party Defendant Rudy A. Dixon were represented at the hearing by J.J. Andrighetti, Esq. Defendants/Third-Party Plaintiffs were represented at the hearing by Wesley D. Few, Esq. Third-Party Defendants Frank T. Gangi and T3 Aviation, LLC were represented by Steven Edward Buckingham, Esq and Frank Gangi was also present. After hearing arguments from the parties and considering the pleading, affidavits, memoranda, and other evidence previous of record and presented at the hearing, the Court finds that Plaintiff is entitled to summary judgment as to its Claim and Delivery cause of action.

DISCUSSION

a. Summary Judgment Standard

A motion for summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Rule 56(c), SCRPC; Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). In determining whether any triable issues of fact exist, the reviewing court must consider all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Nelson v. Charleston County Parks & Recreation Comm’n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004). However, “when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

The moving party has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Rule 56(c), SCRPC*. Once the moving party carries its initial burden, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts” but “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (emphasis in original) (citation omitted). The non-moving party must set forth facts, “as would be admissible in evidence,” to show that a true jury issue exists. *Rule 56(e)*,

SCRCP. “Ultimate or conclusory facts and conclusions of law, as well as statements on ‘information and belief’ cannot be utilized on a summary judgment motion.” *Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (2003) (quoting Charles Alan Wright et al., *Federal Practice and Procedure* § 2738 (3d ed. 2007)).

b. Factual Background

Plaintiff is engaged in the business of buying and deconstructing damaged or inoperable planes for the purpose of selling parts to third party airline operators and part suppliers. In the instant case, Plaintiff purchased the rights to a Hawker 4000 business jet from the Nigerian government. The Plaintiff traveled to Nigeria in the summer of 2019 to begin deconstructing the Hawker 4000. He shipped the parts removed from the Hawker 4000 (“Hawker Inventory”) to Defendant Tiger Enterprises & Trading, Inc. (“TET”) at TET’s warehouse in Greenville County.

It is clear from the record that prior to shipping the Hawker Inventory, Plaintiff and Defendants had several discussions related to the sale of the Hawker Inventory. Plaintiff and Defendants acknowledge that the discussions were lengthy but, ultimately, unfruitful. (Aff. Dwight Walker, Pars. 4-14; Hansen Dep. 59:1-6; Aff. Rudy Dixon, Par. 6). Defendants and Plaintiff further testified that no written contract was ever agreed to or executed by either party (Aff. Rudy Dixon, Par. 6; Hansen Dep. 59:15-17).

It is also undisputed that Plaintiff is the rightful owner of the Hawker Inventory. (Aff. Rudy Dixon, Par. 5; Hansen Dep. 149:6-10). Plaintiff, as rightful owner, demanded the return of the Hawker Inventory when he visited the warehouse and offices of TET in late August, 2019. (Hansen Dep. 149:21-23). TET did not release the Hawker Inventory to Plaintiff and instead, retained it for debts allegedly owed by Plaintiff to TET. (Hansen Dep. 149:23-25).

c. Discussion

Plaintiff argues it is entitled to summary judgment on its second cause of action for Claim and Delivery of the Hawker Inventory. Plaintiff seeks immediate possession of the Hawker Inventory. Defendant TET argues that it has a consignment agreement with the Plaintiff and is entitled to retain the Hawker Inventory to secure payment for breach of the consignment agreement and other damages. Plaintiff denies any such consignment agreement or security interest exists.

"An action in claim and delivery is an action at law for the recovery of specific personal property." First Palmetto State Bank and Trust Co. v. Boyles, 394 S.E.2d 313, 302 S.C. 136 (S.C. 1990). However, such recovery may be limited by a security interest as set forth in the South Carolina Uniform Commercial Code. S.C. Code § 36-9-203(b) provides, in part ". . . a security interest is enforceable against the debtor and third parties with respect to collateral only if: . . . (3) one of the following conditions is met: . . . (A) the debtor has authenticated a security agreement that provides a description of the collateral" The finding of this Court thus rests on the determination of whether an authenticated security agreement exists. SC Code § 36-9-102(7)(A) is clear unequivocal; "'Authenticate' means to sign"

Defendant TET's Vice-President Dan Hansen testified that no signed agreement existed, as previously cited herein. Similarly, Defendant Dwight Walker, TET's co-owner, acknowledged that Plaintiff refused to sign consignment agreement. (Aff. Dwight Walker, Par. 34). The Defendants have failed to provide any evidence or testimony claiming the existence of a contract or written, signed agreement between the parties. Defendants further argue that summary judgment is premature because discovery is not yet completed. Notwithstanding the fact that this case is nearly one year old, Defendants have not provided any indication that additional discovery

would lead to admissible evidence that a written agreement exists, which the Defendants have already testified does not exist.

WHEREFORE, based on the foregoing, the Court hereby orders as follows:

1. Plaintiff's motion for partial summary judgment is granted.
2. Defendants shall release the Hawker Inventory into the care and custody of Plaintiff or its authorized agents and representatives within twenty (20) days of the entry of this Order.
3. This Court shall retain jurisdiction for the purpose of ensuring the release of the Hawker Inventory is conducted in accordance with this Order.

IT IS SO ORDERED.

Judge Gravely's E-Signature Page to Follow



Greenville Common Pleas

Case Caption: ARO D Enterprises LLC , plaintiff, et al vs. Tiger Enterprises & Trading Inc , defendant, et al
Case Number: 2020CP2301886
Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-04-16 12:43:11 page 6 of 6

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2301886

ARO D Enterprises LLC et al
PLAINTIFF(S)

Tiger Enterprises & Trading Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Court issued 2 separate orders granting Partial Summary Judgment: 1) To 3rd Party Defendants and 2) To Plaintiff on certain causes of action. The Orders were issued on April 16, 2021. Defendants filed a Motion to Alter or Amend these Orders on numerous grounds. The Plaintiff and Third Party Defendants filed their responses, and Defendants' counsel sought additional time to respond to their Memoranda due to some personal circumstances, and the Court readily agreed to such an extension. Now, it is time to address Defendants' Motion and the Court has determined that a hearing is not necessary for this purpose. The Court has carefully reviewed the submissions by all parties and does not find a basis for altering or amending its previous Order. Therefore, Defendants' Motion is respectfully denied and the Orders of April 16, 2021 are affirmed and the parties should take appropriate action to comply with the referenced orders. It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/05/2021.

Rudy A Dixon
Tiger Enterprises And Trading Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: ARO D Enterprises LLC , plaintiff, et al vs. Tiger Enterprises & Trading Inc , defendant, et al
Case Number: 2020CP2301886
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-07-05 16:58:12 page 3 of 3

PROOF OF SERVICE

The undersigned hereby certifies that on August 4, 2021, the **Appellant Tiger Enterprises & Trading, Inc.'s Notice of Appeal** were served on all counsel of record and the Court of Appeals Clerk of Court via U.S. Mail/Email/ECF, as follows:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals – Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

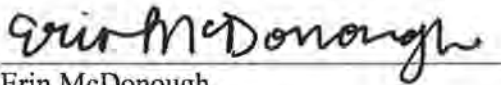
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Greenville County Court of Common Pleas (*via e-file*)
305 E. North Street
Greenville, SC 29601


Erin McDonough

August 4, 2021
Greenville, South Carolina

RECEIVED

Apr 28 2022

SC Court of Appeals

Certificate of Counsel

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

April 27, 2022

s/Wesley D. Few

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Dwight Walker*

RECEIVED

May 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2021-000851

ARO-D Enterprises, LLC Respondent,

v.

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

Tiger Enterprises & Trading, Inc., ... Third-Party Plaintiff / Appellant,

v.

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

FINAL OPENING BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Whether and to what extent any of the issues raised by Appellants in these appellate proceedings are preserved for this Court's review, and relatedly, whether even sufficiently preserved claims have been otherwise abandoned.
- II. Whether the trial court properly granted summary judgment in favor of Respondents T3 Aviation, Inc. and Frank T. Gangi against Appellants' action for violation of the South Carolina Unfair Trade Practices Act, under circumstances where Appellants failed to articulate any evidence at the summary judgment stage to substantiate multiple elements of the cause of action, and where Appellants have failed to present any argument in connection therewith in their appellate brief.
- III. Whether the trial court properly granted summary judgment in favor of Respondent ARO-D Enterprises, LLC against Appellants as to Respondent's action for claim and delivery, under circumstances where it was undisputed that Respondent is the rightful owner of the property at issue.
- IV. Whether the trial court properly granted summary judgment in favor of Respondent T3 Aviation, Inc. and Frank T. Gangi as to their action for declaratory judgment, to establish that no valid, enforceable agreement existed between Appellant Tiger Enterprises & Trading, Inc. and Respondent ARO-D Enterprises, LLC sufficient to sustain an action for tortious interference with contract, under circumstances where it was undisputed that no such contract existed.
- V. Whether the trial court properly granted summary judgment in favor of Respondents, despite Appellants' protestations that more discovery is necessary, under circumstances where, by the very nature of Appellants' allegations, additional discovery would be fruitless, and where Appellants have failed to articulate what information additional discovery is likely to yield or how that information would be pertinent to the matters for which summary judgment was granted.

STATEMENT OF THE CASE

This appeal arises from a commercial dispute regarding aircraft parts. As explained below in the Statement of Facts, Respondent ARO-D Enterprises, LLC acquired the rights to an inoperable luxury business jet from the government of a foreign country. In 2019, Respondent began removing parts from the aircraft at issue, and sending those parts stateside to the warehouse of Appellant Tiger Enterprises & Trading, Inc., which is located in South Carolina. Initially, Appellant and Respondent were discussing the possibility of Appellant purchasing the entirety of the inventory of aircraft parts being sent to their warehouse, but the parties could never reach mutually agreeable terms. Later, Appellant began presenting Respondent with various proposals for a consignment agreement, by which Respondent would allow Appellant to market and sell the inventory of aircraft parts on behalf of Appellant. Here, too, the parties were never able to achieve a set of mutually agreeable terms.

Later in 2019, Respondent met the acquaintance of a third-party—Respondent T3 Aviation, Inc.—who was interested in acquiring the inventory of aircraft parts. To facilitate this potential transaction, Respondent ARO-D Enterprises, LLC instructed Appellant to release the inventory of aircraft parts they were then holding. Appellant refused, ultimately forcing Respondent to file a civil action seeking the release of the inventory being wrongfully withheld.

After the commencement of this action, Appellant elected to dramatically expand the scope of conflict, suing Respondent's owner, as well as T3 Aviation, Inc. and its principal operator. This yielded counterclaims through which the trial court was asked to issue, among other things, a declaratory judgment that a valid, enforceable contract with respect to the inventory at issue never existed between Appellant and Respondent.

In December 2020 and February 2021, Respondents separately filed two Motions for Partial Summary Judgment. These Motions were granted, resulting in, among other things, an order instructing Appellant to remand the inventory at issue to Respondent, and a separate order finding that Appellant and Respondent were not parties to a valid, enforceable contract regarding the inventory at issue. Appellants filed a motion to alter or amend these decisions under Rule 59(e), SCRCP, which was denied in July 2021. It is from these adverse decisions that this appeal was taken.

STATEMENT OF FACTS

The facts of this dispute are unusual, but not complicated. Respondent ARO-D Enterprises, LLC (“**ARO-D**”) is engaged in the business of buying and deconstructing damaged or inoperable aircraft for the purpose of selling parts to third-party aircraft operators and parts suppliers. (R. 132-33.) In the instant case, ARO-D purchased the rights to an inoperable Hawker 4000 business jet from the Nigerian government. (R. 133.) ARO-D, through its sole member, Respondent Rudy A. Dixon, (R. 132), traveled to Nigeria in the summer of 2019 to begin deconstructing the Hawker 4000, (R. 133). As ARO-D was able to remove parts from the Hawker 4000, ARO-D would ship the parts removed from the Hawker 4000 (hereinafter referred to as “**the Hawker Inventory**”) to Appellant Tiger Enterprises & Trading, Inc. (“**TET**”), (id.), at TET’s warehouse in Greenville County, (R. 6).

Despite the fact that TET was allowing ARO-D to ship the Hawker Inventory to TET’s warehouse, neither ARO-D nor TET ever came to an agreement as to what, if anything, TET would do with the Inventory once it was received. Early on in this business relationship, there were discussions between the parties about TET buying certain parts from ARO-D, or perhaps the Hawker Inventory as a whole. (R. 133.) However, an agreement along these was never consummated, and TET began presenting various proposals to ARO-D by which ARO-D would sign a consignment agreement with TET that would allow TET to market and sell the Hawker Inventory. (See R. 171.) The parties engaged in extensive discussions about the entry into a consignment agreement, but ultimately, this was not consummated, either. (Id.)

During the summer of 2019, ARO-D became acquainted with Respondent T3 Aviation, Inc. (referred to hereinafter as “T3,” which has been misidentified as T3 Aviation, LLC) and its principal operator, Respondent Frank T. Gangi. T3 was interested in purchasing the Hawker Inventory from ARO-D, and ARO-D was motivated to sell the Hawker Inventory to T3.

In furtherance of consummating a sales transaction with T3, in September 2019, ARO-D instructed TET to release the Hawker Inventory to T3. (R. 22-23.) TET, through its principal officers and owners Appellants Dwight and Bonnie Walker, refused. (Id.) TET then continued to hold the Hawker Inventory against ARO-D’s objections. (Id.; see also R. 128-31.)

In March 2020, ARO-D commenced a lawsuit against TET and Bonnie and Dwight Walker seeking, among various other forms of relief, an order compelling Appellants to dispossess themselves of the Hawker Inventory. (R. 19.) This was sought through an action for claim and delivery. (Id.)

In April 2020, Appellants filed a counterclaim against ARO-D, and then, by way of third-party complaint, TET brought claims against Dixon individually, T3, and Gangi individually. (R. 38.) In relevant part, the actions against Respondents were for breach of contract, tortious interference with contract, and violation of the South Carolina Unfair Trade Practices Act. (Id.) According to Appellants’ pleadings, the contract sued upon was a consignment agreement that TET had with ARO-D, (R. 52), despite the fact that no such agreement was ever consummated.

In September 2020, Respondents T3 and Gangi filed a counterclaim against TET seeking, among other things, a declaratory judgment that TET did not have any legally enforceable agreement with ARO-D, and certainly not one that could sustain an action against T3 and Gangi for tortious interference. (R. 73 & 93.)

During December 2020 and February 2021, Respondents filed Motions for Partial Summary Judgment against Appellants' claim. (R. 128 & 147.) More specifically, ARO-D filed a Motion for Partial Summary Judgment on its claim and delivery action, seeking an order from the trial court that would compel Appellants to release the Hawker Inventory from their wrongful possession, which was continuing. Respondents T3 and Gangi filed a Motion for Partial Summary Judgment seeking: (1) dismissal of the action for violation of the South Carolina Unfair Trade Practices Act; (2) a declaratory judgment that TET did not have a legally enforceable agreement regarding the Hawker Inventory with ARO-D; and (3) in the event that the trial court found no such agreement to exist, dismissal of TET's action against T3 and Gangi as to the action for tortious interference with contract.

A hearing on Respondents' Motions was held on March 9, 2021. (R. 233.) Importantly, Respondents' Motions were supported by an affidavit given by Respondent Dixon, (R. 132), as well as certain other documents and testimony, including excerpts of the deposition of TET's vice president, (R. 136). Appellants, for whatever reason, did not oppose Respondents' Motions with any memorandum in opposition, affidavits, or exhibits. After receiving the arguments of counsel, the trial court took the disposition of the Motions under advisement. However, on April 16, 2021, the trial court issued two orders addressing each of the Motions for Partial Summary Judgment. With respect to ARO-D's Motion, the court found that ARO-D was the rightful owner of the Hawker Inventory, that Appellants

were withholding the Inventory without authority or justification, and that the Inventory must be remanded to ARO-D's control. (R. 4.) With respect to the Motion of T3 and Gangi, the court held that the action for violation of the Unfair Trade Practices Act must be dismissed, that TET did not have a legally cognizable contract with ARO-D, and that—in the absence of such a contract—neither T3 nor Gangi could be liable for tortious interference of a non-existent contract as a matter of law. (R. 10.)

Later in April 2021, Appellants filed a motion to alter or amend the orders of April 16, 2021 pursuant to Rule 59(e), SCRCPP. (R. 150.) Respondents filed a memorandum in opposition thereto, (R. 169), and Appellants filed a reply in support thereof, (R. 198). However, by decision dated July 6, 2021, the trial court held that a hearing on Appellants' Rule 59 motion was unnecessary, and that the court had not been presented with any basis for altering or amending its prior decisions. (R. 16.)

Appellants filed their notice of appeal on August 3, 2021. (R. 280.) The notice seeks review of the orders of April 16, 2021 granting partial summary judgment, (referred to hereinafter as “**the Orders**”), as well as the order of July 6, 2021 declining the invitation to alter or amend the judgment established by the Orders.

ARGUMENT

Despite the fact that Appellants have asserted six (6) issues which are allegedly presented in this appeal, Appellants' brief is not organized around those topics. Accordingly, for the sake of clarity, Respondents' brief is structured around four (4) discrete Sections, intended to touch upon all issues raised by Appellants' brief and the Statement of Issues presented by Respondents in this brief. Those Sections are addressed in turn, and are as follows: (1) regarding the affirmation of the trial court's decision as to the Motion for Partial Summary Judgment in favor of Respondents T3 and Gangi with respect to Appellants' action for violation of the Unfair Trade Practices Act; (2) regarding the affirmation of the trial court's decision as to Respondent ARO-D's Motion for Partial Summary Judgment on its claim and delivery action; (3) regarding the affirmation of the trial court's decision regarding the lack of utility as to the impact of further discovery on the matters for which summary judgment was granted; and (4) a general request for affirmation of the trial court's decision for any reason that may appear in the record.

I. THE TRIAL COURT'S DECISION TO GRANT SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS T3 AND GANGI WITH RESPECT TO APPELLANTS' ACTION FOR VIOLATION OF THE UNFAIR TRADE PRACTICES ACT MUST BE AFFIRMED.

As part of their Motion for Partial Summary Judgment, Respondents T3 and Gangi requested that summary judgment be granted in their favor as to Appellants' action for violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10 et seq. ("SCUTPA"). The basis for their request was predicated on the perception that Appellants were incapable of producing any evidence—by a mere scintilla or otherwise—to substantiate material elements of the action; more precisely, that Appellants had no evidence to support the proposition that either Respondent had engaged in unfair or

deceptive practices related to trade or commerce, that either had made false statements of material fact to Appellants, that any Appellant had relied on any statements attributable to either Respondent—much less to any Appellant’s detriment, or that there was any adverse impact to the public interest. (R. 148.) This, of course, was a permissible use of summary judgment. Rule 56(e), SCRCPP (“When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”).

In response to this frontal attack on the evidentiary sufficiency of Appellants’ SCUTPA action, they did nothing. The Motion for Partial Summary Judgment filed by Respondents T3 and Gangi was docketed on February 12, 2021; a hearing on the Motion did not occur until March 9, 2021. At no time during the intervening month did Appellants file a memorandum in opposition to Respondents’ Motion.

Moreover, at the hearing on the Motions for Summary Judgment, Appellants made no effort to address—in any fashion—the challenge to their SCUTPA action. (See R. 233.) In fact, even a cursory review of the hearing transcript reveals that the only person who mentioned SCUTPA at all was the undersigned counsel for Respondents T3 and Gangi. Appellants did not offer even a perfunctory defense of their SCUTPA action. Consequently, at the hearing on the Motions for Summary Judgment, the trial judge was not presented with any argument—written or oral—to rebut the facial attack to the sufficiency of Appellants’ SCUTPA action; in that same connection, the trial judge was not presented with any rebuttal evidence or testimony, either.

These circumstances present Appellants with their first problem on this issue. The fact that Appellants failed to contest the basis for the entry of summary judgment against their SCUTPA action before the trial judge at the Motions hearing means that this issue is not preserved for appellate review. See, e.g., Peterson v. Porter, 389 S.C. 148, 152, 697 S.E.2d 656, 658 (Ct. App. 2010).

Even if it were the case that Appellants did not have the opportunity to address the merits of their SCUTPA action at the hearing on the Motions for Partial Summary Judgment, the issue would still not be preserved for review, since Appellants did not address their SCUTPA action—at all—in their Rule 59 motion. Accordingly, there is no question but that the grant of summary judgment against Appellants' SCUTPA action is presently beyond appellate review.

And, even if there were lingering doubt about Appellants' SCUTPA action and issue preservation, that doubt would be resolved by the quick observation that nowhere in Appellants' brief before this Court is the dismissal of their SCUTPA action addressed, much less challenged. Therefore, even if the dismissal of the SCUTPA action had been preserved, it has nonetheless been abandoned. See, e.g., First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

For these reasons, the decision of the trial court to dismiss Appellants' SCUTPA action at summary judgment must be affirmed.

II. THE TRIAL COURT'S DECISION TO GRANT SUMMARY JUDGMENT IN FAVOR OF RESPONDENT ARO-D AS TO ITS ACTION FOR CLAIM AND DELIVERY SHOULD BE AFFIRMED.

Respondent ARO-D's Motion for Partial Summary Judgment was very narrowly targeted. It was addressed solely and exclusively to Respondent ARO-D's action for claim

and delivery, and the only relief sought was an order requiring Appellants to dispossess themselves of all parts of the Hawker Inventory, which belong to ARO-D. (R. 128 & 131.)

Appellants' position on this issue also seems narrowly targeted. To the best of Respondent's reckoning, the only complaint that Appellants seem to have with the trial court's order is that it "fails to set forth the legal basis for granting the claim and delivery remedy to ARO-D." (Appellants' Opening Br. at 10.)

Respondent will address this specific argument in due course. First, however, it is appropriate to question whether this issue is even preserved for appellate review.

A. Appellants failed to preserve claim and delivery issues for appellate review.

As discussed in the preceding Section I, above, it is necessary for purposes of issue preservation that the appellant present all issues that could have been considered at the summary judgment stage to the trial court at the time the court undertakes adjudication of the summary judgment motion. See, e.g., Peterson v. Porter, 389 S.C. 148, 152, 697 S.E.2d 656, 658 (Ct. App. 2010). An issue that was capable of consideration at summary judgment—but was not presented to the trial court—cannot be later resurrected through a motion to alter or amend. See, e.g., Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

In the instant case, Appellants elected to present no opposition to Respondent ARO-D's Motion for Partial Summary Judgment on the claim and delivery action when the matter was pending before the trial judge. Respondent filed its Motion on December 30, 2020; the hearing on Respondent's Motion occurred on March 9, 2021. Appellants had more than two months to prepare some written argument contesting the propriety—factual, procedural, or otherwise—of the court granting judgment as a matter of law to Respondent

on its claim and delivery action. Yet they did nothing. Appellants filed no memorandum, nor any supporting affidavits or documents.

Then, when the hearing on Respondent's Motion for Partial Summary Judgment occurred, Appellants continued to maintain their silence on any issues regarding claim and delivery. As reflected in the hearing transcript, (R. 233), the undersigned counsel for Respondent ARO-D made the initial argument to the trial court as to why claim and delivery was appropriate; Appellants were provided the opportunity to make an immediate rebuttal. Not once during this rebuttal—or at any other time during the hearing on the Motions for Summary Judgment, for that matter—did Appellants address, much less defend against, Respondent's request for entry of judgment as a matter of law as to the claim and delivery action.

The first time that Appellants ever took issue with the fact that Respondent had requested relief in the form of claim and delivery with respect to the Hawker Inventory was on April 26, 2021, through their motion to alter or amend the trial court's decision granting Respondent relief through claim and delivery.

For purposes of appellate review, though, the ship had already sailed; Appellants' failure to address claim and delivery at all at the hearing on Respondent's Motion for Partial Summary Judgment—when the only issue raised by Respondent ARO-D at this hearing was claim and delivery—means that the issues regarding claim and delivery presented in these appellate proceedings are not preserved for review.

B. The relief sought by Appellants on this issue is not clear.

As noted above, it is Appellants' contention that an appeal of the claim and delivery issue is necessary because the trial court's order "fails to set forth the legal basis for

granting the claim and delivery remedy to ARO-D.” (Appellants’ Opening Br. at 10.) Importantly, it is apparently not Appellants’ contention that the trial court’s decision was legally or factually wrong; if that is Appellants’ contention, they haven’t said so. Instead, their complaint seems to be that the trial court simply failed to state the legal authority for the relief afforded.

If this is an accurate statement of Appellants’ contention, then it would seem that their complaint on this issue—even if adequately preserved for appellate review—would constitute the very type of academic question which the courts eschew. See, e.g., Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (“An appellate court will not pass judgment on moot and academic questions”) (citations omitted).

Alternatively, if it is Appellants’ position that the trial court’s decision on this issue ought to be reversed, then Appellants should ask for that specific relief. And, in doing so, Appellants ought to provide legal authority for the proposition that the trial court’s order constitutes error and must be overturned. Otherwise, it would seem that, consistent with the precedents of the State’s appellate courts, Appellants’ position on this issue would constitute the very type of cursory, unsupported assertions which militate in favor of abandonment. See, e.g., State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (citations omitted).

C. The trial court is statutorily authorized to award the type of relief provided to Respondent ARO-D.

There is a tone of incredulity in Appellants’ Opening Brief, or perhaps perplexion, as to how the trial court could possibly have ordered a return of the Hawker Inventory to Respondent through a claim and delivery action. This, itself, is bewildering.

Long before any of us became lawyers, we were ordinary human beings, with ordinary sensibilities of how we ought to behave in a civilized society. And, once upon a time, it used to be common sense that you can't take someone else's property without their permission. Now, of course, common sense seems to have become the least common of all senses. And we find ourselves litigating zealously—first through the trial court, and now the Court of Appeals—the question of whether the law will allow someone who is in possession of another's property without their permission the power to keep it, or whether the law compels the return of the property to its owner.

This question, of course, is the thing furthest from a case of first impression. In fact, we can trace the answer to this question back to the earliest origins of a codified system of justice, finding that every organized legal code along the way provides the same answer: it is wrongful to take someone else's property without their permission; in similar fashion, it is wrongful to keep someone else's property after a demand for its return. It's that simple. And, in the cases where judicial intervention has become necessary, it has been historically common for courts to adjudicate relative property rights, and to order the return of property to its rightful owner when it is reasonably capable of being returned.

It is not hyperbole to say that these basic tenets of law are as old as civilization. Consider the following from the Code of Hammurabi:¹

6. If anyone steal the property of a temple or of the court, he shall be put to death, and also the one who receives the stolen thing from him shall be put to death.

¹ Fortunately, Western Civilization has not strictly inherited the Code of Hammurabi: "If a judge try a case, reach a decision, and present his judgment in writing, if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge's bench, and never again shall he sit there to render judgment." (Code of Hammurabi ¶ 5.)

25. If fire break out in a house, and someone who comes to put it out cast his eye upon the property of the owner of the house, and take the property of the master of the house, he shall be thrown into that self-same fire.
112. If anyone be on a journey and entrust silver, gold, precious stones, or any moveable property to another, and wish to recover it from him, if the latter do not bring all of the property to the appointed place, but appropriate it to his own use, then shall this man, who did not bring the property to hand it over, be convicted, and he shall pay fivefold for all that had been entrusted to him.
253. If anyone agree with another to tend his field, give him seed, entrust a yoke of oxen to him, and bind him to cultivate the field, if he steal the corn or plants, and take them for himself, his hands shall be hewn off.

Centuries later, the same punitive philosophy regarding theft and misappropriation of another's property is recorded in the Pentateuch. This is found not just in the Ten Commandments, which plainly direct that "Thou shalt not steal." Exodus 20:15; Deuteronomy 5:19 (King James). Instead, the moral imperative against theft and misappropriation is found peppered throughout the Torah. See, e.g., Exodus 20:17; Deuteronomy 5:21 ("Thou shalt not covet thy neighbor's house . . . nor any thing that is thy neighbor's.") (King James); Exodus 22:7-8; Leviticus 19:11 & 13 (King James).

The proposition that property of another should not be taken or retained without the owner's permission is not limited to these religious traditions. Hinduism teaches the virtue of "asteya," which is the directive that one must not steal the property of another, or have the intent to steal the property of another, through action, speech, or thought. In Buddhism, one of the five precepts for moral conduct is the vow "to abstain from taking what is not given."

These same, basic principles were reflected in English common law. Historically, the remedy for the wrongful taking or withholding of the property of another without authorization was provided for by the actions of replevin or trover—replevin when the property was capable of being returned; and trover when it was not, and instead, value must be given. See, e.g., Reynolds v. Philips, 72 S.C. 32, 51 S.E. 523 (1905). Now, in South Carolina, the ancient actions of replevin and trover are codified in the statutes for claim and delivery. Id. Accordingly, Appellants’ apparent proposition—that the court has no authority to do anything about the property of another being wrongfully withheld—is simply indefensible. Instead, the trial judge in this action was doing nothing more than what judges throughout the entirety of human history, in a myriad of legal, philosophical, and religious traditions, have historically done: determine who is the rightful owner of property, and order the restoration of that property to them.

Furthermore, the trial judge in this action provided the very relief contemplated by the pertinent provisions of the South Carolina Code. Section 15-69-210—which is entitled “Judgment”—states that, “[i]n an action to recover the possession of personal property[,] judgment for the plaintiff may be for the possession, for the recovery of possession, or for the value thereof in case a delivery cannot be had and for damages, both punitive and actual, for the detention. . . .” In the instant case, the trial judge determined that Respondent ARO-D was the rightful owner of the Hawker Inventory, and directed Appellants to remand such Inventory into ARO-D’s possession. In light of these circumstances, one has to wonder what Appellants believe the trial judge should have done, or how they reasonably contend the Court’s decision was error.

To these questions, Appellants' Brief is less than clear. Perhaps it is Appellants' position that, somehow, the trial judge failed to observe the claim-and-delivery procedures set out in Title 15, Chapter 69. If this is the case, their position is unavailing. Section 15-69-10 addresses the procedure for when "immediate delivery may be claimed." As established by this Section, the Code contemplates that "immediate delivery" may be sought "at the time of issuing the summons, or at any time before answer." Quite clearly, § 15-69-10 is addressed to a form of relief through claim-and-delivery that is effective pendente lite, before the merits of ownership and possession have been adjudicated. That is not the procedural posture with which the trial judge in the instant action was presented. Instead, the judge was presented with the opportunity to rule—as a matter of a final determination on the merits—whether Respondent ARO-D was the rightful owner of the Hawker Inventory. It found that Respondent was the rightful owner, and accordingly, pursuant to S.C. Code § 15-69-210, entered judgment in favor of Respondent on that issue.

Importantly, Appellants do not seem to have taken exception to this decision. None of the six (6) issues identified by Appellants in their Statement of Issue(s) on Appeal challenges the factual determination by the trial judge that Respondent ARO-D was the rightful owner of the Hawker Inventory. Certainly, Appellants have taken the position that the trial judge erred in concluding that no contract existed between TET and ARO-D (which is addressed in the following Section). But the contract whose existence Appellants have asserted is a contract for the consignment of the Hawker Inventory—not ownership of the Inventory.

To the contrary, at the hearing on the Motions for Summary Judgment, the undisputed evidence presented to the trial judge was that Respondent ARO-D was the sole

and exclusive owner of the Hawker Inventory. These circumstances were affirmed by the affidavit of Respondent Dixon, filed on April 9, 2020, and resubmitted with Respondent ARO-D's Motion for Partial Summary Judgment. (R. 132.) Appellant TET did not offer any evidence to dispute this fact. Instead, it was the uncontroverted testimony of TET's vice president that Respondent owned the parts at issue. In relevant part, TET's vice president testified as follows:

Q: Who is the owner of these parts as we speak today?

A: Which parts?

Q: The Hawker 4000 inventory.

A: Rudy Dixon.

Q: Why—if Rudy owns them, why are you retaining them?

[Appellants' Counsel Objects to the Form of the Question]

A: We had entered in good faith into an agreement with Rudy, spent money and many hours of work of logistics and trying to get the material here, trying to finalize a transaction with Rudy on the promise of hundreds of thousands of dollars of revenue for Tiger and profits, you know, with Rudy as well.

And when he came to our facility and decided not to sign the consignment agreement and to pull all of the material back when we had already incurred debt to him, the material is collateral now against the debts owed to Tiger.

(R. 145.)

In short: (1) the Hawker Inventory is Respondent's property; (2) TET was in possession of those parts; and (3) TET was holding those parts as "collateral."

To be clear, the word "collateral," here, as used by TET's vice president, means "hostage." According to another excerpt of his testimony, which was presented to the trial judge:

There was no—there was never a signed consignment agreement by Rudy Dixon. He intended to—he told us on multiple occasions, told me myself personally, that he was going to sign the consignment agreement, which was how this program came to be, and when he defaulted on signing it and changed his tune on how this was going to go, *we had to come up with alternatives on how we could be compensated.* . . .

(R. 143 (emphasis added).)

The “alternative” that TET came up with was to hold Respondent’s property as security for some payment that TET believed it was owed. But, to be clear, not only is there no consignment agreement between Respondent and TET regarding the aircraft parts at issue, there is no written agreement whatsoever that allows TET to hold Respondent’s property as security for any reason.

This observation was specifically addressed by the trial judge. As presented in the trial court’s order granting Respondent ARO-D’s Motion for Partial Summary Judgment, the court examined whether—under pertinent provisions of the South Carolina Uniform Commercial Code—TET had a security interest in the Hawker Inventory that would allow it to continue holding Respondent’s parts even after Respondent had demanded their return. (R. 7-8.) The court observed that S.C. Code § 36-9-203(b)(3)(A) allows the enforcement of a security interest with respect to collateral only if “the debtor has authenticated a security agreement that provides a description of the collateral.” (Id.) Moreover, the authentication requirement of the Uniform Commercial Code requires a signature from the bound party. S.C. Code § 36-9-102(7)(A). The court found that no such authenticated agreement ever existed, and the non-existence of such an agreement has never been disputed—not before the trial court, and not in the course of these appellate proceedings. (Id.)

In light of all these facts and circumstances—which were left undisputed by Appellants at the hearing on Respondent’s Motion for Summary Judgment—*what other conclusion could the trial court have reasonably reached?* Despite Appellants’ unsupported assertions about the existence of an agreement with Respondent ARO-D regarding the Hawker Inventory, Appellants have never produced an agreement that is actually capable of binding ARO-D; TET’s vice president admitted under oath that no such agreement ever existed; Appellants have never disputed ARO-D’s ownership of the Hawker Inventory; TET’s vice president admitted under oath that ARO-D is the rightful owner of the parts; TET’s vice president further admitted that the Hawker Inventory was being held as collateral for the payment of some uncertain amount of debt that Appellants were claiming ARO-D owed; and Appellants have never produced any document that would evidence the authority to withhold the Hawker Inventory from ARO-D as collateral, particularly after ARO-D had demanded the return of such Inventory.

The simple truth is this: the trial judge did the right thing in ordering the return of the Hawker Inventory to ARO-D. It was the right thing from the perspective of the undisputed facts presented to the judge; it was the right thing from the perspective of what relief South Carolina law affords; and it was the right thing from the perspective of reason and morality.

D. Section Concluding Statement

For these reasons, even if Appellants have sufficiently preserved any issues regarding the grant of summary judgment in favor of ARO-D with respect to the claim-and-delivery action, the undisputed, material facts—when applied to the law—yield the conclusion that the trial court’s decision must be affirmed.

III. THE TRIAL COURT’S DECISION TO GRANT SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS’ CONTENTION THAT NO VALID, ENFORCEABLE AGREEMENT BETWEEN TET AND ARO-D EXISTED MUST BE AFFIRMED.

In the preceding argument Section, Respondents have already thoroughly addressed the trial court’s conclusion that no valid, enforceable agreement existed between Respondent ARO-D and Appellant TET. Respondents incorporate that argument into this Section, and will not rehash the same discussion. However, for purposes of this argument Section, it is important to note that the trial court’s conclusion of the non-existence of a valid and enforceable agreement must necessarily result in the dismissal of the action for tortious interference with a contract against Respondents T3 and Gangi, and the granting of summary judgment with respect to those Respondents’ action for declaratory relief on the same issue.

For their part, Appellants have asserted that the trial court’s decision with respect to summary judgment on the tortious interference and declaratory judgment actions was error. This is so, they contend, for three reasons: (1) that the trial court applied the wrong standard of review; (2) that the application of the South Carolina Uniform Electronic Transactions Act creates a disputed issue of fact which compelled the denial of summary judgment; and (3) that more discovery was necessary. Each of these contentions is addressed in turn.

A. The trial court applied the correct standard of review.

Despite the fact that Appellants have made this matter a discrete question for purposes of these appellate proceedings, it is not clear from Appellants’ Brief where—if ever—they are serious about challenging the standard of review applied by the trial court. As set out in both Orders regarding Respondents’ Motions for Partial Summary Judgment,

the trial court was mindful of the familiar standards regarding the consideration of motions under Rule 56, SCRCP. It is also worth noting that the trial judge—the Honorable Perry H. Gravely—is no novice to this standard, either in his present capacity as a judicial officer, or his prior capacity as an excellent trial lawyer.

Regardless, Appellants have predicated a great deal of their case on the proposition that a valid, enforceable agreement existed between Respondent ARO-D and Appellant TET which was capable of sustaining an action against Respondents T3 and Gangi for tortious interference. Appellants put this issue into dispute, and they alleged throughout their counterclaim and third-party complaint that just such a contract existed. This was consistently denied by Respondents.

Accordingly, Respondents filed a Motion for Partial Summary Judgment under Rule 56 to test the factual sufficiency of Appellants' contention. This use of Rule 56 is expressly contemplated by the plain text of the rule, which provides that “[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRCP.

In the instant case, Respondents' Motion for Partial Summary Judgment presented a direct attack to Appellants' contention of the existence of a valid, enforceable agreement with ARO-D. To survive summary judgment, all Appellants had to do was present a mere scintilla of evidence that a contract with ARO-D regarding the Hawker Inventory existed. See, e.g., Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803

(2009). In response, and as noted throughout this brief, Appellants elected to provide the trial judge with nothing: no affidavits, no discovery responses, not even a memorandum in opposition.

Accordingly, at the hearing on the Motions for Partial Summary Judgment, Respondents explicitly invited the trial judge to examine what evidence there was that a valid, enforceable agreement existed between TET and ARO-D. This was the perfect opportunity for Appellants to educate the court as to what competent evidence there was to sustain the assertion that a contract existed. No such information was provided. To be clear, Appellants failed to provide the court with any competent direct information about the existence of an agreement—such as a document signed by both parties, which, by Appellants’ own admission, did not exist—as well as any competent indirect information about the existence of an agreement. The record betrays only Appellants’ general references to the proposition that a legally enforceable agreement must have existed; but this was in direct contravention of the affidavit of Respondent Dixon and the testimony of Appellant TET’s vice president, both of whom affirmed that no contract ever existed between ARO-D and TET with respect to the Hawker Inventory. Accordingly, the trial court necessarily found that Appellants had failed to present competent evidence from which credible inferences of the existence of an agreement could have been drawn.

Certainly, it is true that the standard of review to be applied to Rule 56 motions contains a fair amount of deference to the non-moving party. But that deference is not without limits. It was Appellants’ burden, as the non-moving party, to present the court with even minimally sufficient articulable facts to support the plausibility of the action upon which they’ve sued. And they could not. Accordingly, consistent with the well-trod

standards for the entry of summary judgment, the trial court directed judgment as a matter of law in Respondents' favor as to whether there was a legally valid and enforceable contract between ARO-D and TET.

In their Rule 59 motion, Appellants tried to salvage their contract action by submitting additional materials by way of attachment for the court's consideration. The court was unmoved by these additional materials. And, in truth, they ought not have been considered in the first place. With the exception of certain discovery requests (which Appellants propounded after the summary judgment hearing), each and every of the documents presented to the trial court for reconsideration of the prior decision could have been presented to the court before the hearing on the Motions. Consequently, such pre-existing information was not suitable for consideration of a Rule 59 motion, nor is it suitable for consideration in these appellate proceedings.

In any event, for the foregoing reasons, the trial court applied the correct standard of review, and Appellants' assignment of error on this issue should be found to be without merit.

B. The trial court correctly held that Appellants' attempt to invoke the South Carolina Uniform Electronic Transactions Act was an irrelevant distraction.

Appellants contend that the South Carolina Uniform Electronic Transactions Act, S.C. Code § 26-6-10 et seq., could provide an avenue through which a valid, enforceable agreement between ARO-D and TET may be found to have existed. This is an outright Hail-Mary. The fundamental problem with this argument is that it is in direct contradiction to the undisputed testimony of Respondent Dixon and TET's vice president, both of whom affirmed that there was never any valid, enforceable agreement between ARO-D and TET. It is exceedingly frustrating when, during the course of litigation, the existence of a contract

between representatives of the parties who allegedly formed the very agreement at issue is denied, yet the issue continues to be litigated under specious legal pretense.

Fortunately, the trial judge saw through this ruse. It is axiomatic that the existence of a legally enforceable contract depends on the mutual assent of the parties to the agreement. Here, and as noted throughout this brief, Respondent Dixon denied the existence of an agreement with TET, and TET's own vice president denied the existence of an agreement with ARO-D. It is hard to fathom how the South Carolina Uniform Electronic Transactions Act could possibly create a valid, enforceable contract between parties who themselves did not believe that a contract existed between them.

Moreover, the first time that Appellants presented any documentary information to the trial court in connection with the Motions for Partial Summary Judgment was in furtherance of their Rule 59 motion. As discussed in the immediately preceding argument Section, pre-existing materials that Appellants elected not to file to oppose the summary judgment motions are not suitable for consideration for the first time in a Rule 59 motion, and certainly not in appellate proceedings.

C. The trial court correctly found that additional discovery was unnecessary.

Throughout the hearing on the Motions for Partial Summary Judgment, and then after, in connection with the Rule 59 motion, Appellants have argued that they needed more time to conduct discovery, in order to mount an appropriate opposition to the summary judgment motions. In support of this argument, Appellants have relied upon the Supreme Court's decision in Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991). The language that Appellants continue to fall back upon is the Court's observation that "[s]ummary judgment is a drastic remedy and must not be granted until the opposing party

has had a full and fair opportunity to complete discovery.” Id. at 112, 410 S.E.2d at 543. Appellants have neglected, however, to quote some clarifying language found in Baughman and its progeny. “Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is ‘not merely engaged in a ‘fishing expedition.’” Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing Baughman, 306 S.C. at 112, 410 S.E.2d at 544).

This paradigm quite clearly establishes an obligation on the party seeking to avoid summary judgment by complaining of an insufficient opportunity to conduct discovery to demonstrate how, if at all, additional discovery is likely to yield pertinent information. And that is exactly where Appellants have failed.

In proceedings below, just as in these appellate proceedings, Appellants have argued that they need more time to conduct discovery. This leads to the obvious question: *For what?* The scope of the issues presented in the Motions for Partial Summary Judgment were exceedingly narrow. The first issue was whether Appellants had any right to continue withholding the Hawker Inventory despite Respondent ARO-D’s demands to the contrary. The fact of ARO-D’s ownership of the Hawker Inventory was undisputed, and Appellants never produced a written agreement that gave TET the power to withhold ARO-D’s property over its objection. It is not clear what additional discovery could salvage Appellants’ position on this issue, and certainly, Appellants have never articulated what that additional information may be.

The second issue was whether Appellants may maintain their action for violation of the Unfair Trade Practices Act. As discussed above, it was Appellants’ contention that Respondents T3 and Gangi had made false statements of fact to Appellants, on which

Appellants relied, which caused them damages and which adversely affected the public interest. However, at the hearing on the Motions for Partial Summary Judgment, Appellants never identified any false statements made to Appellants, how they were relied upon, how they were damaged, or how the public interest was affected. Each of these present matters of fact that Appellants ought to have been in possession of already. After all, it was false statements allegedly made *to them*; it was *their* reliance; *they* claim to have sustained damages. It is incredible that, at the summary judgment stage, Appellants could offer no facts or circumstances in support of this action. Ostensibly, when Appellants filed their claim against Respondents T3 and Gangi, they had a good-faith basis upon which to sue for violation of the Unfair Trade Practices Act. However, in light of the fact that, at summary judgment, no Appellant could offer any fact to sustain any element of the action, it truly makes one wonder whether there was ever any good-faith basis to support the allegation, even from the outset of the litigation.

In any event, with respect to the Unfair Trade Practices action, it is not clear what additional discovery Appellants need in order to substantiate the elements of an action that Appellants already ought to know. Appellants have never articulated an answer to this question; not at the summary judgment hearing, not in their Rule 59 motion, and not in their appellate brief.

The third issue was whether TET has a valid, enforceable agreement with ARO-D that would support an action for tortious interference with contract. Appellants' position on this issue suffers from the same deficiencies as the others. Despite asserting in their pleadings that TET has an agreement with ARO-D, TET has never produced a document evidencing the existence of such a binding agreement, and TET's own vice president has

explicitly denied that such an agreement ever existed. In light of these circumstances, it is hard to imagine how additional discovery is going to improve TET's position.

The South Carolina Uniform Electronic Transactions Act will not provide Appellants with that salvation. There is no way that the Electronic Transactions Act could affect Appellants' position on the existence of an agreement unless Appellants were in possession of electronic documents sent to them by ARO-D; and if that were the case, Appellants would already be in possession of those documents. On this matter, then, additional discovery would be useless. And, if there were some other legal avenue of relief through which Appellants could establish the existence of a contract, Appellants have not articulated what that would be, or how additional discovery may prove fruitful.

Ultimately, it is the obligation of neither Respondents nor any court to have the clairvoyance to identify how additional discovery may benefit Appellants' case. It is solely and exclusively Appellants' obligation to do so. And thus far, they have failed to advise any court of how additional discovery may yield relevant information capable of avoiding summary judgment on the issues presented; Appellants failed to do so at the summary judgment hearing, and they failed to do so in their Rule 59 motion. Their initial brief to this Court is also silent on the matter.

D. Section Concluding Statement

For the foregoing reasons, and in light of Appellants' failure to identify how additional discovery is reasonably likely to yield relevant information capable of salvaging the actions for which summary judgment was granted, the Court is encouraged to affirm the decision of the trial court.

IV. GENERAL PRAYER FOR RELIEF

In addition to the bases presented in the foregoing arguments, Respondents respectfully request affirmation of the trial court's Orders at issue in these proceedings on any basis which this Court may determine appears in the record.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, Respondents respectfully request a decision from this Court which affirms the entirety of the Orders at issue in these proceedings, remands the matter to the trial court for further proceedings consistent with the decision of this Court, and provides such other and further relief as the Court deems just and proper.

Respectfully,

s/ J.J. Andrighetti

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Greenville, South Carolina
May 18, 2022

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May 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2021-000851

ARO-D Enterprises, LLC Respondent,

v.

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

Tiger Enterprises & Trading, Inc., ... Third-Party Plaintiff / Appellant,

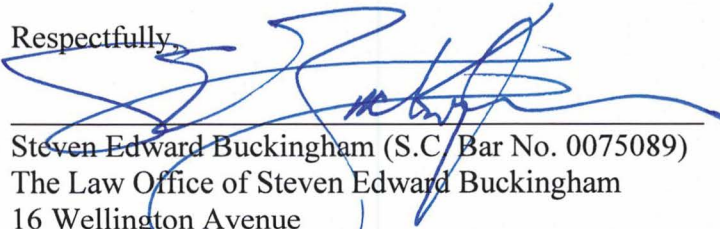
v.

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

CERTIFICATION OF CONFORMITY

The undersigned counsel hereby certify that this Final Opening Brief of Respondents complies with Rule 211(b), SCACR.

Respectfully,


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Greenville, South Carolina
May 18, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUE(S) ON APPEAL

- I. WHETHER APPELLANT HAD AN ADEQUATE OPPORTUNITY TO CONDUCT DISCOVERY WHEN PLAINTIFF AND ITS PRINCIPAL REFUSED TO ATTEND THEIR SCHEDULED DEPOSITIONS?
- II. WHETHER THE EVIDENCE OF RECORD, INCLUDING SPECIFICALLY THE JUNE 10, 2020 AFFIDAVIT OF DWIGHT WALKER AND ITS ACCOMPANYING EXHIBITS 1-6, CREATED A DISPUTED ISSUE OF FACT REGARDING THE EXISTENCE OF AN AGREEMENT WITH ARO-D OR ITS PRINCIPAL, RUDY DIXON?
- III. WHETHER THE LOWER COURT ERRED IN NOT ADDRESSING THE APPLICABILITY OF THE S.C. UNIFORM ELECTRONIC TRANSACTION ACT, AS SAME RELATES TO THE PARTIES ELECTRONIC COMMUNICATIONS THAT RESULTED IN THE SUBJECT AIRPLANE PARTS BEING SHIPPED FROM NIGERIA TO THE APPELLANT'S WAREHOUSE FACILITIES IN GREENVILLE, SOUTH CAROLINA.
- IV. WHETHER THE LOWER COURT ERRED BY NOT APPLYING THE APPROPRIATE LEGAL PROVISIONS IN CONCLUDING THAT PARTIAL SUMMARY JUDGMENT WAS APPROPRIATE ON ARO-D'S CLAIM AND DELIVERY CLAIM.
- V. WHETHER THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO FRANK GANGI AND T3 AVIATION WITHOUT AN ADEQUATE OPPORTUNITY TO CONDUCT DISCOVERY ON THE EXISTENCE OF AN AGREEMENT WITH ARO-D OR ITS PRINCIPAL, RUDY DIXON?
- VI. WHETHER OR NOT THE LOWER COURT APPLIED THE PROPER STANDARD OF REVIEW, NAMELY TO VIEW THE EVIDENCE AND THE INFERENCES TO BE DRAWN THEREFORE IN THE LIGHT MOST FAVORABLE TO APPELLANT.

STATEMENT OF THE CASE

This is an appeal from an order granting summary judgment prematurely on a Claim and Delivery claim, and before the parties could take depositions of the Plaintiff. The gist of the underlying action is a dispute between Appellant and Plaintiff ARO-D Enterprises, LLC (and its owner, Rudy Dixon), regarding airplane parts that Dixon agreed to ship from Nigeria to Appellant in July 2019.

The lower court has erroneously and prematurely concluded, without the benefit of (or opportunity for) adequate discovery by the parties, “that a valid, enforceable agreement did not exist between Plaintiff and [Appellant] with regard to the aircraft parts at issue, it necessarily follows that [Appellant] cannot have a legally cognizable claim against T3 Aviation, Inc. and Mr. Gangi for tortious interference with that non-existent contract.”

The lower court order fails to address the applicability or implications of the S.C. Uniform Electronic Transactions Act on the parties exclusive electronic communications in arranging to ship airplane parts from Nigeria to the United States.

The lower court erred by not applying the requirement of a claim for Claim and Delivery and by not addressing those requirements in its order.

The lower court order did not view the evidence in the light most favorable to Appellant.

FACTS AND PROCEDURAL HISTORY

As is set forth in the Affidavit of Dwight Walker filed in this action on June 10, 2020, Appellant and Plaintiff / Respondent's principal, Rudy Dixon, have known each other for over 40 years. Starting in the 2014 time period, Appellant via Walker began communications with Respondent about airplane parts from a crashed Hawker 4000 aircraft in Nigeria. In 2019, those negotiations continued and ultimately led to Respondents arranging to ship some of the airplane parts to Appellant's facilities in Greenville South Carolina, from Nigeria, at Appellant's expense.

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. (Walker Aff., R. p, 275 at ¶ 26). The Letter Agreement stated, *inter alia*, "this program cannot be terminated as there are monies owed Tiger for the action It has taken." *Id.* 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,"¹ (Rule 59 Appellant's Reply at Ex. A (p. 5 of 6), filed June 25, 2021, R. p, 204);
- **August 5, 2019**: stating to Frank Gangi, "if you want to buy any parts from the

¹ 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.

Hawker 4000 you have to go to Tiger not me,” (Walker Aff., R pp. 274-275, ¶ 24);

- **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 (Walker Aff., R. pp. 275-276, ¶ 26);

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 them, instead of Appellant. 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. Those parties, despite the appearance of new counsel for Gangi / T3 as of June 15, 2020, continue to assert a common interest privilege between themselves and have refused to provide their communications after approximately Sept. 2019.

ARO-D filed its first lawsuit on Nov. 14, 2019, which was later dismissed on March 25, 2019, for lack of capacity to sue due to the fact that the “Plaintiff did not legally exist,” at the time of filing. This lawsuit was filed on March 27, 2020.

ARO-D has made numerous motions, including motions for a preliminary injunction and a receivership, each of which were denied by order of the Circuit Court dated June 11, 2020.

ARGUMENT

This appeal presents several questions, each of which is addressed below.

I. SUMMARY JUDGMENT WAS PREMATURELY GRANTED

In *Baughman v. At&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991), the S.C. Supreme Court stated as follows with respect to summary judgments and the required amount of discovery:

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."). Likewise here, ARO-D first attempted to bring this dispute in Greenville County on Nov. 14, 2019, yet Rudy Dixon, ARO-D's sole owner and principal, has evaded being deposed and continues to do so. (June 25, 2021 Reply (p. 3 of 6), R. p. 200, noting unilateral cancellations of his deposition). Most recently, on Oct. 25, 2021, the undersigned 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." 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, shows that Appellant has done way more than merely 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.

Rudy Dixon, as can be seen by the emails in the record, speaks and types a broken form of the English language. He should not be given every benefit of every doubt to compensate for his communication skills. This is particularly true when the June 10, 2020 Affidavit of Dwight Walker sets forth indisputable instances and evidence of an agreement between Appellant and ARO-D / Dixon. Id., (R. pp. 273 - 275 at ¶¶’s 17-25).. Still further, Dixon himself 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,” and later referring to Appellant as his “client” (on August 5, 2019), and further stating to Gangi on that same date, “if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me.” Id. at ¶ 24.

Still further, the lower court orders have ignored the existence of the Letter Agreement (as identified in Dwight Walker’s Affidavit, R. pp. 275-276 at ¶¶’s 26-27). Despite this evidence in the record since June of 2020, the lower court order concludes 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, R. pp. 7-8).

Even viewed in the light not most favorable to Appellant, Tiger had a written agreement

with 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.” (Walker Aff.). Dixon at no time made any effort to settle his debts with Appellant to obtain a release of the subject property.

Perhaps this is due to Dixon’s poor communication skills. Perhaps this is due to Dixon being controlled by Frank Gangi who clearly became his source of funding for this litigation at least as early as Sept. 3, 2019, when he was wired \$15,000.00 from Gangi (Rule 59 Motion, filed April 26, 2021, at R. p. 154, bullet point 5), and certainly by October 15, 2019, when present day counsel to ARO-D emailed the undersigned and stated, *inter alia*, as follows:

I’ve been retained by ARO (Rudy Dixon) and T3 (Frank Gangi) regarding a dispute with Tiger Enterprise. The basic outline of the dispute is that ARO purchased and dismantled an airplane in Nigeria. ARO shipped the parts to Tiger, where the parts were to be inventoried. After that, Tiger was supposed to make an offer to purchase the parts or sell them on consignment (details are both fuzzy and in dispute). The parties were unable to reach an agreement on the terms of purchase/consignment and ARO requested the parts to be shipped to T3. In response, Tiger has submitted the attached invoice and demanded payment before anything would be shipped.

Id. (bullet point 6, underline emphasis added).

Appellant Tiger submitted its invoice in accordance with the parties’ Letter Agreement.

The above 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. In addition, as noted at the hearing on the motion on March 9, 2021 (Id. at 16 of 37), the parties and the lower court must consider the implications of 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).

ARO-D / Dixon’s communications with Appellant were from overseas and he 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.

Appellant has been greatly prejudiced by the lower court order prematurely granting partial summary judgments to all opposing parties without the benefit of adequate discovery. Adequate discovery, at a minimum, requires the parties to be able to take the depositions of the Plaintiff in the action that chose to file suit in Greenville County, despite his residence in Nigeria or Florida or Massachusetts or wherever. Absent an initial deposition, the opposing party is deprived of even having an opportunity to explore whether or not they received an appropriate response of responsive documents, or other discovery responses from the opposing party.

The lower court order also fails to set forth the legal basis for granting the claim and delivery remedy to ARO-D. As noted in Appellant’s filings, claim and delivery in South Carolina is a statutory remedy. There appears to be some confusion as to which of the following statutory provisions should apply here, S.C. Code Ann. § 15-69-10 as identified in Hotel & Motel Holdings, LLC v. BJC Enters., LLC, 414 S.C. 635, 658, 780 S.E.2d 263, 275-276 (2015) (stating, “The cause of action for claim and delivery is governed by South Carolina Code sections 15-69-10 to -210.”), or S.C. Code Ann. § 22-3-1310, which appears to be the code to apply in Magistrate’s Court. The lower court order neither cites to or references either of these code provisions, and instead, provides references only to S.C. Code Ann. § 36-9-102 and 203.

The remaining errors in the lower court's orders are all related to its refusal to provide Appellant an opportunity to conduct adequate discovery and its conclusion taken in the light most favorable to the Respondent, "that a valid, enforceable agreement did not exist between Plaintiff and [Appellant] with regard to the aircraft parts at issue." *Id.* at 4 of 6.

CONCLUSION

For at least the reasons set forth herein, Appellant respectfully requests that this Court reverse the grant of partial summary judgments, specifically the two April 16, 2021 orders and the July 6, 2021 order, and remand all related matters back to Circuit Court for further proceedings.

Respectfully submitted,

s/ Wesley D. Few/

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INC., BONNIE WALKER AND DWIGHT
WALKER

Greenville, South Carolina
August 1, 2022

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.

CERTIFICATE OF COUNSEL

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

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Greenville, South Carolina
August 1, 2022

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Respondents.

FINAL REPLY BRIEF OF APPELLANTS

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REPLY

Respondents' Brief attempts to mislead the Court on page 2 of 30 in stating, "Later in 2019, Respondent [Dixon] met the acquaintance of a third-party-Respondent T3 Aviation, Inc." *Id.* As shown in the limited discovery that has been provided thus far,ⁱ in an email from Mr. Gangi to Mr. Dixon, dated June 4, 2019 (at 2:12 P.M.), over a month before Dixon / ARO-D agreed to ship the subject parts to Appellant, Dixon was "negotiating" with Gangi, who stated to Dixon, "i cannot tell if you are selling one engine, 2 engines or the whole pile of shit including airframe and spares!!" In response, Dixon stated to Gangi via email on June 5, 2019 (at 3:25 A.M.), "I don't do business with any one with your attitude no thanks." (Walker Aff., R. p. 274-275, at ¶ 24).

Appellants have never disputed whether or not one of Dixon or ARO-D owned the subject parts. In fact, on June 11, 2020, in denying ARO-D's Motion for Preliminary Injunction and Appointment of a Receiver, the Court further placed the following on the record:

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

ⁱ On Jan. 25, 2022, counsel to Respondents Dixon and ARO-D, responded to an email from the undersigned, stating, "My client gave his deposition on 9/9/21 pursuant to your notice of deposition. Buck and I both asked him questions. Accordingly, my client will not sit for a second deposition." *Id.* The undersigned's Paralegal contacted Bishop Court Reporting to obtain a transcript of this Sept. 9, 2021 deposition, and discovered that counsel to Dixon arranged for a court reporter for this "sham" deposition, after being advised in response to do the deposition staring at 1:30 PM via Zoom due to alleged medical reasons, "No thank you, we will do his deposition in person in Greenville [where he filed the action]. ... As you know, Zoom depositions have significant limitations on deposing counsel." *Id.*

and reports provided to all parties.
This agreement was placed on the record and is the Order of the Court.
It is so Ordered.

(Order, June 11, 2020, R. p. 2)

The subject parts, on information and belief (based on representations from counsel to Dixon), are now exclusively in the possession of respondents T3 / Mr. Gangi in Massachusetts, not Mr. Dixon or ARO-D. As a result, the parties are in violation of the above-identified order dated June 11, 2020, for at least the reason that parts have been ‘sold, rented [and / or] disposed of,’ and not accounted for to Appellant, nor have any resultant funds been placed in trust, as required.

Even the limited record developed thus far in discovery (Initial Brief at p. 5-6, setting forth timeline and statement from Respondent Dixon to respondent Gangi, “if you want to buy any parts from the Hawker 4000 you have to go to [Appellant] Tiger not me.” (Walker Aff., R. pp. 274-275 at ¶ 24)) shows that Dixon represents to Gangi he had an agreement with Appellant Tiger, which Dixon / ARO-D referred to as his “client.”

For the reasons set forth in Appellant’s brief, specifically the premature declaration of dispositive facts without the benefit of (or requirement that Plaintiff be deposed in the forum he selected), this Court must reverse the grant of partial summary judgments and remand all related matters back to Circuit Court for further proceedings.

[signature on next page]

Respectfully submitted,

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Greenville, South Carolina
August 1, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Appellants,

v.

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

Respondents.

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Greenville, South Carolina
August 1, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

ARO-D Enterprises, LLC, Respondent,

v.

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

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

v.

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

Appellate Case No. 2021-000851

Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge

Unpublished Opinion No. 2024-UP-049
Heard December 7, 2023 – Filed February 7, 2024

AFFIRMED

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for Appellants.

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Steven E. Buckingham, of The Law Office of Steven Edward Buckingham, LLC, of Greenville, for Respondents Frank T. Gangi and T3 Aviation, Inc.

PER CURIAM: In this claim and delivery action, Tiger Enterprises & Trading Company, Inc. (Tiger), Bonnie Walker, and Dwight Walker (collectively, Appellants) appeal the partial grant of summary judgment to ARO-D Enterprises, LLC (ARO-D), Rudy A. Dixon, T3 Aviation, Inc., and Frank T. Gangi, arguing the circuit court erred in (1) finding Appellants had adequate time for discovery; (2) granting summary judgment when there was a disputed fact regarding the existence of an agreement between the parties; (3) failing to address the South Carolina Uniform Electronic Transaction Act (UETA); (4) misapplying the law as to ARO-D Enterprises' claim and delivery cause of action; (5) prematurely granting summary judgment to Gangi and T3 Aviation; and (6) misapplying the standard of review for a summary judgment motion. We affirm.

1. We first hold the circuit court did not prematurely grant summary judgment. "Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). In *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, this court stated the following:

A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.

383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009). Here, Appellants have not demonstrated further discovery would uncover additional, relevant evidence that would create a genuine issue of material fact. In addition, we find Appellants had sufficient time to depose Dixon. Thus, we find no premature grant of summary judgment by the circuit court. Although "summary judgment must not be granted

until the opposing party has had a full and fair opportunity to complete discovery," the nonmoving party must demonstrate the "likelihood that further discovery will uncover additional [relevant] evidence," and the party must not be "merely engaged in a 'fishing expedition.'" *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543-44 (1991); *see Guinan*, 383 S.C. at 55, 677 S.E.2d at 36 (finding the circuit court did not err in hearing the defendants' summary judgment motion because the discovery deadlines had expired and the plaintiff was afforded a full and fair opportunity to conduct discovery); *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 253, 734 S.E.2d 161, 165 (2012) (finding the appellant "had ample time during discovery to uncover evidence and speak with any potential witnesses . . . [and i]f [the a]ppellant believed he did not have sufficient time, [the a]ppellant should have promptly filed a motion seeking additional discovery time").

2. We hold the circuit court did not err in granting summary judgment by finding no written agreement existed between ARO-D and Tiger. The circuit court correctly found employees of Tiger conceded in an affidavit and deposition that no signed agreement existed. We find Tiger's allegations that the parties' emails and letters evidenced a written agreement have no merit. *See* Rule 56(e), SCRCP (providing a party challenging a motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial"); *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 320, 548 S.E.2d 854, 856 (2001) (providing that Rule 56(e) "requires a party opposing summary judgment to come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial"); *Schmidt v. Courtney*, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003) ("Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings."); *id.* (requiring the nonmoving party to "come forward with specific facts showing there is a genuine issue for trial").

3. 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. *See* S.C. Code Ann. § 26-6-50(B) (2007) ("This chapter applies only to transactions between parties who agree to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the conduct of the parties.").

4. We find no error by the circuit court in granting ARO-D's motion for summary judgment on its claim and delivery cause of action. "An action in claim and delivery is an action at law for the recovery of specific personal property." *First Palmetto State Bank & Tr. Co. v. Boyles*, 302 S.C. 136, 138, 394 S.E.2d 313, 314 (1990), *superseded by statute on other grounds*, S.C. Code Ann. § 15-3-20(B) (2004), *as recognized in Est. of Mims v. S.C. Dep't of Disabilities & Special Needs*, 422 S.C. 388, 397, 811 S.E.2d 807, 812 (Ct. App. 2018). "The cause of action for claim and delivery is governed by South Carolina Code sections 15-69-10 to -210 (2005)." *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 658, 780 S.E.2d 263, 275-76 (Ct. App. 2015). A party claiming entitlement to property in a claim and delivery action must show by affidavit:

- (1) That the plaintiff is the owner of the property claimed . . . ;
- (2) That the property is wrongfully detained by the defendant;
- (3) The alleged cause of the detention thereof, according to the affiant's best knowledge, information and belief;
- (4) That the property has not been taken for a tax, assessment or fine pursuant to a statute or seized under an execution or attachment against the property of the plaintiff or, if so seized, that it is by statute exempt from such seizure; and
- (5) The actual value of the property.

S.C. Code Ann. § 15-69-30.

In a claim and delivery action, the defendant "should move to set aside the proceedings so far as the immediate delivery of the property is concerned, . . . [and] should specify the alleged grounds of insufficiency" if the defendant contests the right of the plaintiff to claim the immediate delivery of the property because the affidavit omits an essential element required by the code. *Adeimy v. Dleykan*, 116 S.C. 159, 163, 107 S.E. 35, 36 (1921). We find ARO-D met the statutory requirements of a claim and delivery cause of action and the circuit court did not err in granting summary judgment on this cause of action. Dixon's affidavit includes a claim of ownership over the property at issue, the allegation of wrongful detention by Tiger, the cause of the detention, and the values of some of the

property. In addition, we affirm the circuit court's finding that no written agreement existed giving possessory rights in the property to Appellants.¹

5. We hold the circuit court did not prematurely grant summary judgment to Gangi and T3 Aviation. As noted previously, the circuit court did not err in finding no written contract existed; thus, the court did not err in granting summary judgment as to the cause of action for tortious interference with contract. *See Eldeco, Inc. v. Charleston Cnty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007) (stating the elements of a tortious interference with contractual relations claim are: "1) *the existence of a contract*; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages" (emphasis added)). Regarding summary judgment on the UTPA claim, the circuit court found Appellants had not rebutted T3 and Gangi's claims that Appellants failed to provide anything beyond mere allegations of, *inter alia*, an impact on the public interest. We agree and affirm. *See Columbia E. Assocs. v. Bi-Lo, Inc.*, 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989) ("To be actionable under the [UTPA], an unfair or deceptive act or practice must have an impact upon the public interest. The [UTPA] is not available to redress a private wrong where the public interest is unaffected."); *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 308, 657 S.E.2d 67, 70 (Ct. App. 2008) (per curiam) ("A party opposing summary judgment must do more than rely on mere allegations.").

AFFIRMED.

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We note the circuit court's partial grant of summary judgment leaves pending many of Appellants' causes of action, including, *inter alia*, unjust enrichment, restitution, fraud, negligent misrepresentation, constructive trust, and conversion.

Mar 07 2024

SC Court of Appeals

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APPELLANTS' PETITION FOR REHEARING

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10A Wright & Miller, <i>Federal Practice and Procedure</i> § 2741, p. 543 (1983)	8
6 <i>Moore’s Federal Practice</i> para. 56.02[6], p. 56-39 (2d. ed. 1990)	8

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, 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, (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, (vi) Interference with prospective Contractual relations against Gangi and T3, (vii) S.C. Unfair Trade Practices Act against all Respondents, (viii) Constructive Trust against Dixon and ARO-D, (ix) Civil Conspiracy against all Respondents, (x) Barratry against Gangi and T3.

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.

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).

Motions to Dismiss by Respondents for lack of jurisdiction and on other grounds were heard on August 19, 2020, and denied in 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 Gravely'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 the 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 lower court orders that are the subject of this appeal did not even mention the S.C. Uniform Electronic Transactions Act (S.C. Code Ann. § 26-6-10 *et seq.*). Accordingly, no analysis was given as to whether or not the UETA might address the existence and / or extent of the "client" relationship Dixon referred in his Aug. 5, 2019 email to 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), 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).

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 its 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 ARO-D via Dixon also stated in emails to Respondents T3 Aviation and Frank Gangi, and others in relation to Tiger, 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

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.

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 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 several questions, each of which is addressed below.

I. SUMMARY JUDGMENT WAS PREMATURELY GRANTED

In the Opinion affirming the judgment of the lower court, the Court 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 he filed in

Greenville, South Carolina. (R.155, 200). 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 these statements:

- 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).

These statements were made in the midst of this dispute that arose when Gangi did not get what he wanted from Tiger, as shown by his email sent on July 30, 2019. (R.223).

In Baughman v. At&T, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991), the S.C. Supreme Court stated as follows with respect to summary judgments and the required amount of discovery:

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.”). Rudy Dixon, 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, plenty of evidence is 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. 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 sets forth evidence of an agreement between Appellant and ARO-D / Dixon. (R.270-279). Dixon himself 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 have ignored the existence of the Letter Agreement. (R.165, 272). Despite this evidence in the record since June of 2020, the lower court order concludes that Appellant “Defendants have not provided any indication that additional discovery would lead to admissible evidence that a written agreement exists.” (R.294-295).

Even viewed in the light not most favorable to Appellant, Tiger had an agreement with Dixon / ARO-D in 2019. 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 already, especially if viewed in the light most favorable to Appellant, is more than enough for a jury to conclude Dixon was being controlled by Frank Gangi. Gangi became Dixon’s source of funding for this litigation at least as early as Sept. 3, 2019, when he wired Dixon \$15,000.00. (R.154). What better way to interfere with a known relationship than to begin providing money to one of the parties? The evidence shows Gangi did this, just weeks after being told to deal with Tiger by Dixon, because Tiger was his “client.”

A jury would have every right to disbelieve Dixon’s ever changing stories and hold him to his words in late July, early August 2019 to Gangi that Tiger was his “client,” and find that one or more of the email communications between the parties were the basis of the parties’ agreement.

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

The lower court did not even consider the implications of 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 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 Dixon did not intend his communications with Tiger in July 2019 would creating a binding agreement? Dixon’s comments that Tiger was his client do not speak just to the existence of an agreement, those statements “ratify” the existence of an established 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.”).

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 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).

ARO-D / Dixon's communications with Appellant were from overseas and he 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 could not have been applied in the light most favorable to Appellant.

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 Dixon as to what he was referring to when he told third-parties Tiger was his "client." (R.168). The question is whether or the evidence could be viewed in the light most favorable to Tiger. If it were, the factfinder could determine Dixon admitted to having an agreement with Tiger when he referred to it as his "client," and made other similar statements. The lower court and this Court have dismissed this affirmative representation made by Dixon, as if it did not occur. It did occur. People don't go around randomly telling 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 have done here, effectively, 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, 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 Opinion suggests on page 3 under Heading No. 2.

In Heading No. 3, the Opinion again declares what facts the evidence can or 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 Opinion, have not cited to or interpreted this code section. When the legal requirement set forth in the statute is to consider the “context and surrounding circumstances, including the conduct of the parties,” only a jury can make a proper fact finding based on these criteria. *Id.* (underline emphasis added).

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

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

The conclusions and findings in the 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 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 existing record and the legal principles set forth herein. Parties must have an opportunity to conduct adequate discovery, and to have the limited facts already in the record viewed in the proper light,

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.

favorable to the non-moving Appellant at the summary judgment stage.

Respectfully submitted,

s/ Wesley D. Few/

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ATTORNEYS FOR APPELLANTS
TIGER ENTERPRISES & TRADING COMPANY
INC., BONNIE WALKER AND DWIGHT
WALKER

Greenville, South Carolina
March 7, 2024

RECEIVED

Mar 07 2024

SC Court of Appeals

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

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,

PROOF OF SERVICE

The undersigned hereby certifies that on March 7, 2024, the **Appellants' Tiger Enterprises & Trading, Inc., Bonnie Walker and Dwight Walker's Petition for Rehearing** was served on all counsel of record and the Court of Appeals Clerk of Court via U.S. Mail/Email/ECF, as follows:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals – Clerk of Court
Post Office Box 11629
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s/Cassy Young
Cassy Young

March 7, 2024
Columbia, South Carolina

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RECEIVED

Mar 07 2024

SC Court of Appeals

March 7, 2024

Via Email:

The Hon. Jenny Abbott Kitchings, Clerk of Court

South Carolina Court of Appeals

P.O. Box 11629

Columbia, South Carolina 29211

ctappfilings@sccourts.org

RE: Tiger Enterprises & Trading Company, Inc., Bonnie Walker and Dwight Walker v.
ARO-D Enterprises, LLC et al
Appellate Case No. 2021-000851
Our File No.: 00264-002

Dear Ms. Kitchings:

Enclosed for filing is Appellants' Tiger Enterprises & Trading, Company, Inc., Bonnie Walker and Dwight Walker's Petition for Rehearing and Proof of Service for same.

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/cgy

CC: J.J. Andrighetti, Esq. (*Via Email only*)
Steven E. Buckingham, Esq. (*Via Email only*)
Clients (*Via Email only*)

The South Carolina Court of Appeals

ARO-D Enterprises, LLC, Respondent,

v.

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

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

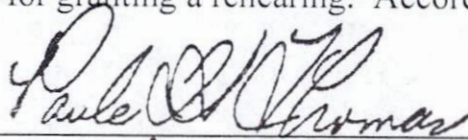
v.

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

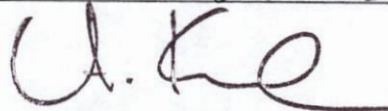
Appellate Case No. 2021-000851

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


Paul W. Roman

J.


U. Ke

J.


John D. Beathan

J.

Columbia, South Carolina

FILED
Apr 12 2024

cc:

Wesley D. Few, Esquire

Jason James Andrighetti, Esquire

Steven Edward Buckingham, Esquire

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Wesley D. Few, Esquire

Jason James

Steven Edm

cc:

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Jason James

Steven Edm