

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Jan 15 2025**

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000777

ARO-D Enterprises, LLC ..... Respondent,

v.

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

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

v.

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

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**BRIEF OF RESPONDENTS**  
**FRANK T. GANGI & T3 AVIATION, LLC**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
STATEMENT OF ISSUES ON APPEAL .....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS .....	5
ARGUMENT .....	9
<b>I.    The caption of the Petition is not correct.....</b>	<b>9</b>
A.        Dixon is not now, and has never been, a party to these appellate proceedings.....	9
B.        Mr. and Mrs. Walker are not Petitioners.....	10
C.        ARO-D is no longer a Respondent.....	12
D.        Section Concluding Statement .....	14
<b>II.    An Initial Comment on the Organization of this Brief.....</b>	<b>14</b>
<b>III.   The Court of Appeals properly affirmed the trial court’s decision that no agreement existed between ARO-D and TET.....</b>	<b>15</b>
A.        The relevant portions of the lower courts’ decisions. ....	16
B.        The trial court applied the appropriate standard of review. ....	18
C.        The trial court did not err in granting partial summary judgment over TET’s demand for more time to engage in discovery.....	22
D.        Section Concluding Statement .....	23
<b>IV.   The Court of Appeals properly affirmed the trial court’s decision granting partial summary judgment in favor of Respondents as to the action for tortious interference with contract.....</b>	<b>24</b>
<b>V.    The Court of Appeals properly affirmed the trial court’s decision granting partial summary judgment in favor of Respondents as to the SCUTPA action.....</b>	<b>26</b>
A.        The relevant portions of the lower courts’ decisions. ....	26
B.        The trial court applied the proper standard of review. ....	27
C.        The trial court did not err in its decision to grant summary judgment in favor of Respondents against the SCUTPA action over TET’s request for additional time to conduct discovery..	30
D.        There is a substantial question as to whether this issue is preserved for appellate review. ....	31

E.	Section Concluding Statement .....	32
<b>VI.</b>	<b>General Prayer for Relief.....</b>	<b>32</b>
<b>CONCLUDING STATEMENT.....</b>		<b>33</b>

**TABLE OF AUTHORITIES**

**South Carolina Statutes**

S.C. Code Ann. § 39-5-10..... 27, 31

**South Carolina Rules of Civil Procedure**

Rule 59(e)..... passim

**South Carolina Appellate Decisions**

Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991) ..... passim

Charleston Lumber Co. v. Miller Housing Co., 338 S.C. 171, 525 S.E.2d 869 (2000) ... 13

Columbia E. Assocs. v. Bi-Lo, Inc., 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989) ..... 27

Edens v. Laurel Hill, Inc., 271 S.C. 360, 247 S.E.2d 434 (1978)..... 22

Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990) ..... 21

Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568,  
762 S.E.2d 696 (2014) ..... 20

Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)..... 28

Walton v. Mazda of Rock Hill, 376 S.C. 301, 657 S.E.2d 67 (Ct. App. 2008)..... 27

Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006)..... 27

**Decisions of the United States Supreme Court**

Celotex Corp. v. Catrett, 477 U.S. 317 (1990) ..... 28

**Other Materials**

Toal et al., Appellate Practice in South Carolina (3d ed. 2016) ..... 25

### STATEMENT OF ISSUES ON APPEAL

- I. Whether and to what extent the parties identified as “Petitioners” and “Respondents” are properly before this Court.
- II. Whether and to what extent any of the issues raised by Petitioners in these appellate proceedings are preserved for this Court’s review, and relatedly, whether Petitioners have otherwise abandoned issues for which review is sought.
- III. Whether the Court of Appeals properly affirmed the trial court’s grant of summary judgment in favor of Respondents T3 Aviation, Inc. and Frank T. Gangi against TET’s action for violation of the South Carolina Unfair Trade Practices Act, under circumstances where TET failed to articulate any evidence at the summary judgment stage to substantiate multiple elements of the cause of action, and where TET failed to present any argument in connection therewith in its prior appellate submissions.
- IV. Whether the Court of Appeals properly affirmed the trial court’s grant of summary judgment in favor of Respondents T3 Aviation, Inc. and Frank T. Gangi as to their action for declaratory judgment, to establish that no valid, enforceable agreement existed between TET and 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 Court of Appeals properly affirmed the trial court’s grant of summary judgment in favor of Respondents T3 Aviation, Inc. and Frank T. Gangi, despite TET’s protestations that more discovery was necessary, under circumstances where, by the very nature of TET’s allegations, additional discovery would have been fruitless, and where TET has consistently failed to articulate what information additional discovery would likely 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, ARO-D Enterprises, LLC (“**ARO-D**”) acquired the rights to an inoperable luxury business jet from the government of a foreign country. In 2019, ARO-D began removing parts from the aircraft at issue and sending those parts stateside to the warehouse of Petitioner Tiger Enterprises & Trading, Inc. (“**TET**”), which is located in South Carolina. Initially, TET and ARO-D were discussing the possibility of TET purchasing the entirety of the inventory of aircraft parts being sent to their warehouse, but the parties could never reach mutually agreeable terms. Later, TET began presenting ARO-D with various proposals for a consignment agreement, by which ARO-D would allow TET to market and sell the inventory of aircraft parts on behalf of ARO-D. Here, too, the parties were never able to achieve a set of mutually agreeable terms.

Later in 2019, ARO-D met the acquaintance of a third-party—Respondent T3 Aviation, Inc. (“**T3**”)—who was interested in acquiring the inventory of aircraft parts. To facilitate this potential transaction, ARO-D instructed TET to release the inventory of aircraft parts it was then holding. TET refused, ultimately forcing ARO-D to file a civil action seeking the release of the inventory being wrongfully withheld.

After the commencement of this action, TET elected to dramatically expand the scope of conflict, suing ARO-D’s owner—Rudy Dixon—individually, as well as T3 and its principal operator, Frank T. Gangi. 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 TET and ARO-D.

In December 2020 and February 2021, ARO-D, T3, and Gangi separately filed two motions for partial summary judgment. (R. 128 & 147.) These motions were granted, resulting in, among other things, orders instructing TET to remand the inventory at issue to ARO-D, finding that ARO-D and TET were not parties to a valid, enforceable contract regarding the inventory at issue, and dismissing TET's action under the South Carolina Unfair Trade Practices Act ("SCUTPA") against T3 and Gangi. (R. 4 & 10.) Multiple other causes of action remained. (See R. 19 & 36.)

TET filed a motion to alter or amend these decisions under Rule 59(e), SCRCPP, (R. 150), which was denied in July 2021, (R. 16). TET then filed a notice of appeal, dated August 3, 2021. (R. 280.)

A panel of the Court of Appeals affirmed the trial court's disposition of the motions for partial summary judgment by opinion dated February 7, 2024. (R. 358.) Petitioners then filed a petition for rehearing with the Court of Appeals, (R. 363), which was denied by order dated April 12, 2024, (R. 383). Petitioners filed a petition for writ of certiorari with this Court on May 13, 2024, which was granted by order dated November 14, 2024.<sup>1</sup>

During the pendency of these appellate proceedings, Dixon passed away. The undersigned does not believe that an estate has been opened for Dixon. This has placed a great deal of doubt as to whether Dixon's interests, as well as those of ARO-D—of which Dixon was the sole member, may be properly represented by legal counsel. As a

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<sup>1</sup> It does not appear that the petition for writ of certiorari, or the order granting the petition, are included in the Appendix.

consequence of these complications, counsel for ARO-D and Dixon—J.J. Andrighetti, Esq., of Greenville—has been relieved from further representation by order of the trial court. Accordingly, this brief is being submitted solely on behalf of Respondents T3 and Gangi.

## STATEMENT OF FACTS

The facts of this dispute are unusual, but not complicated. 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, 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 Petitioner 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 involving a consignment agreement that would allow TET to market and sell the Hawker Inventory on behalf of ARO-D. (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 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 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, as well as Mr. and Mrs. Walker, seeking, among various other forms of relief, an order compelling TET to dispossess itself of the Hawker Inventory. (R. 19.) This was sought through an action for claim and delivery. (Id.)

In April 2020, TET and the Walkers 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 T3 and Gangi were for breach of contract, tortious interference with contract, and SCUTPA. (Id.) According to the pleadings of TET and the Walkers, 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, two motions for partial summary judgment were filed against TET. (R. 128 & 147.) ARO-D's motion sought partial summary judgment on its claim and delivery action, seeking an order from the trial court that would compel TET to release the Hawker Inventory from its wrongful possession, which was continuing. Respondents T3 and Gangi filed a motion for partial summary judgment seeking: (1) dismissal of the SCUTPA action; (2) a declaratory judgment that TET did not have a legally enforceable agreement with ARO-D regarding the Hawker Inventory; 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, since that was predicated on the existence of a contract between ARO-D and TET.

A hearing on these motions was held on March 9, 2021. (R. 233.) Importantly, ARO-D's motion was supported by an affidavit given Dixon, (R. 132), as well as certain other documents and testimony, including excerpts of the deposition of TET's vice president, Dan Hansen, (R. 136). TET, for whatever reason, did not oppose either of the motions for partial summary judgment with any memorandum in opposition, affidavits, or exhibits. After receiving the arguments of counsel, the trial court took the motions under advisement. 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 TET was 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 SCUTPA action 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 contract as a matter of law. (R. 10.)

These appellate proceedings followed.

## ARGUMENT

### **I. THE CAPTION OF THE PETITION IS NOT CORRECT.**

Petitioners are identified as TET, Mr. Walker, and Mrs. Walker; Respondents are identified as ARO-D, Dixon, Gangi, and T3. However, as explained below, the only Petitioner is TET, and the only Respondents are T3 and Gangi.

#### **A. Dixon is not now, and has never been, a party to these appellate proceedings.**

On August 3, 2021, TET filed the notice of appeal that commenced these appellate proceedings. (R. 280.) The decisions appealed from comprise: (1) an order of April 16, 2021 granting ARO-D's motion for partial summary judgment, (R. 4); and (2) an order of April 16, 2021 granting the motion for partial summary judgment of T3 and Gangi, (R. 10).

The order granting relief in ARO-D's favor was precipitated by the filing of a motion for partial summary judgment by ARO-D on December 30, 2020. (R. 128.) That motion was narrowly tailored to address only ARO-D's second cause of action, for claim and delivery. With respect to that cause of action, ARO-D was the only plaintiff, and it was the only party that moved for summary judgment on that claim. Accordingly, when the trial court granted summary judgment as to the claim and delivery action, ARO-D was the only prevailing party. Therefore, necessarily, when TET filed its notice of appeal as to the order on claim and delivery, the only parties directly involved in that determination were TET and ARO-D. Dixon—in his individual capacity—was not a party to order granting summary judgment on claim and delivery, and consequently, he was not directly involved in the underlying appellate proceedings on this issue, nor is he presently a party to this Petition.

A similar analysis applies with respect to the order granting partial summary judgment in favor of T3 and Gangi. Their motion was filed on February 12, 2021; ARO-D did not join in the motion, nor did Dixon. (R. 147.) Accordingly, when partial summary judgment was granted in favor of T3 and Gangi, they were the only prevailing parties.

Consistent with this procedural history, when the Court of Appeals took jurisdiction of this case upon TET's filing of its notice of appeal, the two components of the appeal were:

- (1) The appeal of TET against ARO-D, with respect to the trial court's grant of partial summary judgment in ARO-D's favor on the claim and delivery action; and,
- (2) The appeal of TET against T3 and Gangi, with respect to the trial court's grant of partial summary judgment in favor of T3 and Gangi as to the actions for tortious interference with contract and SCUTPA (as well as for the declaratory judgment action brought by T3 and Gangi as to the non-existence of a predicate contract to sustain an action for tortious interference).

Dixon was simply not involved as a party moving for affirmative relief in the orders from which this appeal was taken, and is not a respondent-party in this Petition.

**B. Mr. and Mrs. Walker are not Petitioners.**

As discussed above, neither of the Walkers was directly involved in the motions for which summary judgment was granted, and which have been appealed.

With respect to T3 and Gangi, these Respondents were made party-defendants to the underlying action by virtue of a third-party complaint filed by TET. Among various

other causes of action, TET sued T3 and Gangi for tortious interference with contract and SCUTPA. T3 and Gangi countersued TET for a declaratory judgment that no contract ever existed that could sustain TET's action for tortious interference with contract. Accordingly, when TET filed its appeal of the trial court order granting partial summary judgment in favor of T3 and Gangi, the only appellant on this aspect of the appellate proceedings was TET.<sup>2</sup>

The same analysis holds with respect to the grant of summary judgment in ARO-D's favor on the claim and delivery issue. ARO-D's pleading makes clear that affirmative relief on claim and delivery is sought against TET—not Mr. Walker, and not Mrs. Walker. (R. 19.) Accordingly, when ARO-D filed its motion for partial summary judgment, the only party-opponent on that specific issue was TET. And, when the trial court granted ARO-D's motion, the only party whose interests were directly and adversely affected was TET.

It is therefore not surprising that the Rule 59 motion pertaining to the orders presently on appeal was filed by TET, and was not joined by either of the Walkers. (R. 150.) In similar fashion, it is not surprising that the pertinent notice of appeal was filed by TET exclusively, again, without Mr. or Mrs. Walker's participation. (R. 280.) In fact, nowhere in the record does it appear that Mr. or Mrs. Walker ever filed a notice of appeal from any decision of the trial court. It is strange, then, that Mr. and Mrs. Walker have been identified as "Appellants," first, and now "Petitioners," despite the fact that they are not and have never been proper parties to these appellate proceedings in their individual capacities.

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<sup>2</sup> This is consistent with Petitioners' Rule 59 motion before the trial court, in which the tortious interference and SCUTPA actions are identified as belonging to TET.

**C. ARO-D is no longer a Respondent.**

As discussed above, the only issue in these appellate proceedings that directly involved ARO-D is the order granting partial summary judgment in favor of ARO-D as to its claim and delivery action. Now, however, it appears that issue has been abandoned.

At oral argument before the Court of Appeals on December 7, 2023, TET advised the Court that it was withdrawing at least the claim and delivery issue from consideration. Although this is not reflected in the panel decision of the Court of Appeals, it has been acknowledged by TET's counsel twice in writing: first, in footnote 3 of the petition for rehearing, (R. 378); then, in footnote 3 of the petition for writ of certiorari.

There are two immediate impacts of this concession on these appellate proceedings. First, as discussed above, the only issue involved in this appeal that pertains directly to ARO-D is the disposition of the claim and delivery action in ARO-D's favor. The fact that TET has explicitly abandoned this issue necessarily terminates further involvement by ARO-D in these proceedings. Second: with the abandonment of the claim and delivery issue, the Court of Appeals' disposition of that portion of the appeal has become the law of the case.

What remains is a far narrower scope of review than was presented to the Court of Appeals. Specifically, the only issue remaining for this Court's consideration is the affirmation of the trial court's order granting partial summary judgment in favor of T3 and Gangi against TET's actions for tortious interference with contract and for violation of the Unfair Trade Practices Act.

And even this is subject to further refinement. In both its petition for rehearing and its petition for writ of certiorari, TET expressly "conceded [that] the claim and

delivery issue was moot, and do[es] not challenge here the decision of the Court [of Appeals] in Heading No. 4 on page 4 of 5.” (R. 378.) Item No. 4 of the Court of Appeals’ opinion provides as follows: “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. . . . In addition, we affirm the circuit court’s finding that no written agreement existed giving possessory rights in the property to Appellants.” (R. 361-62 (emphasis added).) This would seem to dovetail with Item No. 2 of the Court of Appeals’ opinion, which “hold[s] the circuit court did not err in granting summary judgment by finding no written agreement existed between ARO-D and [TET].” (R. 360.)

If it is the case that TET has conceded the holding of Item No. 4 of the Court of Appeals’ opinion, then the issue of whether an agreement existed between TET and ARO-D regarding the Hawker Inventory has been put to rest. The trial court’s decision that no contract existed has been affirmed by the Court of Appeals, it has not been appealed, and the matter is now the law of the case. See, e.g., Charleston Lumber Co. v. Miller Housing Co., 338 S.C. 171, 174-75, 525 S.E.2d 869, 871 (2000) (citations omitted) (holding that an unappealed decision of the Court of Appeals becomes the law of the case for purposes of further review by the Supreme Court).

This, too, would seem to affect other aspects of these appellate proceedings. Section I.A of TET’s brief to this Court is titled “Dixon’s conduct ratified existence of agreement,” (Pet.’s Br. at 10); Section I.B is targeted at the lower courts’ failure to apply the Uniform Electronic Transactions Act (“UETA”) to the circumstances of the dispute in order to create a contract, (id. at 13). Neither of these arguments matters, however, if this Court is to honor TET’s concession; the absence of an agreement between TET and

ARO-D would be the law of the case, no further argument would be capable of its resurrection, and the Court of Appeals' decision affirming summary judgment in favor of T3 and Gangi as to tortious interference should be upheld. Accordingly, the only matter remaining for this Court's consideration would seem to be consideration of the Court of Appeals' decision affirming summary judgment in favor of T3 and Gangi as to TET's SCUTPA action.

**D. Section Concluding Statement**

It is no longer clear to the undersigned whether and to what extent matters resolved by the Court of Appeals remain extant for appellate review. It seems reasonably clear that the issues regarding the claim and delivery action have been withdrawn or abandoned, and that the issues regarding the SCUTPA action remain. However, between TET claiming to have abandoned the appeal with respect to matters decided in Item No. 4 of the Court of Appeals' opinion, and yet continuing to argue issues that are relevant only if the existence of a written agreement is still in dispute, the undersigned is left with no choice but to address issues that may or may not remain in dispute.

Ultimately, however, it would seem that the only Petitioner properly before this Court is TET, and the only Respondents properly before this Court are T3 and Gangi. Consequently, and for the sake of simplicity, when "Respondents" are referred to hereinafter, that term is intended to describe only T3 and Gangi.

**II. AN INITIAL COMMENT ON THE ORGANIZATION OF THIS BRIEF**

The undersigned has put a great deal of thought into how best to organize the arguments presented in this brief. Certainly, the ambiguity of TET's abandonment of the issues decided in Item No. 4 of the Court of Appeals' opinion has muddied the waters as

to what matters continue to require discussion. Regardless, the issues that perhaps remain do not fall neatly into discrete silos that would allow separate, self-contained analysis. For example, despite TET's argument that the trial court's grant of partial summary judgment was premature, that is not a basis for reversal *per se*; as discussed below, summary judgment might be premature when further discovery is warranted as to a specific issue or set of issues. Accordingly, with respect to this case, the trial court's grant of partial summary judgment would constitute error only if the court's failure to afford TET additional time for discovery reasonably prejudiced its ability to develop some identifiable aspect of its claim. This requires a discussion of both substance and procedure.

All that to say this: the following arguments are organized around the substantive actions implicated by the trial court's grant of partial summary judgment. The first topic is the trial court's decision that no agreement existed between ARO-D and TET; the second is the trial court's decision granting summary judgment in favor of T3 and Gangi as to the action for tortious interference with contract; and the third, the trial court's decision granting summary judgment in favor of T3 and Gangi as to SCUTPA.

Within each of these topics, Respondents have endeavored to address various procedural aspects in addition to their substance, including whether the issue has been preserved for review, whether the appropriate standard was applied at the trial and appellate court levels, and ultimately, whether the prior dispositions should be affirmed.

**III. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT'S DECISION THAT NO AGREEMENT EXISTED BETWEEN ARO-D AND TET.**

As an initial matter, Respondents perceive that TET's concession as to the matters decided in Item No. 4 of the Court of Appeals' opinion has removed this issue from

dispute. The Court of Appeals “affirm[ed] the circuit court’s finding that no written agreement existed giving possessory rights in the property to [TET],” (R. 362), and TET has affirmatively represented that it “do[es] not challenge here the decision of the Court in Heading No. 4 on page 4 of 5,” (R. 378). Consequently, the determination that no agreement existed between ARO-D and TET—as found by the trial court, and as affirmed by the Court of Appeals—would seem to be the law of the case. However, in the event the Supreme Court deems otherwise, Respondents will proceed with analyzing the merits of this issue.

**A. The relevant portions of the lower courts’ decisions.**

ARO-D’s motion for partial summary judgment sought immediate possession of the Hawker Inventory, claiming that ARO-D was the owner of the property, that TET was in wrongful possession of the property, and that TET had refused to surrender the property to ARO-D. TET opposed the relief sought, claiming that it had a valid consignment agreement with ARO-D that vested TET with the right to possess the Hawker Inventory. At summary judgment, it was TET’s contention that a genuine dispute of material fact existed as to whether a valid consignment agreement existed, based on the sworn statements of Mr. Walker and Dixon, and additionally, whether UETA provided an additional avenue through which the trial court may find evidence sufficient to support the inference that a consignment agreement had been established. (R. 233.)

In furtherance of its motion for partial summary judgment, ARO-D provided the trial court with an affidavit from Dixon, disclaiming the existence of a consignment agreement with TET, (R. 132), as well as excerpts from the deposition of Dan Hansen,

who was a vice president of TET with direct, personal knowledge of the relationship between ARO-D and TET. Vice president Hansen affirmed that no consignment agreement ever existed between the parties. (R. 136.) This information was bolstered by a previously filed affidavit from Mr. Walker, TET's chief executive officer, which also denied the existence of a consignment agreement with ARO-D regarding the Hawker Inventory. (R. 270.)

By contrast, in opposition to ARO-D's motion, TET filed nothing. TET submitted no affidavits or exhibits for the trial court's consideration, choosing instead to rest on oral argument.

These circumstances led the trial court to render the following decision:

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, [R. 270], 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.

(R. 7-8.)

In its decision, the Court of Appeals held that: (1) the trial court applied the correct standard of review; (2) the trial court did not err in granting the summary judgment requested over TET's request for more time to conduct discovery; (3) the trial court did not err in withholding application of the UETA, specifically because TET had not presented any evidence "that the parties had agreed to conduct their business by

electronic means;” and (4) the trial court did not err in concluding that no agreement existed between ARO-D and TET. (R. 359.)

**B. The trial court applied the appropriate standard of review.**

This is plainly evident by the content of the trial court’s decision. (R. 5-6.) Moreover, the trial court was specifically aware of the Baughman decision relied upon so extensively by TET. Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991). At the hearing on ARO-D’s motion for partial summary judgment, TET’s counsel explicitly referenced Baughman on two occasions. (R. 240 & 243.) The trial court’s order—in the very section discussing the appropriate standard of review on motions for summary judgment, no less—cited Baughman. (R. 5.) Suffice to say, the precedent did not escape the trial court’s consideration.

Certainly, to an extent, Baughman stands for the proposition that a litigant should be afforded a reasonably sufficient amount of time to develop the facts to support its case. It does not provide a “get out of jail free card” to a litigant facing summary judgment who has no evidence to support its claim. Instead, Baughman provides a set of factors that trial courts should consider in determining whether a motion for summary judgment ought to be denied in order to allow more time for discovery.

In terms of underlying facts, Baughman was an environmental torts case. It was plaintiffs’ contention that defendants’ operation of a nearby refinery—and the pollution it would generate—had caused personal injuries in the form of illnesses, as well as property damages. The trial court granted partial summary judgment in defendants’ favor as to plaintiffs’ personal injury and property claims, over the objection of plaintiffs’ counsel

that he had not had a sufficient amount of time to develop medical evidence of a causal link between the environmental harms complained of and plaintiffs' personal injuries.

On appeal, the Supreme Court reversed the portion of the trial court's order that granted summary judgment as to the personal injury claims, but affirmed the portion of the trial court's order as to summary judgment against the property damage claims. In a section of the opinion entitled "Summary Judgment Premature?," the Court identified several circumstances that militated in favor of giving plaintiffs more time to engage in discovery. Three factors were explicitly identified by the Court: (1) the demonstration of "a likelihood that further discovery will uncover additional evidence relevant" to the issues in dispute, and will not comprise a mere "fishing expedition;" (2) a showing that the party seeking more time to engage in discovery has not been dilatory, but has been "reasonably diligent" in the pursuit of discovery appropriate to substantiate its claims; and (3) the complexity of the issue for which more discovery is sought. Baughman, 306 S.C. at 112-13, 410 S.E.2d at 544.

In the course of deciding Baughman, the Supreme Court observed that establishing medical causation of personal injuries in cases alleging toxic environmental torts is ordinarily a particularly complex endeavor, which was amplified in the underlying case because of the challenges experienced with discovery. The Court found that defendants had impaired plaintiffs' ability to engage an expert on the issue of medical causation, specifically because defendants had failed to disclose the identity of the chemical substances discharged from the refinery that were suspected to be causing plaintiffs' injuries. The Court ultimately held that, under these circumstances, summary judgment was premature; plaintiffs' ability to develop evidence to prove a discrete,

medically complex issue had been unreasonably frustrated by defendants, as the information that plaintiffs required to procure expert testimony was controlled, and had been wrongfully withheld, by defendants. In short, it would have been inequitable to grant summary judgment against plaintiffs' personal injury claims for failure to establish causation, when defendants effectively prohibited plaintiffs' access to the very information that was likely to establish causation.

None of the equitable considerations at issue in Baughman are pertinent to TET's circumstances. There is no extraordinary complexity to what is—at its core—a breach of contract action where the central issue is the fundamental question of whether a contract existed, at all. That is particularly true in the underlying case, where it was undisputed by both sides to the so-called agreement that no contract was ever established. This fact was not lost on the trial judge, who explicitly observed that TET had “failed to provide any evidence or testimony claiming the existence of a contract or written, signed agreement between the parties,” or “provided any indication that additional discovery would lead to admissible evidence that a written agreement exists, which [TET has] already testified does not exist.” (R. 7-8.) In short, at summary judgment, TET was obliged to identify specific facts that would evidence the existence of a contract, and it failed to. Under these circumstances, there was nothing improper with the trial court's decision to hold that no valid, enforceable agreement existed between the parties. See, e.g., Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 578-79, 762 S.E.2d 696, 701-02 (2014) (citations omitted).

A similar analysis applies with respect to TET's invocation of UETA. It has been suggested that the trial court erred in failing to consider whether UETA supplied the legal

predicate necessary to form a valid, enforceable agreement between ARO-D and TET. The more pertinent question, though, is *what information did TET provide to the trial court in order to assist the court in concluding that UETA may apply to form a contract?* The answer is nothing. It was not until TET's Rule 59 motion that it, for the first time, presented the trial court with records of electronic correspondence that were suggested to evidence the existence of a contract by virtue of UETA. (R. 150.)

It's not as if this information was unavailable to TET at the time of the summary judgment hearing. The correspondence relied upon by TET to support this argument was identified at the end of the Rule 59 motion; it consists of three items of electronic correspondence, sent between July 24 and August 5, 2019, on which at least one representative of TET was copied. Suffice to say, this information was available to TET at the time of the summary judgment hearing in March 2021. Yet, for whatever reason, TET made the strategic decision to not provide any of this information to the trial judge until after the court had already entered summary judgment. Cf. Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.") (citation omitted).

Not that it would have mattered. These items of correspondence were made part of the Record on Appeal, were evaluated by the Court of Appeals, and were properly found to fail to establish the existence of an agreement between the parties "to conduct their transactions by electronic means." (R. 360.)

Rule 56 requires that a party opposing a motion for summary judgment 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, 306 S.C. at 115, 410 S.E.2d at 545 (citations, internal quotations, and alteration omitted). The trial court found that TET failed to carry this burden, and that decision was affirmed by the Court of Appeals. Neither constitutes error.

**C. The trial court did not err in granting partial summary judgment over TET’s demand for more time to engage in discovery.**

As discussed in the preceding section, a party who seeks more time for discovery in an effort to oppose summary judgment must be capable of articulating the additional discovery necessary to sustain its claim, and justify why that information has not yet been developed. With respect to their suggestion that the trial court was premature in granting partial summary judgment on the issue of the existence of a contract with ARO-D, TET did not meet that burden, nor could it.

It is axiomatic that the formation of a valid, enforceable agreement requires the mutual assent of the contracting parties. See, e.g., Edens v. Laurel Hill, Inc., 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978) (citation omitted). In the instant case, there is no dispute between the so-called contracting parties that no contract was ever formed. Dixon’s sworn statement denied the existence of a contract; CEO Walker’s sworn statement acknowledged that a consignment agreement was never formed; vice president Hansen’s deposition testimony affirmed the same. The information before the trial court at the hearing on the motions for partial summary judgment was mutually unequivocal and undisputed: ARO-D and TET did not achieve a valid, enforceable agreement. The only meeting of the minds between these parties was that a contract for the Hawker Inventory did not exist.

TET's demand for "more discovery" was never going to change the testimony of the key officers of the allegedly contracting parties. Nor was "more discovery" going to improve TET's arguments regarding UETA. To the extent that UETA would have provided an avenue for TET to plausibly argue the existence of a contract with ARO-D, TET's personnel would necessarily have to have been part of the electronic correspondence that allegedly formed their agreement. In other words, if information existed that would have supported the application of UETA to create a contract with ARO-D, TET would have already had that information; its personnel would have sent and received that correspondence, and it would have been in their email inboxes. "More discovery" would not have yielded any different or better information than what TET would have already had, if such information existed.

To some extent, it seems that TET has quietly acknowledged this fact. Time and again, TET has had the opportunity to identify, with specificity, what additional information it thinks "more discovery" would yield. It has never done so. And one can't help but wonder if TET's steadfast silence on such a critical issue is a tacit admission. No amount of further discovery is going to yield any more information to suggest the existence of a contract between ARO-D and TET other than what was already available to the parties at the outset of this action.

#### **D. Section Concluding Statement**

All the information that TET needed to avoid partial summary judgment on the issue of the existence of a contract with ARO-D—if such information existed, at all—was available to TET from the beginning of the case. If the information existed, it was never provided to the trial court prior to or at the hearing on the motions for partial summary

judgment. If the information never existed, then no amount of additional discovery would change that fact. Either way, on the record before the court, the trial judge properly granted partial summary judgment on the issue of whether a contract existed between ARO-D and TET, and that decision was properly affirmed by the Court of Appeals.

**IV. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT'S DECISION GRANTING PARTIAL SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS AS TO THE ACTION FOR TORTIOUS INTERFERENCE WITH CONTRACT.**

The only contract that TET has ever argued to have existed with ARO-D is the consignment agreement for the Hawker Inventory. (R. 52.) In that connection, TET's third-party claim against T3 and Gangi for tortious interference with contract wholly depends on the existence of that agreement. If it is the case that no valid, enforceable consignment agreement ever existed between ARO-D and TET, then necessarily, the tortious interference action against Respondents cannot survive as a matter of law.

Therefore, in a very real sense, the arguments presented in the foregoing section, and those to be presented in this section, are inextricably intertwined. For example, if it is the case that TET has conceded the totality of matters decided in Item No. 4 of the Court of Appeals' opinion, then not only has the Court of Appeals' disposition of the issues regarding the existence of a contract between ARO-D and TET become the law of the case, but the Court of Appeals' affirmation of the trial court's grant of partial summary judgment to Respondents on the tortious interference action must also necessarily be upheld. In similar fashion, if the Court of Appeals' decision on the existence of a contract is affirmed due to TET's failure to provide any material opposition to the motions for partial summary judgment, then the decision affirming partial summary

judgment in Respondents' favor on the tortious interference action must also be upheld. For this reason, and for the sake of brevity, Respondents will simply incorporate the arguments set out in the foregoing section into this section, since the arguments may very well rise or fall together.

With one addition. There is a substantial question as to whether TET has preserved the dismissal of the action for tortious interference against Respondents for appellate review, or whether the issue has been abandoned. Respondents would call the Court's attention to TET's opening brief to the Court of Appeals. Despite the fact that one of the "Issue(s) on Appeal" is described as pertaining to "whether the lower court erred in granting summary judgment to Frank Gangi and T3 Aviation," there are no arguments made, or authorities cited, anywhere in the brief that pertain to Respondents. (R. 339.) The same silence haunts TET's reply brief. (R. 352.)

Ordinarily, "an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory manner without supporting authority." Toal et al., Appellate Practice in South Carolina, Part III, Ch. 9, Section IV.A, at 208 (3d ed. 2016) (citations omitted). The same must certainly be true with respect to issues that are neither argued nor supported with authority. And, if the issue was not properly presented to the Court of Appeals for review, then the issue "is not properly preserved for review by the Supreme Court on certiorari." Id., Part III, Ch. 9, Section IV.D, at 210 (citations omitted).

**V. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT’S DECISION GRANTING PARTIAL SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS AS TO THE SCUTPA ACTION.**

It is axiomatic that a party’s claim is defined by its pleadings. In the underlying case, and with respect to the SCUTPA action, TET alleged the following:

146. Dixon, ARO, Gangi and/or T3 made false statements with the intent to deceive Defendants.
147. Dixon, ARO, Gangi and/or T3 did in fact deceive Defendants.
148. On information and belief, one or more of Dixon, ARO, Gangi and/or T3’s such statements have been repeated and / or are capable of repetition, and such acts will cause damage to the public interests of the citizens of the state [sic] of South Carolina, who expect efficient and fair markets for products, including airplane products, and services, such as the professional and skilled services of the Defendants.
149. As a result of these intentional acts of these 3<sup>rd</sup> Party Defendants, Defendants have been damaged, and are entitled to compensation for their damages, recovery [sic] their damages, attorneys’ fees and costs as permitted by applicable law, and punitive or exemplary / trebled damages.

(R. 57-58.)

Respondents’ motion for partial summary judgment challenged the legal and factual sufficiency of TET’s SCUTPA action: (1) that “TET has failed to establish what false statements were attributable to either Gangi or T3 Aviation;” (2) that TET has failed to establish “how [it] has sustained damages in reliance thereon;” and (3) that TET has failed to establish “how—if at all—this matter is within the ambit of the Unfair Trade Practices Act.” (R. 147.)

**A. The relevant portions of the lower courts’ decisions.**

In granting partial summary judgment in favor of Respondents as to TET’s SCUTPA action, the trial court held as follows:

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 SCUPTA action.

(R. 13-14.)

The Court of Appeals affirmed the trial court's decision:

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.").

(R. 362.)

**B. The trial court applied the proper standard of review.**

This is evidenced by the trial court's opinion:

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.

(R. 12.)

Respondents wish to draw the Court's attention to type of motion for summary judgment they filed. It was not the type of summary judgment motion that is supported by affidavits, discovery responses, and deposition testimony; it was simpler. Respondents' motion merely pointed out to the trial court that there was an absence of evidence to support TET's SCUTPA action. See, e.g., Baughman v. AT&T, 306 S.C. 101, 114-15, 410 S.E.2d 537, 545-46 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1990)). In other words: (1) TET did not have any evidence that either Respondent had ever made any false statement to TET; (2) TET did not have any evidence that TET had ever relied—much less to its financial detriment—to any statement attributable to either Respondent; and (3) TET did not have any evidence that was capable of meeting the “public interest” element of a SCUTPA action.

At that point, and consistent with Rule 56, SCRCP, it was incumbent on TET to “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. . . . Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.” Baughman, 306 S.C. at 115, 410 S.E.2d at 545 (citations omitted).

TET did not rise to that challenge. In response to Respondents' motion, TET did not provide any information to the trial court by which the court could have found in TET's favor. It cannot be forgotten that TET alleged, in its pleadings, that Respondents made false and deceptive statements to TET and its personnel. At summary judgment, Respondents merely asked TET to identify what those statements were. TET couldn't. Respondents challenged TET to identify what damages were incurred as a result of TET's reliance on the putative false statements. TET couldn't. Respondents demanded that TET produce some evidence that, consistent with pertinent authority, could establish the public-interest element of a SCUTPA action. TET couldn't.

And, to be clear, this is not the type of case where some amount of information was presented to the trial court, but was found to be insufficient to withstand summary judgment. TET couldn't provide any evidence of any material element of its SCUTPA action, and didn't even try. It was TET's allegation that Respondents made false and misleading statements to TET's personnel, that were relied on by TET's personnel, to TET's financial detriment. All the information that would have been sufficient for TET to avoid summary judgment on its SCUTPA action—if that information existed—would necessarily have been within TET's control. After all, *who better to know what false or deceptive statements were made to TET, that were relied upon to TET's financial detriment, than the personnel who heard the statements, relied upon them, and witnessed their prejudice?* Yet, ostensibly, not even TET's own personnel—its owners and senior executives—were capable of providing information on behalf of TET in opposition to Respondents' request for summary judgment as to the SCUTPA action.

In short, the trial court did not fail to apply the correct standard of review at summary judgment. TET failed to mount any opposition to Respondents' motion for partial summary judgment, and left the trial court with no meaningful option but to grant Respondents the relief they requested.

**C. The trial court did not err in its decision to grant summary judgment in favor of Respondents against the SCUTPA action over TET's request for additional time to conduct discovery.**

As discussed in a previous section, if a party wishes to avoid summary judgment on the basis that it is premature and more discovery is needed, that party must be able to articulate what relevant evidence additional discovery is likely to yield. And, for many of the same reasons discussed in the preceding section, that is a burden TET cannot carry.

TET alleged that Respondents made false and deceptive statements to TET personnel. But, when challenged at summary judgment, TET did not identify any evidence from any of TET's personnel about false or deceptive statements attributable to Respondents. *If TET's own witnesses don't know what false or deceptive statements were made to them, how would anyone else?* It was alleged that TET incurred financial loss as a result of its reliance on Respondents' false or deceptive statements. Yet TET presented no evidence of this to oppose summary judgment. *Again, if TET's own witnesses don't know what statements they relied upon to TET's financial detriment, and don't know what financial losses TET incurred, how would anyone else?* "More discovery" was never going to cure the fact that no evidence existed—not even from TET's own witnesses—to support its SCUTPA action.

**D. There is a substantial question as to whether this issue is preserved for appellate review.**

As discussed above, to preserve an issue for appellate review, the issue must be raised at every step of the appellate process; the failure to do constitutes abandonment.

Respondents would direct the Court's attention to TET's Rule 59 motion. (R. 150.) The only reference to the dismissal of TET's SCUTPA action is for "clarification that any dismissal or summary judgment related to Tiger's claims in this action under the S.C. Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq., will be without prejudice." (R. 151.) In other words, in its Rule 59 motion, TET did not argue that the trial court's disposition of the SCUTPA action was error; it merely argued that the dismissal ought to be without prejudice.

Respondents would next direct the Court's attention to TET's filings with the Court of Appeals. Nowhere in TET's opening brief is the trial court's dismissal of the SCUTPA action addressed. (R. 339.) In fact, the words "unfair," "UTPA," and "SCUTPA" make no appearance whatsoever. This fact was explicitly raised by Respondents in their brief to the Court of Appeals. (R. 316.) Surprisingly, however, TET did not take any opportunity in its reply brief to cure this omission and address the disposition of its SCUTPA action; it held its silence on the matter. (R. 352.) As does TET's petition for rehearing. (R. 363.) And TET's petition for writ of certiorari. Now, in TET's opening brief to this Court, and for the first time in a long time, TET has challenged the disposition of its SCUTPA action. (Pet.'s Op. Br. at 17.)

But it has raised a new issue. Whereas previously, in its Rule 59 motion, TET requested a modification of the trial court's order to provide for a dismissal of the SCUTPA action without prejudice, in its opening brief to this Court, TET is now

claiming it was error for the trial court to grant summary judgment in favor of Respondents as to the SCUTPA action instead of giving TET more time to conduct discovery. Respectfully, that ship has sailed, and the issue is not preserved for review. See, e.g., Baughman v. AT&T, 306 S.C. 101, 117, 410 S.E.2d 537, 546 (1991) (declining to consider the issue of whether the trial court should have given the underlying plaintiffs more time to conduct discovery on their nuisance actions, since that issue had not been properly preserved with the trial court).

**E. Section Concluding Statement**

Consistent with the foregoing discussion, the trial court's disposition of TET's SCUTPA action is not preserved for appellate review. But even if it were, there is no error to assign to the lower courts. When challenged at summary judgment, TET made no effort to present information capable of sustaining its SCUTPA action. And, in light of the nature of the allegations of TET's SCUTPA action, "more discovery" is not reasonably likely to yield relevant evidence capable of salvaging the claim, nor has TET ever explained what it believes more time for discovery would uncover in the way of information that is not already otherwise available to it.

**VI. GENERAL PRAYER FOR RELIEF**

In addition to the bases presented in the foregoing arguments, Respondents respectfully request affirmation of the lower courts' decisions on any basis which may determine appear in the record.

**CONCLUDING STATEMENT**

Consistent with the foregoing discussion, Respondents respectfully request a decision from this Court which affirms the entirety of the lower courts' decisions 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 submitted,

*s/ Steven Edward Buckingham*

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