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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas
Hon. Edward W. Miller, Judge

Appellate Case No. 2024-001671

ScanSource, Inc., Respondent
v.
Dependable Technology Center, LLC
and George G. Moraru, Appellants,

APPENDIX

J. Falkner Wilkes (SC Bar #12893)
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
jfalcknerwilkes@gmail.com

William R. McKibbon, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
will@legalcarolina.com

Counsel for Petitioners

Robert Alan Pohl
POHL, PA
PO Box 27290
Greenville, SC 29616
(864) 233-6294
robert@pohlpa.com

Counsel for Respondent

January 27, 2025.

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The South Carolina Court of Appeals

ScanSource, Inc., Respondent,

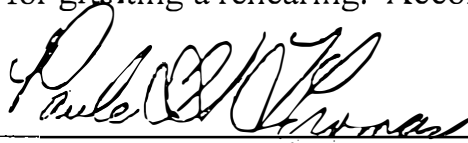
v.

Dependable Technology Center, LLC and George G.
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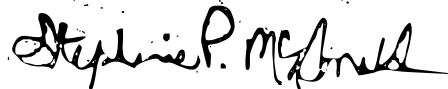
Appellate Case No. 2022-001619

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.



J.



J.



A.J.

Columbia, South Carolina

FILED
Sep 18 2024

cc:

J. Falkner Wilkes, Esquire
William R. McKibbon, III, Esquire
Craig Horger Allen, Esquire
The Honorable Edward W. Miller

**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**

ScanSource, Inc., Respondent,

v.

Dependable Technology Center, LLC and George G.
Moraru, Appellants.

Appellate Case No. 2022-001619

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2024-UP-260
Submitted June 1, 2024 – Filed July 17, 2024

AFFIRMED

J. Falkner Wilkes, of Oakland, Mississippi, and William
R. McKibbon, III, of Greenville, both for Appellants.

Craig Horger Allen, of Craig H. Allen, P.A., of
Greenville for Respondent.

PER CURIAM: Dependable Technology Center and George G. Moraru appeal a circuit court judgment of \$149,379.07, arguing the circuit court erred by: (1) issuing judgment against Appellants before they had an opportunity to present evidence at trial, (2) finding as a matter of law that Moraru's individual personal

guarantee was valid and enforceable, and (3) granting judgment against Moraru in an amount exceeding \$5,000. We affirm.

Facts and Procedural History

On April 12, 2013, Dependable completed a credit application with ScanSource in order to purchase goods on a short-term credit basis. That same day, Moraru executed an individual personal guarantee (the Guarantee) covering Dependable's indebtedness. The Guarantee stated:

In conjunction with my individual personal guarantee and customer application to ScanSource, Inc. and its subsidiaries and/or affiliates (hereinafter "Creditor") on behalf of Dependable Tech Center (hereinafter "Debtor") of which I, George G. Moraru . . . am an officer, principal, partner, or major shareholder, I represent to Creditor that neither Debtor nor any company in which I have been an officer, principal, partner, or major shareholder, nor have I personally never [sic] experienced any type of insolvency including bankruptcy.

I, for good and valuable consideration, including the extension of trade credit to debtor which I hereby acknowledge as having been received, do hereby personally guarantee and promise to pay any obligation to Creditor on demand for any indebtedness of Debtor to Creditor now due and/or which may be hereafter become due to Creditor for merchandise and other property hereafter sold and delivered by it to Debtor. This guarantee is one of payment, not of collection.

This guarantee is given individually, not in my capacity as _____ of Dependable Tech Center.

This guarantee shall be an irrevocable guarantee and indemnity to Creditor. Further, I hereby subrogate any indebtedness of Debtor, which it may have to me to the indebtedness of Creditor.

I do hereby waive notice of default, non-payment and notice thereof and to jury trial and consent to (i) changes in the terms of the guaranteed indebtedness and (ii) any and all renewals or modifications of extension of trade credit. I agree that Creditor may take any action with regard to the disposition of the collateral, including releasing it, and still enforce this guarantee without foreclosing on the collateral first. I agree that this guarantee shall be governed by the substantive law of the State of South Carolina without regard to its provisions concerning conflicts of law. I grant permission to Creditor to obtain information from any and all sources required to properly ascertain my capability to meet my financial obligations.

On September 13, 2019, ScanSource filed an action seeking judgment against Appellants following ScanSource's extensions of credit for the sale of goods and services. ScanSource sought \$72,923.39, plus one and a half percent interest, and attorney's fees. To its complaint, ScanSource attached Dependable's September 10, 2014 credit application and Moraru's April 12, 2013 Guarantee. Appellants answered, arguing that if Moraru's Guarantee were valid, his liability was limited to \$5,000—the credit limit requested in the September 2014 credit application.

At trial, ScanSource's Director of Financial Services, Steven Zielinski, identified Dependable's initial April 2013 credit application and Moraru's Guarantee, and testified that ScanSource opened a credit account for Dependable. ScanSource conducted business with Dependable from 2013 to 2016, and during this time, Dependable submitted three credit applications. Zielinski identified Dependable's December 7, 2013 and September 10, 2014 applications, noting their terms were similar to those of the initial April 2013 credit application. Zielinski explained that ScanSource periodically requests updated credit applications from customers to ensure it has accurate contact and legal entity information.

Zielinski identified past due invoices and testified Dependable last made payment to ScanSource on December 21, 2016. Although Dependable made payments towards some invoices, an unpaid balance of \$72,923.39 remained. According to Zielinski, Dependable had not disputed the amount owed on the account.

On cross-examination, Appellants asked Zielinski about a May 21, 2013 email from ScanSource denying Dependable's April 2013 credit application. Counsel for ScanSource objected because he had not received the document in discovery.

ScanSource explained it served discovery and while it received a response to its requests for admission, it never received any response to its interrogatories or request for production of documents. Although Appellants did not deny that they failed to respond to the discovery requests, they sought to introduce a chain of emails between ScanSource and Appellants. Appellants' counsel stated:

Your Honor, this is a document from ScanSource, itself, that specifically declines giving any credit to my company. And, Your Honor, I haven't seen any of the documents that they provided. In fact, the Plaintiff just based the contract on a completely different document than they pled in the complaint. The complaint tries to make a claim for a 2014 contract and today comes in here arguing about a 2013. We've never seen that. And the Plaintiff is limited to pleading and proving the case as it is pled. And that is not done.¹

The circuit court allowed Appellants to make a proffer regarding the email chain. Zielinski testified that if ScanSource emailed a customer stating it declined credit, that meant ScanSource denied credit as to that particular application. When Appellants noted Zielinski testified ScanSource accepted the 2013 application and granted credit, Zielinski responded, "That's my understanding." After reviewing the emails, Zielinski noted ScanSource denied Dependable's April 2013 credit application because Dependable failed to respond to ScanSource's requests that it update certain missing information, including an incomplete resale tax certificate. However, on December 7, 2013, Dependable submitted a second credit application, rectifying the issue of the missing tax information. ScanSource approved this credit application, and Dependable made its first purchase in 2014.

Appellants then argued, "Your Honor, the point here is there is only one grouping of documents that they allege created a contract with a personal guarantee by my client. And that was April of 2013, and it was declined." The circuit court

¹ Following this assertion, counsel for ScanSource explained he "never received any discovery requests from them, Your Honor," noted he had never seen the email, and reiterated his objection.

reviewed the documents and noted nothing in the Guarantee tied it to the April 2013 application. The circuit court explained, "[T]he document says it shall be an irrevocable guarantee and indemnity to creditor. It doesn't say based on granting an application in April of 2013." The circuit court stated it planned to rule as a matter of law that the Guarantee was valid independent of the April 2013 credit application and explained Dependable "satisfied whatever contingencies needed to be satisfied" in December when ScanSource approved the second credit application. Still, the circuit court found the email had impeachment value and Appellants would be allowed to cross-examine Zielinski with it despite their failure to answer ScanSource's interrogatories.

The circuit court then made three attempts to call the jury back for the completion of Zielinski's cross-examination; however, Appellants' counsel interjected, stating:

Your Honor, at this point my client is going to confess judgment on behalf of the LLC, which is a defunct LLC, which Mr. Allen knows. We've talked about that a lot. You've ruled as a matter of law as to the guarantee. And we've not doubted the accounting. I believe that's going to end the case.

....

[W]e don't doubt the debt from the company's standpoint. And since you had ruled the guarantee is valid and enforceable, I don't know how there's an issue left.

ScanSource responded by requesting a directed verdict. Additional discussion followed, including the circuit court's inquiry as to whether ScanSource needed to conduct a redirect examination of Zielinski. ScanSource declined, noting it had no other witnesses. The circuit court then granted the directed verdict, made the email chain a court's exhibit, and subsequently entered judgment for ScanSource in the amount of \$149,379.07 against Dependable and Moraru. Appellants timely appealed.

I. Enforceability of the Personal Guarantee

Appellants argue Moraru's Guarantee was executed specifically in conjunction with the April 2013 credit application ScanSource denied. Appellants contend ScanSource cannot rely on the Guarantee for claims related to later credit

applications; thus, in their view, the circuit court erred in finding the Guarantee valid and in entering judgment for ScanSource. We disagree.

"[A] guarantor's liability is an independent contractual obligation." *TranSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 295, 478 S.E.2d 63, 65 (Ct. App. 1996); *see also Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994) ("The general rule in South Carolina, as noted in *Rock Hill Nat'l Bank v. Honeycutt*, 289 S.C. 98, 344 S.E.2d 875 (Ct.App.1986), is that a guaranty of payment is an obligation separate and distinct from the original note.").

The debtor is not a party to the guaranty, and the guarantor is not a party to the principal obligation. The undertaking of the former is independent of the promise of the latter; and the responsibilities which are imposed by the contract of guaranty differ from those which are created by the contract to which the guaranty is collateral.

CoastalStates Bank v. Hanover Homes of S.C., LLC, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014) (quoting *Lanford*, 313 S.C. at 543, 443 S.E.2d at 550).

"A guaranty is a contract and should be construed based on the language used by the parties to express their intention." *Cochran*, 324 S.C. at 294, 478 S.E.2d at 65 "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

In addition to the presumption that the Guarantee and the underlying obligation are separate contractual obligations, the language of the Guarantee supports the circuit court's finding that the Guarantee is valid as to Dependable's ongoing indebtedness. There is no language in the Guarantee tying it to a specific credit application, and the word "optional" appears in bold, capital letters at the top of the document. Under the terms of the Guarantee, Moraru agreed to pay *any* obligation for *any* indebtedness of the Debtor to ScanSource, and the Guarantee addresses indebtedness "hereafter due . . . for merchandise and other property hereafter sold and delivered" by ScanSource to Dependable. Moraru agreed to personally guarantee Dependable's indebtedness "hereafter due," and ScanSource extended the anticipated credit. Therefore, the circuit court did not err in finding the Guarantee was valid as a matter of law.

II. Directed Verdict

Appellants further argue the circuit court erred in granting ScanSource a directed verdict because it failed to construe all evidence and inferences therefrom in Moraru's favor. *See Est. of Carr ex rel. Bolton v. Circle S Enters., Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008) ("In ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and to deny the motion when either the evidence yields more than one inference or its inference is in doubt.").

The crux of Appellants' argument on this point is that the circuit court failed to consider the effect of ScanSource's denial of the April 2013 credit application in conjunction with the Guarantee. For the reasons discussed in Section I, the court properly found the Guarantee—by its own language—applied to the parties' ongoing business relationship and credit extensions, and not merely to the declined April 2013 application. Appellants then chose to confess judgment, despite the circuit court's ruling that Appellants could cross-examine Zielinski with the email declining the April 2013 credit application.² We find the circuit court did not err in directing a verdict for ScanSource.

III. Opportunity to Present Evidence

Appellants next assert the circuit court erred in directing a verdict and entering judgment before Appellants had the opportunity to present evidence. They contend the circuit court's finding that the Guarantee was valid as a matter of law "removed any defense Moraru had and effectively ended the case without Moraru ever having the opportunity to offer Moraru's testimony or any other evidence on the issue." Appellants argue the supreme court's opinion in *Halsey v. Simmons*, 432 S.C. 54, 849 S.E.2d 578 (2020) (per curiam) requires this court to reverse. We disagree.

When the circuit court stated it planned to find the Guarantee valid as a matter of law, Appellants did not seek to proffer Moraru's testimony—or any other evidence—challenging the validity of the Guarantee or the invoices Zielinski identified. In fact, Appellants' counsel noted in opening that there would be "no dispute about goods that ScanSource has stated were sold to Dependable." Although Appellants claim in their briefs to this court that the circuit court's ruling

² This email was made a court's exhibit but was not admitted into evidence.

"constitutes a clear violation of Moraru's right to due process," no such argument was made to the circuit court. Moreover, nothing in the record suggests Appellants were denied the opportunity to continue with their cross-examination, present evidence, or offer additional argument before voluntarily confessing judgment.

Halsey does not support Appellants' position. There, the plaintiffs filed an action challenging the sale of their property at a delinquent tax sale. *Id.* at 55-56, 849 S.E.2d at 579. At trial, the plaintiffs allowed the defendants to present evidence first, and the special referee granted defendants' motion to approve the sale before the plaintiffs had an opportunity to present their own case. *Id.* at 56, 849 S.E.2d at 579. In their subsequent motion to amend the judgment, the plaintiffs "summarized the factual presentation they were not permitted to make and explained several theories on how those facts could have changed the outcome of the case." *Id.* Such has not occurred here.

Appellants did not attempt to proffer any additional evidence they intended to present, though they now argue on appeal that they were prejudiced by the lack of such opportunity. Specifically, Appellants assert they were prejudiced by the granting of a directed verdict prior to Moraru's testimony, but there is no indication in the record what Moraru's testimony might have addressed—or how it might have been helpful in challenging the plain language of his Guarantee. In *Halsey*, the plaintiffs' post-trial summary of the evidence they would have presented allowed the special referee an opportunity to amend the judgment, though he declined to do so. *Id.* Appellants made no such showing here, either at trial or by post-trial motion. The circuit court granted ScanSource's directed verdict motion only after the defendants chose to confess judgment following the circuit court's statement that the Guarantee was valid as to ScanSource's extensions of credit to Dependable. We find no error by the circuit court.

IV. Judgment Exceeding \$5000

Finally, Appellants contend that even if the Guarantee is valid, any judgment against Moraru must be limited to \$5,000 because the credit application attached with the complaint requested a \$5,000 limit. Again, we disagree.

In support of this argument, Appellants cite cases addressing the construction of contemporaneously executed documents. However, the relevant documents here were not executed at the same time—as noted above, the Guarantee is dated April 12, 2013, and Dependable's last credit application to ScanSource is dated September 10, 2014. Appellants' various ScanSource credit applications and

invoices were admitted into evidence without objection. The April 2013 application requested a credit limit of "as much as p," the December 2013 application contained no specific amount, and the September 2014 application requested a credit limit of \$5,000. There is no other evidence in the record addressing a capped credit limit applicable to Dependable's trade credit with ScanSource, and the Guarantee provides no such limit. Nor does the Guarantee cap Moraru's liability for ScanSource's extensions of credit. As contemplated by the Guarantee, ScanSource extended trade credit to Appellants, and Appellants accepted it. Appellants chose not to challenge the invoices and indebtedness ScanSource presented at trial. For these reasons, the circuit court did not err in entering a judgment exceeding \$5,000 against Moraru.

AFFIRMED.³

THOMAS, MCDONALD, and VERDIN, JJ., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

Aug 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Judge

Appellate Court Case No.: 2022-001619

ScanSource, Inc., Respondent
v.
Dependable Technology Center, LLC
and George G. Moraru, Appellants,

PETITION FOR REHEARING

J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38930
(864) 421-4618
jfalcknerwilkes@gmail.com

William R. McKibbon, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
will@legalcarolina.com

Counsel for Appellant

PETITION

Pursuant to Rule 221, SCACR, Appellants move this Court for rehearing based on the following points the Appellants submit have been overlooked or misapprehended by the Court.

A. THE COURT'S OPINION FAILS TO ADDRESS APPELLANTS' LACK OF CONSIDERATION ISSUE.

The Court's opinion as to the enforceability of the personal guarantee fails to address the Appellant's argument as to lack of consideration. Appellant's issue as stated is whether the court erred in ruling Moraru's individual personal guarantee valid and enforceable as a matter of law. The crux of Appellant's argument was that the Guarantee became invalid and unenforceable in 2013 due to a lack of consideration. The Court's opinion does not address the issue nor the underlying evidence that creates a question of fact.

Moraru's offer of a personal guarantee required consideration for the 2013 Guarantee to become a valid and enforceable contract. Valuable consideration may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." McPeters v. Yeargin Constr. Co., 290 S.C. 327, 331, 350 S.E.2d 208, 211 (Ct. App. 1986). Here the Guarantee expressly states that consideration for Moraru's offer of guarantee includes the extension of trade credit to the debtor. R. 82. When the Respondent rejected the Customer Application and denied trade credit in 2013, consideration for the Guarantee failed and no contracts were formed. Thus the Guarantee became invalid and unenforceable in 2013. The Court's opinion fails to address how the rejected, invalid, and unenforceable guarantee could be unilaterally resurrected by the Respondent a year later and

applied to a new attempt by the corporation to obtain credit. The record contains no evidence to show that in 2014 Moraru intended that the otherwise dead and unenforceable Guarantee be applied to subsequent attempts by the corporation to obtain credit.

When combined with the lack of evidence as to any intent on the part of Moraru in 2014 to have the Guarantee resurrected, the evidence in record is sufficient to create a question of fact as to the validity of the Guarantee once the Respondent rejected the Customer Application and declined trade credit in 2013. Respondent's chief financial officer Steven Zielinski testified that the Personal Guarantee was part of the Customer Application, and that the Customer Application was rejected in 2013. R. 63-66. The facsimile information on the Guarantee and Customer Application show that they were submitted simultaneously as one document. R. 79-82. "If a note and guaranty are executed simultaneously, the consideration of the note functions as consideration for the guaranty; however, if the documents are not executed simultaneously, there is no presumption of consideration, and the consideration must be proved. See *id.* at 351, 550 S.E.2d at 907." Branch Banking v. Carolina Crank & Core, Inc., 362 S.C. 647, 608 S.E.2d 896 (S.C. App. 2005). The Guarantee specifically states that the extension of trade credit, which was provided for in the Customer Application, was consideration for the Guarantee. R. 63-66. The Guarantee was therefore clearly part and parcel of the 2013 Customer Application. As a result, when the application for trade credit was declined in 2013 consideration for the Guarantee failed and no contract resulted.

The Court's opinion fails to address how a contract that failed in 2013 for lack of consideration can unilaterally be revived by the Respondent in 2014, especially where there is no evidence in record indicating any intent on the part of Moraru individually to have the Guarantee

revived and applied to the corporation's subsequent attempts to obtain trade credit. While the Court's Opinion talks about an ongoing business relationship and credit extensions, the record shows that subsequent attempts by the corporation to obtain credit were completely independent of the 2013 Guarantee and Customer Agreement of which it was a part. There were no credit sales in 2013. R. 66-67. After the 2013 rejection subsequent attempts to obtain credit were initiated by the corporation's submission of a entirely new Customer Agreements. R. 5; 10. There is also no evidence that the Guarantee at issue was resubmitted with the 2014 Customer Application under which trade credit was granted, or that it was Moraru's intention that it be resurrected and made part of the 2014 Customer Agreement. "In ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and to deny the motion when either the evidence yields more than one inference or its inference is in doubt." Est. of Carr ex rel. Bolton v. Circle S Enters., Inc., 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008). The record is therefore sufficient to create a jury question as to whether the Guarantee died for lack of consideration and became unenforceable in 2013. As a result, the circuit court's ruling on the validity of the Guarantee as a matter of law and directed verdict were in error.

The Court's Opinion further errs in its reliance on the confession of judgment by the corporate defendant in its analysis of Moraru's liability under the Guarantee. In its analysis the Court appears to find that both Appellants confessed judgment at trial. The record shows that only the corporate defendant confessed judgment. R. 74-75. The question of the debt's validity as to the corporate defendant and the question of extent to which the Guarantee can be enforced against Moraru are separate issues. To the extent that the Court's Opinion is based on a finding

that both Appellants confessed judgment, it is in error.

B. THE COURT ERRED IN FAILING TO CONSIDER AND CONSTRUE THE GUARANTEE IN LIGHT OF THE \$5,000 CREDIT LIMIT IN THE CUSTOMER APPLICATION TO WHICH IT WAS APPLIED.

To the extent that the Guarantee is held valid as to the 2014 Customer Application, Moraru's obligation under the Guarantee should be construed in light of the \$5,000 credit limit requested in that Application. The Court's opinion interprets the terms and conditions of the Guarantee in isolation from those of the 2014 Customer Application to which it is being applied. In doing so the Court overlooks evidence proving that a guarantee is an integral part of a customer application. Facsimile transmittal information on the Guarantee and Customer Application submitted in 2013 show that both documents were executed and submitted simultaneously, by the same parties, for the same purpose, and in the course of the same transaction. R. 81-83. "The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together." Klutts, 268 S.C. at 88, 232 S.E.2d at 24. The record therefore shows that the Guarantee and 2013 Customer Application were so closely connected that they must be construed in light of each other. The Court's application of the Guarantee to the 2014 Customer Agreement does nothing to change that fact that the Guarantee must be construed in light of whatever Agreement to which it is applied.

The Court finding that Klutts is inapplicable is based entirely on the fact that the 2013 Guarantee was not contemporaneously executed with the 2014 Customer Agreement. This

misses the mark on Klutts entirely, and overlooks that fact that a guarantee is a part of a customer application. If the Court finds the Guarantee became a be part of the 2014 Customer Application it would have to find that it did so 2014 when that application was submitted, since it certainly could not become a part of the application before the application existed. If it became a part of the application in 2014, given Klutts, it must be construed in light of the terms of that application, including the \$5,000 credit limit.

C. THE COURT’S OPINION ON APPELLANTS’ LACK OF OPPORTUNITY TO PRESENT EVIDENCE MISPERCEIVES THE FINALITY OF THE CIRCUIT COURT’S RULING AND APPLICABLE LAW.

During the testimony of the plaintiff’s first witness, and before the Appellants had an opportunity to present any witnesses, the circuit court *sua sponte* made a ruling finding the Guarantee at issue valid as a matter of law. R. 71. This was clearly error on the part of the circuit court. "The law, however, does not permit a court to issue judgment against a party before giving that party an opportunity to present evidence in support of her position." Halsey v. Simmons, 432 S.C. 54, 849 S.E.2d 578 (S.C. 2020). This Court, however, found Halsey inapplicable based on the Appellant’s failure to attempt to continue to offer or proffer proof or otherwise argue. This was error.

In this case the circuit court made a clear and definitive ruling on the validity of the guarantee: “So I’m going to rule as a matter of law that that guarantee is valid. Okay? All right.” R. 71, l. 21-23. After pointing out that the Court had ruled *sua sponte* Appellants’ counsel inquired as to the record “for the purposes of appealing that issue,” to which the court interrupted and said: “Everything is on the record, —”. R. 53, l.1-6. Subsequent to the court’s ruling the corporate defendant confessed judgment. R. 74. When asked by the court if Moraru was also

confessing judgment counsel stated that he was not, but pointed out that there was nothing left to litigate: “And since you had ruled the guarantee is valid and enforceable, I don't know how there's an issue left. R. 76, l. 20-21. Further discussions led to counsel again asking the court again if it had ruled that the Guarantee is valid and enforceable, to which the court responded clearly that it had. R. 75, l. 16-18. The court’s initial ruling was therefore intended and considered as final. As a result the court ruled without allowing the Appellants the opportunity to present evidence or be heard fully on the issue.

Once the court ruled that the Guarantee was valid and enforceable Moraru’s issue was adjudicated and liability established. Since Moraru did not contest the amount of credit sales incurred by the corporation there was nothing left for Moraru to litigate once the corporate defendant confessed judgment. R. 74. This Court’s opinion refuses to apply Halsey because “Appellants did not attempt to proffer any additional evidence, though they now argue on appeal they were prejudiced by the lack of such opportunity.” The Court overlooks the fact that counsel was prevented from attempting to argue the point further once the circuit court had ruled: "Counsel shall not attempt to further argue any matter after he has been heard and the ruling of the court has been pronounced. Rule 43(i), SCRCP." Since it would have been inappropriate for the Appellants to continue to argue the point, it was error for this Court to fault them in its analysis for not doing so.

The Court’s opinion also distinguishes Halsey based on the Appellants’ failure to set forth the facts and theories in a Rule 59(e) motion. This is error. Nothing in the holding of Halsey requires a Rule 59(e) motion be filed to preserve issues when a party is denied an opportunity to present witnesses and evidence prior to a court’s ruling. Halsey merely mentioned the Rule 59(e)

motion in its procedural history of the case, it was not necessary to or a part of the holding.

D. THE COURT MISPERCIEVES FACTS AND LAW RELEVANT TO ITS ANALYSIS OF THE JUDGMENT EXCEEDING \$5,000.

A guarantee is a contract. TranSouth Fin. Corp. v. Cochran, 324 S.C. 290, 294, 478 S.E.2d 63, 65 (Ct. App. 1996). A note and guarantee are two separate contracts. First Sav. Bank, FSB v. Capital Investors, 318 S.C. 555, 557, 459 S.E.2d 307, 308 (1995). However, "[t]he general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together." Klutts, 268 S.C. at 88, 232 S.E.2d at 24. "Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated." *Id.* at 88-89, 232 S.E.2d at 24. Conversely, when the terms of a written guarantee agreement are clear and complete, extrinsic evidence of agreements or understandings contemporaneous with or prior to its execution cannot be used to contradict, explain, or vary its terms. Pee Dee State Bank v. Nat'l Fiber Corp., 287 S.C. 640, 643, 340 S.E.2d 569, 570-71 (Ct. App. 1986).

In the present matter, the Guarantee provides that Moraru is individually responsible for "any obligation to Creditor on demand of any indebtedness of Debtor to Creditor now due and/or which may hereafter become due to Creditor." The Guarantee is dated April 12, 2013 and states that it is made "[i]n conjunction with my individual personal guarantee and customer application to ScanSource, Inc." The Customer Application referenced is also dated April 12, 2013 and was

submitted contemporaneously with the Guarantee as evidenced by the transmittal information on the both documents. R. 79-81. Respondent's chief financial officer Steven Zielinski testified that the Guarantee was part of the Customer Application. R. 66, l. 13-25. Because the 2013 Customer Application and the Guarantee were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the two documents should be read together. *See First Sav. Bank*, 318 S.C. at 557, 459 S.E.2d at 308; *Klutts*, 268 S.C. at 88, 232 S.E.2d at 24. This is especially true where the Guarantee indicates that the extension of trade credit under the Customer Agreement is consideration for the Guarantee. To the extent that the Court applies the Guarantee to the 2014 Customer Agreement, those documents should likewise be read together.

The record shows that the 2013 Customer Application and Guarantee were declined. The Respondent subsequently approved Dependable's Customer Application dated September 10, 2014. That application indicated a request for a credit limit of \$5,000. No Guarantee was submitted with the 2014 Customer Application. Assuming *arguendo* that the 2013 can be applied to the Customer Agreement dated September 10, 2014, they must be read together just as they would have been had the Guarantee been applied to the 2013 Customer Agreement. While the original Customer Application requested as much as possible, the subsequent submission of a Customer Application requested trade credit limit of only \$5,000. It was the later that the Respondent accepted, and attaches liability for, through the Guarantee from 2013. If the Guarantee is applied to the 2014 Customer Application there is no valid basis to distinguish it from the holdings of *First Sav. Bank* or *Klutts*. Any rationale that the Court assigns for applying the Guarantee to the 2014 Customer Application negates placing any significance on the dates the documents were transmitted. As the Court rejected the argument that the Guarantee was

invalid, giving it the same effect as had it been submitted with the 2014 Customer Application, then so it should be treated in the Court's analysis under First Sav. Bank and Klutts.

In Pee Dee State Bank, this Court scrutinized a guarantee executed as security for an \$85,000 loan to a corporation. 287 S.C. at 641, 340 S.E.2d at 570. The loan was secured by the personal guarantees of two of its officers. *Id.* After the corporation repaid the first loan, the bank loaned another \$85,000, which was never repaid. *Id.* One officer contested his liability for the second loan, claiming his personal guarantee was only for the first loan. *Id.* at 642, 340 S.E.2d at 570. The court found the guarantee, entitled "UNCONDITIONAL CONTINUING PERSONAL GUARANTY" in all caps, was plain on its face and not limited to the initial loan. *Id.* at 642, 340 S.E.2d at 570.

Notwithstanding, Pee Dee State Bank is reconcilable with the rule of construing related documents together enunciated in Klutts, which has been cited frequently in this state. *See, e.g., Cafe Assocs. v. Gerngross*, 305 S.C. 6, 10, 406 S.E.2d 162, 164 (1991); Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp., 287 S.C. 346, 350, 338 S.E.2d 631, 633 (1985); Wilbur Smith & Assocs. v. Nat'l Bank of S.C., 274 S.C. 296, 299, 263 S.E.2d 643, 645 (1980); Ecclesiastes Prod. Ministries v. Outparcel Assocs., 374 S.C. 483, 498-99, 649 S.E.2d 494, 502 (Ct. App. 2007). The guarantee in Pee Dee State Bank was, by its terms, a continuing guarantee for full payment of all debts "whether now owing or due, or which may hereafter, from time to time, be owing or due, and howsoever heretofore or hereafter created...." Pee Dee State Bank, 287 S.C. at 642, 340 S.E.2d at 570. The court refused to consider extrinsic evidence of agreements or understandings contemporaneous with, or prior to, its execution to explain the terms in the guarantee because the guarantee was clear and complete on its own. *Id.* at 643, 340 S.E.2d at

570-71. However, in the present case, the guarantee signed by Moraru and original Customer Application in 2013 were submitted contemporaneously as one document. Respondent's chief financial officer testified that the Guarantee was part of the Customer Application. R. 63-66. The Guarantee should therefore be construed together with the Customer Application on which the Respondent's claims are based. When read in conjunction with the approved 2014 Customer Application the Guarantee can be interpreted as being limited to \$5000, the amount of credit requested by the corporation. At a minimum, for direct verdict purposes, this fact distinguishes the present case from the unconditional guarantee found in Pee Dee State Bank in which no such additional fact raised a question as to the intent of the parties.

Further, although not discussed, the indication that the guarantee in Pee Dee State Bank was unconditional and continuing could be interpreted as a contrary intention that the guarantee should not be considered together with the other contemporaneously executed documents. *Cf. Klutts*, 268 S.C. at 88, 232 S.E.2d at 24 (construing instruments executed at the same time together "in the absence of anything indicating a contrary intention"). In the present case, the personal guarantee submitted by Moraru contemporaneously with the 2013 Customer Application does not contain any indication it should not be read together with the Customer Application; especially where the guarantee references the Customer Application and the extension of trade credit as consideration for the Guarantee and evidence shows that the Respondent considers a guarantee part of a customer application.

Ultimately, if the guarantee and the customer application at issue are construed together, there is more than one inference that may be drawn therefrom. Respondent views the terms of the guarantee as insuring payment of "all future and current indebtedness." Moraru, on the other

hand, contends that if the Guarantee is valid as to the 2014 Customer Agreement it is limited to \$5,000. As long as there is at least sufficient evidence to create a question of fact as to Moraru's position, the grant of directed verdict and the award of damages should be reversed. *See* USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008); Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Based on the foregoing this Court should grant a rehearing in the matter.

I Respectfully submitted,

s/J. Falkner Wilkes

J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38930
(864) 421-4618
jfalcknerwilkes@gmail.com

William R. McKibbon, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
will@legalcarolina.com

Counsel for Appellant

Aug 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Judge

Appellate Court Case No.: 2022-001619

ScanSource, Inc., Respondent
v.
Dependable Technology Center, LLC
and George G. Moraru, Appellants,

CERTIFICATE OF SERVICE

I certify that on August 16, 2024, I served the Appellants' Petition for Rehearing on the Respondent by delivering a copy AIS email to counsel of record and others if, and as, indicated below:

Craig H. Allen
POB 10854
Greenville, SC 29603
(864) 239-0444
Attorney for Respondent

via AIS email only to: craig@craigallenlaw.com

Attorney for Respondent

and to:

William R. McKibbon, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
Attorney for Appellants
via AIS email only to: will@legalcarolina.com

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211
via email filing only to: ctappfilings@sccourts.org

Respectfully submitted,

s/J. Falkner Wilkes
J. Falkner Wilkes (SC Bar #12893)
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
jfalknerwilkes@gmail.com

Counsel for Appellants

August 16, 2024.

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BRIEF OF APPELLANTS

J. Falkner Wilkes (SC Bar #12893)
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
jfalknerwilkes@gmail.com

William R. McKibbin, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
will@legalcarolina.com

Counsel for Appellants

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STATEMENT OF THE ISSUES

1. Did the trial court err when it issued judgment against Moraru before giving the appellant an opportunity to present evidence in support of his position?
2. Did the trial court err in ruling Moraru's individual personal guarantee valid and enforceable as a matter of law?
3. Did the trial court err in granting a directed verdict and entering judgement against Moraru as guarantor where there was evidence supporting Moraru's position?
4. Did the trial court err in granting judgement against Moraru in an amount exceeding \$5,000?

STATEMENT OF THE CASE

Plaintiff/Respondent ScanSource, Inc., initiated this case on September 13, 2019 by the filing of a Summons and Complaint to which the Defendants/Appellants Dependable Technology Center, LLC, and George G. Moraru filed a timely Answer and demanded a jury trial. A jury trial was held on October 17, 2022, the Hon. Edward W. Miller presiding. Plaintiff was represented at trial by Craig H. Allen. Defendants were represented by William R. McKibbin and Melissa Adorno. As a result of the jury trial a judgment in the amount of \$147,379.07 was entered against the Dependable Technology Center, LLC, and George G. Moraru. Defendants timely appealed. J. Falkner Wilkes joined the appeal on behalf of the Defendants. This brief follows.

STATEMENT OF FACTS

On April 12, 2013, Dependable Technology Center, LLC, submitted a “Customer Application” to ScanSource, Inc., in an attempt to obtain trade credit. (R. p. 40). On the same day Dependable submitted an “Independent Personal Guarantee” (IPG) executed by George G. Moraru, an officer of Dependable. (R. p. 41-42, 82). ScanSource employee Steven Zielinski testified that the Appellant's personal guarantee was a part of Dependable's April 12, 2013 application for credit. (R. 66, l. 13-17). The IPG specifically identifies the acceptance and issuance of credit as consideration for Moraru's personal guarantee: “for getting valuable consideration, including the extension of trade credit together, which I hereby acknowledge as *having been received...*” (R. p. 4-11; R. p. 42, l. 14-16; R. p. 79; 80; 82 (*emphasis added*)). While originally testifying that ScanSource opened a credit account for Dependable based on the April 13, 2013 Customer Application and IPG, on cross-examination Zielinski admitted that ScanSource declined Dependable's April 12, 2013 application for credit and as a result was unable to open an account for Dependable. (R. p. 62-63; 66, l. 13-17; R. p. 99). ScanSource's rejection of credit and required notices under federal law were conveyed by email to Dependable on April 19, 2013. (R. p. 62-64; R. p. 99). There were no credit sales to Dependable in 2013. (R. 67).

Dependable attempted to obtain credit again on December 7, 2013, eight months after the denial of the 2013 application, by submitting a new Customer Application for credit. (R. p. 4-6; R. p. 68-71; R. p. 99). A third Customer Application was submitted on September 10, 2014, a year and a half after the rejection of the April 12, 2013 Credit Application and IPG. (R. p. 4-11; R. p. 68-71; R. p. 99; R. p. 79-82). No personal guarantee was submitted with the December 7, 2013, or any subsequent Customer Application, including the September 2014 Application on which the Complaint is based. (R. p. 4-11; R. p. 68-71; R. p. 99). Other than the Customer Agreement of September 10, 2014, the Complaint fails to refer to any Customer Application specifically. (Ex. A, Complaint). ScanSource's claims against Appellant are based solely on the IPG that was part of Dependable's credit application dated April 12, 2013. (R. p. 4-11; R. p. 68-71; R. p. 79-82; R. p. 99). There is no evidence that the Appellant offered or issued a Individual Personal Guarantee with the December 7, 2013, September 10, 2014, or any other attempt by Dependable to obtain credit.

Dependable and Moraru argued at trial that the Customer Application of September 10, 2014, alleged in the Complaint as the basis for Appellant's liability, had no associated valid personal guarantee. (R. p. 69). In discussions arising out of

an objection to the scope of the Appellant's cross-examination of Zielinski, ScanSources' first witness, the Court stated: "Well, there is nothing in this personal guarantee that ties it to the April '13 application." (R. p. 70, l. 24-25). Defendants argued that the personal guarantee was invalid as it lacked consideration when ScanSource denied Dependable credit on April 19, 2013, and that granting credit based on a new application submitted over a year and a half later could not constitute consideration for the IPG. (R. p. 70-71). During the discussion as to the scope of cross-examination of Zielinski, and prior to the Appellant being afforded an opportunity to present evidence to support his case, the Court made a credibility ruling and entered a ruling that as a matter of law the April 12, 2013 personal guarantee was valid and binding against the Appellant. (R. p. 71). The Court subsequently granted ScanSource's motion for a directed verdict against Appellant and entered judgment against both Dependable and Appellant in the amount of \$149,379.07. (R. p. 77; Judgment).

ARGUMENT

I. THE COURT ERRED WHEN IT ISSUED JUDGMENT AGAINST APPELLANT BEFORE GIVING THE APPELLANT AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF HIS POSITION.

Standard of Review

This case is controlled by the decision in Halsey v. Simmons, 432 S.C. 54, 849 S.E.2d 578 (S.C. 2020).

Discussion

ScanSource's case against Moraru is based on the allegation that Moraru entered into a valid and binding personal guarantee of Dependable's debt, which Moraru denied. Moraru's liability in the case turned entirely on the issue of the validity of the alleged personal guarantee. At the very beginning of the trial there was an objection by ScanSource over the scope of cross-examination of ScanSource's first witness, Steven Zielinski. Discussions followed which resulted in Appellant being allowed to proffer his cross-examination of Zielinski. In the middle of proffering cross-examination of Zielinski the trial court abruptly ended the proffer and ruled that the alleged personal guarantee of Moraru was valid and binding. In so ruling the court removed any defense Moraru had and effectively ended the case without Moraru ever having the opportunity to offer Moraru's

testimony or any other evidence on the issue. The court's ruling constitutes a clear violation of Moraru's right to due process: "The law, however, does not permit a court to issue judgment against a party before giving that party an opportunity to present evidence in support of her position." Halsey v. Simmons, 432 S.C. 54, 849 S.E.2d 578 (S.C. 2020).

Here the trial judge made factual findings and issued judgment during the cross-examination of the Plaintiff's first witness. Moraru had not even reached his case or been allowed to present his own testimony or other evidence on the issue.

In Halsey the same facts were found so blatantly erroneous that the Court ruled:

We grant the petition, dispense with briefing, reverse the court of appeals, and remand to the circuit court for a new trial. Rule 43(a) of the South Carolina Rules of Civil Procedure requires, "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules." The Due Process Clause requires all parties be given "an opportunity to be heard in a meaningful way." Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "In cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses." Smith v. S.C. Dep't of Mental Health, 329 S.C. 485, 500, 494 S.E.2d 630, 638 (Ct. App. 1997), *aff'd*, 335 S.C. 396, 517 S.E.2d 694 (1999) ; *see also* Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) ("Where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.").

Halsey v. Simmons, 432 S.C. 54, 849 S.E.2d 578 (S.C. 2020).

The trial court's ruling deprived Moraru of due process, including the right

to be heard and the right to present witnesses and other evidence. Halsey is controlling and requires the decision of the trial court be reversed and a new trial granted.

II. THE COURT ERRED IN RULING MORARU’S INDIVIDUAL PERSONAL GUARANTEE VALID AND ENFORCEABLE AS A MATTER OF LAW.

Standard of Review

“This Court reviews all questions of law *de novo*. *E.g.*, Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). Review of the trial court's factual findings, however, depends on the whether the underlying action is an action at law or an action in equity. *See* Townes Assocs. Ltd. v. City of Greenville, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775-76 (1976) (setting forth standards of review to apply in actions at law and actions in equity).” Fesmire v. Digh, 683 S.E.2d 803, 385 S.C. 296 (S.C. App. 2009). Where the existence of a contract is in dispute the action is one in equity. *See* Fesmire v. Digh, 683 S.E.2d 803, 385 S.C. 296 (S.C. App. 2009). "In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence. *See* Wilder Corp. v. Wilke, 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct. App.1996)..." Fesmire v. Digh, 683 S.E.2d 803, 385 S.C. 296 (S.C. App. 2009).

Discussion

As pled in its Complaint, ScanSource's claims are related to Dependable's Credit Application dated September 10, 2014. "Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions." Johnson v. Alexander, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015). As a general rule "the parties to an action are judicially concluded and bound by [the pleadings] unless withdrawn, altered[,] or stricken by amendment or otherwise. The allegations, statements[,] or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts [that] are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible." Elrod v. All, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964). Here, by way of its Complaint ScanSource specifically relied on Dependable's Customer Application dated September 10, 2014, as the basis for its underlying claim against Moraru. Accordingly, its claim against Moraru requires a valid and binding personal guarantee for Dependable's 2014 Customer Application for credit. Since there was none, ScanSource attempts to rely on the April 12, 2013 IPG that was rejected by ScanSource when it denied Dependable's

request for credit.

The April 12, 2013 IPG, on which ScanSource bases its claims against Moraru, was part and parcel of Dependable's April 2013 Customer Application. Both were submitted together on April 12, 2013. Had credit been granted to Dependable in 2013, it would have constituted consideration for, and been a condition of, the Moraru's IPG. Yet when the ScanSource denied Dependable credit on April 19, 2013, it left the Moraru's IPG without consideration. When Dependable's application for credit died on April 19, 2013, Moraru's IPG died along with it. Lacking consideration no contract formed and the personal guarantee by Moraru became unenforceable.

The record is clear that Moraru's IPG was submitted on April 12, 2013, in conjunction with Dependable's Customer Application of the same date which ScanSource rejected on April 19, 2013, by its denial of credit. The record also shows that the refusal to grant credit was a final one as evidenced by the emails dated May 21, 2013, which contained what appears to be the ScanSource's attempt at providing notices required under state and federal law when there is a denial of credit. Having made a final decision to deny credit on May 19, 2013, there was no consideration for the IPG. "A guaranty must be supported by sufficient legal consideration, either a benefit to the principal obligor or guarantor on the one

hand, or some detriment to the obligee on the other." Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 178, 425 S.E.2d 786, 791 (Ct. App. 1992).

A mere promise to pay the debt of another without any consideration for such promise is void." *Id.* Valuable consideration may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." McPeters v. Yeargin Constr. Co., 290 S.C. 327, 331, 350 S.E.2d 208, 211 (Ct. App. 1986). Gen. Heating & Air Conditioning Co. of Greenville v. SMD Constr. (S.C. App. 2005).

Once the April 12, 2013 credit application was denied, consideration for Moraru's IPG failed and no contract formed. At that point Moraru had further obligation relating to his offer to guarantee Dependable's debts. Moraru's offer to guarantee under the IPG is therefore unenforceable.

Credit granted to Dependable subsequent to April 19, 2013 is not subject to a personal guarantee of Moraru. The record shows a Customer Application submitted by Dependable submitted in December of 2013, and another on September 10, 2014. The existence of either fails to alter the analysis as both were submitted subsequent to Moraru's offer of personal guarantee becoming unenforceable due to a failure of consideration. Credit granted on any Customer Application subsequent to the one submitted in April of 2013 was therefore

granted free any obligation on the part of Moraru based on his April 12, 2013 offer of personal guarantee, and where no subsequent IPG was submitted by Moraru, he has no liability for the debts of Dependable.

ScanSource's case is based on an attempt to unilaterally revive Moraru's the April 12, 2013 IPG that it clearly and unequivocally rejected in writing on April 19, 2013. There is no evidence in record that Moraru intended or consented to personally guarantee Dependable's subsequent attempts to gain credit. Nor is there any presumption that he intended the April 2013 IPG to apply to Dependable's subsequent attempts to gain credit, especially one and a half years later. The record clearly shows that Moraru's IPG and a Customer Application for credit were both executed and submitted on April 12, 2013, and rejected shortly thereafter on April 19, 2013. The Customer Application pled in the Complaint was executed in September of 2014, after the failure of consideration for IPG. Although there is also a Customer Application in evidence dated December 7, 2013, it was also executed after the failure of consideration for Moraru's IPG. As a result, there is no presumption that the granting of credit in 2014 was consideration for a personal guarantee offered and rejected in 2013. "If a note and guaranty are executed simultaneously, the consideration of the note functions as consideration for the guaranty; however, if the documents are not executed simultaneously, there is no

presumption of consideration, and the consideration must be proved. *See id. at* 351, 550 S.E.2d at 907." Branch Banking v. Carolina Crank & Core, Inc., 362 S.C. 647, 608 S.E.2d 896 (S.C. App. 2005).

ScanSource has failed to prove by presumption of law or by evidence that consideration was given for the April 12, 2013 IPG on which its claims against Moraru are based. The record lacks evidence to show that Moraru knew, intended, or consented to the revival of a personal guarantee that had been previously rejected by the ScanSource. "A contract of guaranty, like every other contract, can only be made by the mutual assent of the parties." Crafton v. Brown, 346 S.C. 347 at 354, 550 S.E.2d 904, 907 (Ct App. 2001). "“If the guaranty is signed by the guarantor at the request of the other party, or if the latter's agreement is contemporaneous with the guaranty, the mutual assent is proved, and the delivery of the guaranty to him or for his use completes the contract.’ *Id.*” Branch Banking v. Carolina Crank & Core, Inc., 362 S.C. 647, 608 S.E.2d 896 (S.C. App. 2005). Here any agreement to provide credit to Dependable was subsequent to the offer and rejection by Moraru of a personal guarantee. Absent evidence that Moraru assented to the revival of the rejected April 12, 2013 IPG, any offer of a personal guarantee it made is invalid and unenforceable for lack of consideration, knowledge and consent. The trial court therefore erred in ruling Moraru’s IPG was

valid as a matter of law prior.

III. THE COURT ERRED IN GRANTING A DIRECTED VERDICT AND ENTERING JUDGEMENT AGAINST APPELLANT AS GUARANTOR WHERE THERE WAS EVIDENCE SUPPORTING MORARU'S POSITION.

Standard of Review

"The appellate court must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor." Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006).

Discussion

In ruling on the Plaintiff's motion for directed verdict the trial court failed to consider all evidence and inferences in favor of Moraru. Here, the IPG was issued in conjunction with Dependable's Customer Application for credit on April 12, 2013. Dependable's Application was rejected on April 19, 2013 and credit denied. Once credit was denied, the contemplated and stated consideration for the IPG failed. Lacking consideration, no contract for credit and guarantee was formed. The record fails to show by presumption of law or evidence that Moraru intended, offered or agreed that the IPG rejected by the ScanSource and therefore unenforceable as of April 19, 2013 would subsequently be revived by subsequent

attempts of Dependable to obtain credit. The lack of the IPG at issue, or any other IPG, being provided by Moraru contemporaneously with any subsequent attempt by Dependable to obtain credit, combined with the lack of any testimony that Moraru actually offered or intended to guarantee Dependable's debts subsequent to the rejection gives rise to the inference that Moraru never intended the IPG to extend past its rejection in 2013 or apply to subsequent attempts of Dependable to obtain credit.

"When reviewing the trial court's decision on a motion for directed verdict, this court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." Burnett v. Family Kingdom, Inc., 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010). "The trial court must deny a directed verdict motion when the evidence yields more than one inference or its inference is in doubt." *id.* "When considering a directed verdict motion, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *id.* at 188-89, 691 S.E.2d at 173. "An appellate court will reverse the trial court's grant of a directed verdict when any evidence supports the party opposing the directed verdict." Graves v. Horry-Georgetown Tech. Coll., 391 S.C. 1, 7, 704 S.E.2d 350, 354 (Ct. App. 2010). Here, the record

contains evidence from which inferences can be drawn that support the claim that Moraru never intended, agreed, or assented to the creation, continuation, or revival of a personal guarantee past the 2013 rejection of credit by ScanSource. The trial court therefore erred in directing a verdict.

IV. THE COURT ERRED IN GRANTING JUDGEMENT AGAINST MORARU IN AN AMOUNT EXCEEDING \$5,000.

Assuming *arguendo* that the 2013 IPG rejected in 2013 could somehow be revived and applicable under the September 10, 2014 Customer Application as pled in this case, Moraru's liability should be limited to the amount of credit requested by Dependable in the Customer Application. A review of September 10, 2014 Customer Application for credit shows that Dependable requested a credit limit of only \$5,000. (R. p. 8). Given Dependable's request for credit was clearly limited to \$5,000, it is reasonable to infer that if consented to the application of the April 12, 2013 IPA, any resulting personal guarantee should be limited to the \$5,000 for which Dependable applied.

A guarantee is a contract. TranSouth Fin. Corp. v. Cochran, 324 S.C. 290, 294, 478 S.E.2d 63, 65 (Ct. App. 1996). A note and guarantee are two separate contracts. First Sav. Bank, FSB v. Capital Investors, 318 S.C. 555, 557, 459

S.E.2d 307, 308 (1995). However, "[t]he general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together." Klutts Resort Realty, Inc., et al., 268 S.C. 80, at 88, 232 S.E.2d 20, at 24 (1977).

"Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated." *Id.* at 88-89, 232 S.E.2d at 24. Conversely, when the terms of a written guarantee agreement are clear and complete, extrinsic evidence of agreements or understandings contemporaneous with or prior to its execution cannot be used to contradict, explain, or vary its terms. Pee Dee State Bank v. Nat'l Fiber Corp., 287 S.C. 640, 643, 340 S.E.2d 569, 570-71 (Ct. App. 1986).

Here the IPG at issue provides that Moraru is individually responsible for "any indebtedness of Debtor to Creditor now due and/or which may hereafter become due to Creditor..." The guarantee also indicates that it is "for good and valuable consideration, including the extension of trade credit to debtor..." and expressly references Dependable's Customer Application "[i]n conjunction with

my IPG and customer application to ScanSource, Inc., and its subsidiaries and/or affiliates (hereinafter “Creditor”) on behalf of Dependable Tech Center (hereinafter “Debtor”)....” (R. p. 11; R. p. 82). Even though a guarantee is considered to be a separate contract, both the original Customer Application for credit April of 2013 and the IPG were executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, all of which create an inference that the documents should be read together. *See First Sav. Bank*, 318 S.C. at 557, 459 S.E.2d at 308; *Klutts*, 268 S.C. at 88, 232 S.E.2d at 24. The IPA also references Dependable’s credit application, which further supports the inference that the two documents are to be read together. Additionally, neither the Customer Application nor the IPG contain any language indicating that they should not be read together. As a result, if the September 10, 2014 Customer Application is the operative agreement, then Moraru’s IPG should be read in conjunction with its terms and conditions, including the \$5,000 limit.

Ultimately, if the documents are construed together, there is more than one inference that may be drawn from them. ScanSource views the terms of the guarantee as insuring payment of "any indebtedness of Debtor to Creditor now due and/or which may hereafter become due to Creditor." Moraru, views the agreements as a whole and believes that any liability should be no greater than the credit limit of

\$5,000 indicated in the September 10, 2013 Customer Application pled in the Complaint. Because there is more than one inference arising from the record as to the amount of liability created under the alleged personal guarantee, the directed verdict should be reversed and the judgment awarding damages in the amount of \$149,379.07 modified so as not to exceed \$5,000.

CONCLUSION

Based on the foregoing the decision of the trial court granting a directed verdict and judgement against Appellants should therefore be reversed.

Respectfully submitted,
s/J. Falkner Wilkes
J. Falkner Wilkes, 12893
4 Hickory Ridge
Greenville, SC 29609
(864) 421-4618
jfalcknerwilkes@gmail.com

William R. McKibbin, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
will@legalcarolina.com

Counsel for Appellant

June 7, 2023.

Jun 07 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Judge

Appellate Court Case No.: 2022-001619

ScanSource, Inc., Respondent
v.
Dependable Technology Center, LLC
and George G. Moraru, Appellants,

REPLY OF APPELLANTS

J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38930
(864) 421-4618
jfalcknerwilkes@gmail.com

William R. McKibbon, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
will@legalcarolina.com

Counsel for Appellant

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ARGUMENT IN REPLY

I. RESPONDENT FAILS TO ADDRESS THE DUE PROCESS ISSUE PRESENTED.

The issue presented is whether the Appellants were afforded Due Process when the court made a final ruling as a matter of law on the issue of Appellant Moraru's liability under a personal guarantee prior to Appellants being allowed to offer any evidence or testimony on the issue. The cases cited by Respondent relate to the court's ability, after the conclusion of a case, to issue a written order that varies from the ruling announced from the bench. The Respondent relies on cases, unlike in the present case, where both parties were provided the opportunity to present evidence and testimony on the issues prior to the court's ruling. Here the Appellants were never such an opportunity. This case presents a Due Process issue, especially given that the court's ruling did nothing short of foreclosing any meaningful opportunity to have essential facts decided by the jury. The result of the court's ruling as a matter of law in this case could only result in Appellant Moraru being held personal liable for the corporate debt. Respondent fails to address the issue presented or explain how the holding of Halsey v. Simmons, 432 S.C. 54 (S.C. 2020) does not apply in this case.

There is no question that the court's ruling was a final ruling on the issue

and that left Moraru without any defense to personal liability for the corporate debt. R. p. 75. The ruling therefore ended Moraru's ability to have a jury decide the facts pertaining to the personal guarantee before the Appellants had an opportunity to present evidence on the issue.

II. RESPONDENT'S ARGUMENT IGNORES THE FACT THAT THE RULING EFFECTIVELY ENDED THE JURY TRIAL AS TO APPELLANT MORARU ONCE THE VALIDITY OF THE PERSONAL GUARANTEE WAS REMOVED FROM THE JURY'S CONSIDERATION.

The facts relied on by the Respondent to argue that the Appellant was afforded Due Process all occurred after the court ruled that the personal guarantee was valid and binding as a matter of law. Ruling that the personal guarantee was binding as to Appellant Moraru removed Moraru's defense to personal liability for the corporate debt. Once Moraru's defense had been eliminated as a matter of law a continuation of the trial became meaningless, as no outcome other than Moraru being personally responsible for the corporate debt could result. The record shows that the issue of Due Process was fully argued to the court and that the decision essentially ended the case as Appellant Moraru was thereby precluded from presenting his defense to the jury.

While clearly opposing the directed verdict, Appellant Moraru made it clear

that he had no defense to argue due at that point due to the court's having ruled the personal guarantee was valid and binding. R. p. 73-75. The issue was clearly raised to the court and the court made a comment indicating that the issue was preserved. Therefore, no further objection was required upon the entry of the directed verdict.

III. RESPONDENT'S ARGUMENT THAT APPELLANT DID NOT OPPOSE DIRECTED VERDICT IS UNSUPPORTED BY THE RECORD.

Respondent states that there was "[n]o opposition to the directed verdict motion was made on the basis of Appellants' alleged lack of opportunity to present its case." (Respondent's Brief, p. 10). To the contrary, the record shows that Appellant Moraru clearly opposed the entry of the directed verdict but had no defense to argue after the court's ruling that the personal guarantee was valid and enforceable against Appellant Moraru. R. p. 75. As the Appellants made clear, the court's ruling on the validity of the personal guarantee could lead to no result other than personal liability for Appellant Moraru and therefore any further proceedings past that point were entirely futile. R. p. 75.

IV. RESPONDENT'S ARGUMENT OVERLOOKS THE FACT THAT THE JUDGMENT WAS BASED ON A RULING THAT PRECLUDED THE APPELLANTS TO PRESENT EVIDENCE AND TESTIMONY ON THE ISSUE OF THE AMOUNT OF DEBT SUBJECT TO PERSONAL GUARANTEE.

The court's ruling as to the validity of the personal guarantee foreclosed further challenge on the issue of the personal guarantee. This included the amount of liability of Appellant Moraru under the personal guarantee. R. p. 71. The Appellants clearly raised an objection to the court's ruling and the court made a statement indicating that the issue was preserved. R. p. 73. No further objection was required.

CONCLUSION

Based on the foregoing the decision of the trial court granting a directed verdict and judgement against Appellants should therefore be reversed.

Respectfully submitted,
s/J. Falkner Wilkes
J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38930
(864) 421-4618
jfalknerwilkes@gmail.com

William R. McKibbon, III
601 East McBee Avenue, Suite 104
Greenville, SC 29601
Counsel for Appellant

June 7, 2023.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Hon. Edward W. Miller, Judge

Appellate Court Case No. 2022-001619

ScanSource, Inc.,

Respondent,

v.

Dependable Technology Center, LLC,
and George G. Moraru,

Appellants.

BRIEF OF RESPONDENT

Craig H. Allen
Craig H. Allen, P.A.
Post Office Box 10854
Greenville, South Carolina 29603
(864) 239-0444
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING THAT A VERDICT IN FAVOR OF THE APPELLANTS WAS NOT REASONABLY POSSIBLE UNDER THE EVIDENCE PRESENTED AT TRIAL?
- II. DID THE TRIAL COURT ERR BY GRANTING RESPONDENT'S MOTION FOR DIRECTED VERDICT AT THE CONCLUSION OF APPELLANTS' PROFFER?
- III. DID THE TRIAL COURT ERR IN FINDING THE PERSONAL GUARANTY OBLIGATION BINDING UPON APPELLANT MORARU?
- IV. DID THE TRIAL COURT ERR IN AWARDING JUDGMENT IN AN AMOUNT IN EXCESS OF \$5,000.00?

STATEMENT OF THE CASE

Respondent, ScanSource, Inc., commenced this action by filing its Summons and Complaint on September 13, 2019 alleging a cause of action to recover an unpaid account balance due from Appellant, Dependable Technology Center, LLC, for goods sold and delivered on open account, and from Appellant, George G. Moraru, on his personal guaranty of payment. Appellants timely filed their Answer and demanded a jury trial. The case was called for trial on October 17, 2022, before The Honorable Edward W. Miller. Testimony and other evidence was submitted. At the conclusion of the evidence, and upon motion, Judge Miller granted a directed verdict in favor of Respondent, and the Order for Judgment was filed October 20, 2022, granting Respondent judgment against Appellants for \$149,379.07. Thereafter, Appellants filed their Notice of Appeal.

STATEMENT OF FACTS

Appellant, Dependable Technology Center, LLC (hereinafter "DTC"), applied for credit with Respondent, ScanSource, Inc., and Appellant, George G. Moraru (hereinafter "Moraru"), executed and delivered to Respondent his personal guaranty agreement guaranteeing payment for all debts due or to become due by DTC. R. p. 43, line 19; R. p. 79 - 82. The agreed account terms provided for recovery of interest at 1.5% per month and collection costs including reasonable attorneys fees. R. p. 39, line 6 - p. 41, line 11. Subsequently, additional credit applications were executed by Moraru on behalf of DTC and submitted to Respondent. R. p. 45, line 1 - p. 47, line 17. These credit applications contained the same terms. R. p. 45, line 1 - p. 47, line 17; R. p. 83 - 85. Steven Zielinski (hereinafter, "Zielinski"), Respondent's Director of Financial Services, testified that the credit application and guaranty agreement were relied upon to extend credit to Appellants. R. p. 43, lines 15 - 19. Invoices for goods sold to DTC by Respondent were identified and submitted in evidence, together with a statement of account. R. p. 47, line 18 - p. 50, line 13. The balance due to Respondent on the account and guaranty of Appellants was \$149,379.07, including interest. R. p. 54, lines 4 - 20; R. p. 86 - 90; R. p. 98. On cross examination of Zielinski, Appellants' counsel attempted to present an e-mail document that had not been produced in response to discovery requests. R. p. 60, line 3 - p. 61, line 5. Upon objection by Respondent, the jury was excused and the objection was argued by counsel to the Court. R. p. 60, line 6 - p. 62, line 19. The purported email in question was not provided to Respondent prior to trial although Respondent had requested documents in discovery and had received none. R. p. 60, line 19 - p. 62 line 15. This fact was not disputed by Appellants. Appellants were allowed to make an offer of proof

regarding the purported email, still outside the presence of the jury. R. p. 62, line 16 – p. 72 – line 8. During the offer of proof, the Court made an oral ruling that the personal guarantee was valid and binding on Moraru. R. p. 71, line 21 – p. 72, line 8. Thereafter, Appellants stated they saw no reason to continue with the trial. R. p. 72, line 9 – p. 74, line 13; p. 75, line 21. Neither Respondent nor Appellants had any further witnesses. R. p. 76, line 21 – p. 77, line 8. After the jury had been excused from the courtroom, the jury heard no further testimony, nor was any further evidence presented to them, including the proffer. See R. p. 60, line 17. Appellants did not resume their cross-examination of Zielinski in the presence of the jury, although the Court stated Appellants could use the information in the email document for impeachment purposes. R. p. 70, lines 14 – 16; p. 71, line 24 – p. 75, line 13. Appellants made no attempt to submit the proffered testimony to the jury.

Accordingly, there being no further examination or evidence proposed by either party, Respondent moved for directed verdict, which was granted by the Court. R. p. 76, line 22 – p. 77, line 8.

ARGUMENTS

I. THE TRIAL COURT PROPERLY FOUND THAT A VERDICT IN FAVOR OF APPELLANTS WOULD NOT BE REASONABLY POSSIBLE UNDER THE EVIDENCE PRESENTED AT THE TRIAL.

This was a contract action for enforcement of an account debt and guaranty of payment. Accordingly, this was an action at law. See Crafton v. Brown, 346 S.C. 347, 550 S.E.2d 904 (Ct.App. 2001). The Supreme Court has stated the standard of review of a directed verdict as follows:

In reviewing a directed verdict, this Court must determine whether a verdict for the party opposing the motion would have been reasonably possible under the facts. ... The issue must be submitted to a jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. ... However, this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury. We have repeatedly recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. ... A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture or speculation.

Hanahan v Simpson, 326 S.C. 140, 485 S.E.2d 903, 908 (Ct.App. 1987), superseded on other grounds by statute, S.C. Code Ann. § 15-26-10(C)(1).

At trial Respondent presented testimony and documentary evidence of the submission of credit applications and a guaranty of payment thereon. R. p. 38, line 3 – p. 55, line 3. The testimony and records presented by Respondent at trial showed that Dependable Technology Center, Inc. (hereinafter “DTC”) applied for credit and George Moraru (hereinafter, “Moraru”) submitted a personal guaranty agreement for all sums then or thereafter owed by DTC to Respondent, that goods were ordered by DTC and shipped to them, and that a balance remained due to Respondent for goods sold and delivered in the amount of \$149,379.07. R. p. 39, line 6 – p. 43, line 19; p. 47, line 18 – p. 55, line 3; R. p. 79 - 98. Appellants briefly cross-examined Respondent’s witness, Zielinski, its

Director of Financial Services. R. p. 55, line 9 – p. 60, line 17. However, the only purported evidence relied upon by Appellants to create a factual issue is referenced only in Appellants’ offer of proof regarding an e-mail document first produced at trial by Appellants. Respondent objected to the use and introduction of the e-mail document on the grounds that it had not been produced in response to discovery. R. p. 60, lines 6 – 17. The trial court allowed Appellants to make an offer of proof as to the e-mail document. R. p. 62, lines 16 – 18. The Appellants’ offer of proof was made outside the presence of the jury. R. p. 60, lines 12 – 17. “A proffer is not evidence, ipso facto.” Crawley v. Ford, 43 Va.App. 308, 597 S.E.2d 264, 268 (Va.App. 2004), quoting United States v. Reed, 114 F.3d 1067, 1070 (10th Cir. 1997). As a result of the proffer, the e-mail document was not admitted into evidence, although the trial court stated that it would allow Appellants to cross-examine Zielinski on the e-mail. R. p. 73, line 9 – p. 74, line 13. Despite this, the cross-examination never resumed, and no portion of the proffered testimony was presented to the jury. The Trial Court attempted several times to bring the jury back in so Appellants could complete their cross-examination, however Appellants repeatedly stated that they saw no reason to proceed with any further cross-examination or witnesses in the action. R. p. 72, lines 7 – p. 73, line 1, p. 73, line 20 – p. 74, line 8. And Appellants did not proceed with further cross-examination when given the opportunity to do so and did not seek to present the proffered testimony before the jury. R. p. 74, line 5 – p. 78, line 11. When the parties were asked if there were any further witnesses, Appellants did not offer up any. R. p. 76, line 22, p. 77, line 8. Appellants plainly stated their intent not to proceed with the trial any further. R. p. 74, lines 8 - 22.

Therefore, the only evidence presented to the jury was the testimony from Zielinski and documents supporting the Respondent's claims. There was no evidence presented to the jury from which they could reasonably find in favor of the Appellants. Appellants' counsel declined to prolong the trial any longer on the apparent belief that the trial court's oral ruling ended the case. However, "[n]o order is final until it is written and entered." First Union Nat'l. Bank v. Hitman, Inc., 306 S.C. 327, 411 S.E.2d 681, 682 (Ct.App. 1991), *aff'd*, 308 S.C. 421, 418 S.E.2d 545 (1992). See also Rule 58(a) SCRCP.

"Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly." Ford v. State Ethics Comm'n, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001); First Union Nat'l Bank, 306 S.C. at 329, 411 S.E.2d at 682. See also Case v. Case, 243 S.C. at 451, 134 S.E.2d at 396 (holding even if the trial judge made oral ruling in favor of one party, such pronouncement is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the judge, and delivered for recordation).

"It is well settled that a judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling." Badeaux v. Davis, 337 S.C. 295, 204, 522, S.E.2d 835, 839 (Ct.App. 1999). See also Owens v. Magill, 308 S.C. 556, 419 S.E.2d 786 (1992) (ruling judge was not bound by prior oral ruling and could issue written order which conflicted with prior oral ruling).

Corbin v. Kohler Co., 351 S.C. 613, 621, 571 S.E.2d 92 (Ct.App. 2002). Additionally, "[a]rguments made by counsel are not evidence." S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 590 S.E.2d 511, 513 (Ct.App. 2003). Respondent's testimony in the record was that the account was opened and goods sold to DTS in reliance upon the guaranty of Moraru. See R. p. 43, lines 15 – 19; p. 44, lines 7 – 12; p. 47, lines 10 – 17. Appellants failed to present any testimony or documentary evidence to the jury raising any issues of fact with regard to the claims established by Respondent.

In Gosnell v. S.C. Dept. of Highways and Public Transp., 282 S.C. 526, 320 S.E.2d 454 (Ct.App. 1984), the plaintiff had run into a motor grader operated by the

Highway Department. Gosnell claimed that the motor grader had moved suddenly out onto the highway into the path of his car. The Highway Department moved for directed verdict and judgment n.o.v. The Court of Appeals noted:

South Carolina adheres to the rule which requires submission of an issue to a jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. ... However, this rule does not authorize the submission of speculative, theoretical and hypothetical views to the jury. While adhering to the scintilla rule, our Supreme Court has repeatedly recognized another equally important rule which provides that when only one reasonable inference, not just one inference, can be deduced from the evidence, the question becomes one of law for the court.

Id., at 457. The Court of Appeals reversed the trial court's denial of the Highway Department's motion for judgment n.o.v., holding:

... that the testimony of Gosnell and Moore that they did not recall seeing the grader in the roadway, when viewed in light of the direct evidence by Gosnell's own witness, Kelly, (and other eyewitnesses) that the grader was clearly visible in the roadway and Gosnell just "plain" ran into its rear, does not give rise to a reasonably inference that the grader suddenly darted out in front of Gosnell's car. The record fails to show the facts to be other than as Gosnell's witness Kelly and the other eyewitnesses testified.

Id., at 457-458.

Similarly here, based on the evidentiary record presented to the jury, there was simply no evidence presented from which the jury could have reasonably found in favor of the Appellants. Therefore, the judgment of the trial court should be affirmed.

II. THE TRIAL COURT PROPERLY GRANTED RESPONDENT'S MOTION FOR DIRECTED VERDICT BECAUSE APPELLANTS STATED THAT THEY WOULD NOT PROCEED FURTHER WITH THE TRIAL.

After Respondent's direct testimony and a short cross-examination before the jury, the jury was excused and Appellants made a proffer of some further cross examination testimony and an e-mail document. R. p. 62, line 20 – p. 68, line 19; R. p. 99 - 100. After the proffer, no further evidence or testimony, including the proffered testimony, was presented to the jury. Appellants stated to the trial court that there was no need for the trial to continue and waived further proceedings. R. p. 74, lines 5 – 22; p 75, lines 10 – 21; p 76, line 22 – p. 77, line 1. The Court asked the parties if there were any further witnesses and neither party offered any. R. p. 76, line 22 – p. 77, line 8; p. 74, line 19 – 22; p. 75, lines 11-13. Appellants thereby clearly indicated no intention to proceed further with the trial. There was no opposition to the motion for directed verdict based upon Appellants not having had an opportunity to be heard or present their case. R. p. 74 line 23 – p. 77, line 8. Upon the granting of Respondent's motion for directed verdict, the trial was ended. After entry and filing of the written Order granting Respondent its verdict, there were no post-trial motions filed by Appellants seeking to set aside, reconsider, alter or amend the judgment, or for new trial.

Appellants cannot now argue that they had no opportunity to present witnesses and evidence, as they were present at trial and voluntarily offered no witnesses or evidence. R. p. 25, lines 6 – 8; p. 35, line 19 – p. 36, line 3; p. 72, line 7 – p. 73, line 1; p. 73, line 20 – p. 74, line 8; p. 76, line 21 – p. 77, line 8. During its proffer, Appellants ceased their cross-examination and proposed to confess judgment on behalf of DTC, stating “and that should end the case.” R. p. 74, lines 8 – 22. No further cross-examination was

presented, despite several attempts by the Court to bring back the jury to resume the trial. R. p. 72, line 7 – p. 73, line 1; p. 73, line 20 – p. 74, line 6. Appellants recognized their right to proceed with further cross-examination before the jury, but elected not to do so. R. p. 71, line 24 – p. 72, line 8; p. 72, line 20 – p. 73, line 21; p. 74, line 4 – p. 77, line 8. Appellants advised that they did not want to waste the Court's or the jury's time any further. R. p. 75, lines 10 – 13. No opposition to the directed verdict motion was made on the basis of Appellants' alleged lack of opportunity to present its case. Appellants simply elected to not proceed any further and conceded there were no issues with the principal balance due by DTC on the account debt. R. p. 74, line 8 – p. 75, line 13. Clearly, Appellants had the opportunity to pursue its cross examination of Respondent's witness and to present its case to the jury. However, Appellants plainly "gave up," despite the fact that an oral ruling by the trial court is not binding on the parties or the court until written and entered, and even after the trial court reiterated that a final decision had not been earlier made on the directed verdict. See R. p. 74, line 19 – p. 75, line 6. See Corbin v. Kohler Co., id. The trial court did not prohibit Appellants from completing their cross-examination, nor from presenting their case, and only granted the directed verdict after Appellants stated there was no reason to proceed with the trial further. R. p. 75, lines 11-13.

In addition, a party cannot argue on appeal an issue not first raised to the trial court and ruled upon by it. Revis v. Barrett, 321 S.C. 206, 467 S.E.2d 460 (Ct.App. 1996). At the time of the directed verdict motion, Appellants did not raise an argument that they had not had an opportunity to be heard. R. p. 74, line 23 – p. 77, line 8. Therefore, those arguments cannot now form the basis for this appeal. Accordingly, the judgment of the trial court should be affirmed.

III. BECAUSE THE GUARANTY WAS GIVEN FOR CREDIT TO BE EXTENDED IN THE FUTURE, AND CREDIT WAS IN FACT EXTENDED IN RELIANCE THEREON, THE EVIDENCE PRESENTED SUPPORTS THE FINDING THAT THE GUARANTY WAS BINDING ON APPELLANT GEORGE MORARU.

The credit applications and guaranty, as well as Respondent's other exhibits, presented at trial were all entered into evidence without objection. Accordingly, the evidence became competent. Wayne Smith Const. Co., Inc. v. Wolman, Duberstein, and Thompson, 294 S.C. 140, 363 S.E.2d 115 (Ct.App. 1987). As such, the evidence must be considered on Respondent's motion for directed verdict. Cantrell v. Carruth, 250 S.C. 415, 158 S.E.2d 208 (1997).

The guaranty was given in anticipation of the extension of credit. R. p. 82. The guarantor further consented to changes in the terms of the indebtedness and "any and all renewals or modifications of extension of trade credit." R. p. 82. Extension of credit to the principal debtor is sufficient consideration to bind the guaranty of an individual. Woods v. Universal C.I.T. Credit Corp., 110 Ga.App. 394, 138 S.E.2d 593 (Ga.App. 1964). 38 Am.Jur. 2d, Guaranty §27 (2019). See PPG Industries, Inc. v. Orangeburg Paint & Decorating Center Inc., 297 S.C.176, 375 S.E.2d 331 (Ct.App. 1988). See also Porter Bros., Inc., v. Smith, 284 S.C. 292, 325 S.E.2d 588 (Ct.App. 1984).

"Valuable consideration may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." McPeters v. Yeargin Const. Co., Inc., 290 S.C. 327, 350 S.E.2d 208, 211 (Ct.App. 1986). "Moreover, 'it is not necessary that the guarantor derive any benefit from either the principal contract or the guaranty' as long as there is a benefit to the obligor or a detriment to the creditor." Crafton v. Brown, *id.* at 354, quoting in part 38A C.J.S. Guaranty § 29 (1996). Based on the only evidence presented to the jury, credit

was extended to DTC in reliance upon this guaranty. R. p. 43, lines 15 – 19. The proffered testimony was not entered into evidence and was not presented to the jury. See Crawley v. Ford, id.

“A guaranty is a contract and should be construed based on the language used by the parties to express their intentions.” TranSouth Financial Corp. v. Cochran, 324 S.C. 290, 478 S.E.2d 63, 65 (Ct.App. 1996). The plain terms of the guaranty contemplated future credit which would become due for merchandise to be sold to DTC. Accordingly, this is not a case of an existing debt for which a guaranty is later given, which would have required some new consideration. See Branch Banking v. Carolina Crank & Core, 362 S.C. 647, 608 S.E.2d 896 (Ct.App. 2005). The recollection of Zielinsky, according to his testimony presented to the jury, was that the initial sale to DTC was in 2013. R. p. 44, lines 7 - 12. Even if, contrary to the only testimony presented to the jury, credit was not extended to DTC until sometime after subsequent credit applications were submitted by Appellants to Respondent, nothing in the clear language of the guaranty terminates it or makes it inapplicable to any later credit applications or credit sales. And the guaranty clearly applied to future transactions by its very language. The extension of the credit is the consideration for the guaranty, and the guaranty was given to Respondent and relied upon by Respondent in granting the credit terms to DTC. R. p. 43, lines 15 – 19; R. p. 82. Foote & Davies, Inc. v. Arnold Craven, Inc., 72 N.C.App. 591, 324 S.E.2d 889 (N.C.App. 1985).

The facts of Foote & Davies, Inc. v. Arnold Craven, Inc., id., are similar to the alleged facts in the Appellants’ proffer. A proposal to print catalogs for the principal debtor was made by the creditor. Enclosed with the proposal was a proposed guaranty agreement. The proposal was accepted and signed, and the guaranty was retyped by the

guarantor and then signed and sent to the creditor. Thereafter the creditor learned that the principal debtor was having trouble raising operating capital. Further discussions took place between the parties. Subsequently the catalogs were printed for the principal debtor and invoices were sent. The principal debtor then filed bankruptcy, and the creditor sued the guarantor on the guaranty of payment. The court there held that the extension of credit by the obligee to the principal debtor supplied the consideration for both the principal debt and the guaranty. Similarly in the case at bar, Respondent requested a personal guaranty from Moraru in connection with his request for sales on credit to DTC. R. p. 41, line 16 – p. 43, line 19. Credit was extended to DTC in reliance upon the guaranty and at the request of Appellants. Even if the proffered testimony had been submitted in evidence, it shows at best that additional discussions may have occurred regarding what was needed to open the credit account. But in any event, the account was opened with no revocation, termination or withdrawal of the guaranty of payment. Arguments of counsel cannot substitute for evidence. See S.C. Dept. Transp. v. Thompson, id. Therefore, the extension of credit by Respondent to DTC, in reliance upon the guaranty, supplied the consideration for both the principal debt and the guaranty.

Again, the allegations that Appellants rely upon were posited only during the proffer and were not presented to the jury. R. p. 62, line 20 – p. 68, line 19. As noted above, Appellants never attempted to resume cross-examination, nor move the proffered testimony into evidence, nor otherwise proceed with the trial. R. p. 75, lines 10 – 13; p. 74, lines 5 – 22; p. 75, lines 10 – 21; p. 76, line 22 – p. 77, line 1. Instead, Appellants clearly represented to the trial court that they saw no reason to proceed further with the trial. R. p. 74, lines 5 – 22; p. 75, lines 10 – 21; p. 76, line 22 – p. 77, line 1. And the clear

language of the guaranty did not make it subject to any specific credit application or any specific sales, but to all sales thereafter on credit to DTC. See Pee Dee State Bank v. National Fiber Corp., 287 S.C. 640, 340 S.E.2d 569 (Ct.App. 1985).

Therefore, the evidence presented leads to only one reasonable inference, that being that the credit was extended to DTC in reliance upon the guaranty of Moraru, and the judgment of the trial court should be affirmed.

IV. THE TRIAL COURT PROPERLY ENTERED THE AMOUNT OF JUDGMENT AGAINST APPELLANTS BASED ON THE EVIDENCE PRESENTED.

A party cannot argue on appeal an issue not first raised to the trial court and ruled upon by it. Revis v. Barrett, *id.* Therefore, Appellants cannot now argue that any liability they had to Respondent was limited to \$5,000.00, as that issue was not raised to the trial court, either at trial or by post-trial motions.

In addition, the guaranty and the principal agreement are separate contracts. Citizens and Southern Nat. Bank of South Carolina v. Lanford, 313 S.C. 540, 443 S.E.2d 549 (1994). Even if the principal agreement contained a “requested” credit limit, there is no corresponding limit in the guaranty. In Builders Supply Co., Inc. v. Czerwinski, 275 Neb. 622, 748 N.W.2d 645, 655 (2008), the court stated, “Other courts have observed, and we agree, that in the absence of a limit in a guaranty, the presence of a credit limit in a separate credit agreement does not create a limit in the corresponding guaranty.” *Id.* at 655. See PPG Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc., *id.* The Moraru guaranty plainly applies to “any obligation to Creditor on demand for any indebtedness of Debtor to Creditor now due and/or which may hereafter become due to Creditor for merchandise and other property hereafter sold and delivered by it to Debtor.” R. p. 82. Furthermore, the guaranty signed by Moraru contained the following language:

... I do hereby waive notice of default, non-payment and notice thereof and to jury trial and consent to (i) changes in the terms of the guaranteed indebtedness and (ii) any and all renewals or modifications of extension of trade credit.

R. p. 82. Therefore, whether a requested credit limit may have existed with DTC, the terms of any such limit would be subject to alteration or modification, and the guarantor has already consented in advance to such alterations and modifications. See, Florentine Corp.,

Inc. v. PEDA I, Inc., 287 S.C. 382, 339 S.E.2d 112 (1985). The fact that the principal debtor ordered and received goods on credit in excess of the “requested credit limit” itself, is evidence of an alteration or modification of the credit terms. Moreover, Appellants conceded that there were no issues with the balance due by DTC as claimed by Respondent. R. p. 74, lines 19 – 20.

Accordingly, the judgment of the trial court should be affirmed.

CONCLUSION

For the reasons set forth hereinabove, this appeal should be dismissed and/or the Judgment of the trial judge should be affirmed, with costs.

Respectfully submitted,

June 1, 2023

s/ Craig H. Allen
Craig H. Allen, S.C. Bar #000329
Craig H. Allen, P.A.
Post Office Box 10854
Greenville, South Carolina 29603
(864) 239-0444
Attorney for Respondent

RECEIVED

Jun 07 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Hon. Edward W. Miller, Judge

Appellate Court Case No. 2022-001619

ScanSource, Inc.,

Respondent,

v.

Dependable Technology Center, LLC,
and George G. Moraru,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Brief of Respondent complies with Rule 211(b), SCACR.

June 1, 2023

s/ Craig H. Allen
Craig H. Allen, S.C. Bar #000329
Craig H. Allen, P.A.
Post Office Box 10854
Greenville, South Carolina 29003
(864) 239-0444
Attorney for Respondent

RECEIVED

Jun 07 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Judge

Appellate Court Case No.: 2022-001619

ScanSource, Inc., ... Respondent
v.
Dependable Technology Center, LLC
and George G. Moraru, ... Appellants,

RECORD ON APPEAL

J. Falkner Wilkes (SC Bar #12893)
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
jfalcknerwilkes@gmail.com

Craig H. Allen (SC Bar #00329)
POB 10854
Greenville, SC 29603
(864) 239-0444
craig@craigallenlaw.com

William R. McKibbon, III (# 68454)
601 East McBee Avenue, Suite 104
Greenville, SC 29601
(864) 235-0071
will@legalcarolina.com

Attorney for Respondent

Counsel for Appellants

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-23-05406

ScanSource, Inc.

Dependable Technology Center LLC and

PLAINTIFF(S)

George G. Moraru
DEFENDANT(S)

Submitted by: s/Craig H. Allen
P. O. Box 10854, Greenville, SC 29603
864-239-0444
craig@craigallenlaw.com

Attorney for: ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **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: directed verdict in favor of Plaintiff and against Dependable Technology Center LLC and George G. Moraru for the sum of \$149,379.07.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
ScanSource, Inc.	Dependable Technology Center LLC	\$149,379.07
ScanSource, Inc.	George G. Moraru	\$149,379.07
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

SUMMONS FOR RELIEF (Complaint Served)

Craig H. Allen, P.A., Attorney at Law
 605 Pettigru Street
 Greenville, SC 29601

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
ScanSource, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	
Dependable Technology Center LLC, and	)	
George G. Moraru,	)	2019-CP-23-_____
	)	
Defendant(s).	)	
_____	)	

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices, 605 Pettigru Street, Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

CRAIG H. ALLEN, P.A.

BY: s/ Craig H. Allen
 Craig H. Allen, S.C. Bar #000329
 P.O. Box 10854
 Greenville, SC 29603
 864-239-0444

Attorney for Plaintiff

Greenville, SC
 September 12, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
ScanSource, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(Non-Jury)
Dependable Technology Center LLC, and	)	
George G. Moraru,	)	2019-CP-23-_____
	)	
Defendants.	)	
_____	)	

The above-named Plaintiff, complaining of the Defendants herein, would respectfully show the Court:

I.

That Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of South Carolina.

II.

That the Defendant, Dependable Technology Center LLC (hereinafter referred to as "Dependable Technology"), upon information and belief, is a New York limited liability company, doing business with Plaintiff in South Carolina; and that George G. Moraru is, upon information and belief, a resident of the State of New York and is the principal officer of Dependable Technology; that Defendants have consented to jurisdiction of this action in this State pursuant to the terms of the Exhibits A and B described hereinbelow.

III.

That heretofore, Dependable Technology, applied for credit with Plaintiff and executed and delivered to Plaintiff its Customer Application, a copy of which is attached hereto as

Exhibit A and incorporated herein by reference; that as set forth in Exhibit A, said Defendant agreed to pay interest on any delinquent balance at the rate of 1.5 % per month; that Exhibit A further provides that said Defendant would pay reasonable attorneys' fees and costs incurred by Plaintiff in enforcing the account terms.

IV.

That in order to induce Plaintiff to sell goods and/or services on open account to Dependable Technology, the Defendant, George G. Moraru, executed an Individual Personal Guarantee of the account, which guarantee is attached hereto as Exhibit B and incorporated herein by reference.

V.

That acting and relying on the credit application and the guarantee, Exhibits A and B hereto, and at the special instance and request of Dependable Technology, and upon its promise and agreement to pay Plaintiff for the same, Plaintiff sold and delivered goods and/or services to said Defendant; that the aforesaid goods and/or services were sold and delivered by Plaintiff to said Defendant at the time or times, in the character and amounts, and at the agreed prices as set forth in the itemized statement of account, a copy of which is attached hereto as Exhibit C and incorporated herein by reference; that after applying all payments and credits to the account as stated thereon, there remains due and owing Plaintiff by the Defendants, the sum of Seventy-Two Thousand Nine Hundred Twenty-Three and 39/100 (\$72,923.39) Dollars, plus interest thereon at the rate of 1.5% per month from December 21, 2016, on the aforesaid account and the guarantee thereof; that Plaintiff has made demand on Defendants for payment of the balance due Plaintiff, however said Defendants have failed and refused to pay the same; that accordingly, Plaintiff is entitled to recover from said Defendants the aforesaid indebtedness, plus

interest as stated above, together with reasonable attorney's fees, pursuant to the terms and provisions of Exhibits A and B.

VI.

That as set forth in Exhibit A, Plaintiff is entitled to recover from Defendants reasonable attorney's fees for this action; that Plaintiff is informed and believes that not less than 20% of the balance due would be a reasonable attorney's fee in this action.

WHEREFORE, Plaintiff prays for judgment against Defendants, Dependable Technology Center LLC, and George G. Moraru, in the sum of Seventy-Two Thousand Nine Hundred Twenty-Three and 39/100 (\$72,923.39) Dollars, plus interest thereon at the rate of 1.5% per month from December 21, 2016, plus reasonable attorney's fees of 20% of said total balance due, for the costs of this action, and for such other and further relief as to the Court may seem just and proper.

CRAIG H. ALLEN, P.A.

BY: s/ Craig H. Allen
Craig H. Allen, S.C. Bar #000329
P.O. Box 10854
Greenville, SC 29603
864-239-0444

Attorney for Plaintiff

Greenville, SC
September 12, 2019

Exhibit A



(800) 944.2439 ext. 4007
 (864) 286.4544 FAX
 You can apply online at
www.scansource.com
 Reseller Financial Services

CUSTOMER APPLICATION

DATE OF APPLICATION 9/10/2014
CREDIT LIMIT REQUESTED \$5,000
PAYMENT METHOD ☐ CREDIT CARD ☒ NET 20 DAYS ☐ PREPAY VIA WIRE

SALES UNITS



COMPANY INFORMATION

TYPE:	☐ C Corporation	☐ S Corporation	☒ Limited Liability Company	☐ Partnership	☐ Proprietor
COMPANY'S COMPLETE LEGAL NAME (Please print or type) Dependable Technology Center			DOING BUSINESS AS NAME Dependable Technology Center		
COMPANY WEBSITE			YEAR STARTED 2010	STATE OF INCORPORATION New York	
MAILING ADDRESS OF CORPORATE OFFICE 6510 New Utrecht Ave			CITY Brooklyn	STATE/PROVINCE NY	POSTAL CODE
STREET ADDRESS OF CORPORATE OFFICE (If different than above)			CITY	STATE/PROVINCE	POSTAL CODE
CORPORATE PHONE NUMBER 718-256-3976			CORPORATE FAX NUMBER 718-256-9531		

CONTACT INFORMATION

EXECUTIVE CONTACT NAME AND TITLE George Moraru	ACCOUNTS PAYABLE MANAGER NAME George Moraru
EXECUTIVE CONTACT PHONE 347-267-8262	ACCOUNTS PAYABLE MANAGER PHONE 347-267-8262
EXECUTIVE CONTACT FAX 718-256-9531	ACCOUNTS PAYABLE MANAGER FAX 718-256-9531
EXECUTIVE CONTACT EMAIL ADDRESS gabriel@mtsny.com	ACCOUNTS PAYABLE MANAGER EMAIL ADDRESS gabriel@mtsny.com

Please indicate if you authorize ScanSource, Inc. to communicate with your company via fax and email: ☒ YES ☐ NO

Please indicate if you would like to receive invoices in PDF format in lieu of paper invoices: ☐ YES ☐ NO

If so, please indicate the email address to receive the invoices: _____

TAX INFORMATION

Federal Employer Identification Number:	
Sales Tax Exempt Number:	Note: Please attach a copy of exemption certificate(s) for each state or use the Multijurisdiction Form Tax Certificate also available to download at http://www.scansource.com/downloads/Multijurisdiction_Form.pdf .

PURCHASING INFORMATION

Do you require a purchase order number before we accept an order? ☐ YES ☒ NO

AUTHORIZED SIGNATURES

By signing this application Applicant hereby acknowledges that it is submitting the Application to ScanSource and each of its subsidiaries and/or affiliates. Applicant hereby gives the right to each of ScanSource and its subsidiaries and affiliates to rely on this application in considering the extension of trade credit at any time. Applicant's authorized signature constitutes a representation of the trust and accuracy of all statements made on this Application and its express agreement to abide by the Terms and Conditions of Sale on the second page hereof. A faxed copy of the signature will be considered an original.

APPLICANT AUTHORIZED NAME (Please print or type) George Moraru	TITLE President	SIGNATURE <i>George Moraru</i>	DATE
---	--------------------	-----------------------------------	------

FINANCIAL INFORMATION

Please attach the applicant's latest two (2) fiscal year end financial statements for ScanSource Reseller Financial Services' processing. This information will be for the exclusive use of ScanSource Reseller Financial Services and will remain confidential.

TERMS AND CONDITIONS OF SALE

ScanSource, Inc., including its subsidiaries and/or affiliates ("Seller"), makes all sales of its products and services ("Products") to buyer ("Buyer") subject to the following terms and conditions:

1. **Pricing/Purchase Orders/Acceptance of Terms and Conditions.** All Products sold by Seller to Buyer shall be at the standard prices set forth in Seller's current catalog of Products at the time the order is submitted to Seller. Buyer shall submit all orders for Products to Seller using a method approved in writing by Seller, which includes by telephone and by electronic data interchange if Buyer has executed and provided to Seller Seller's standard EDI Trading Partner Agreement. Seller's acceptance of all orders, however made, is expressly conditioned upon Buyer's consent, either express or implied, to these terms and conditions, and Seller will not accept, and expressly objects to and rejects, any other terms and conditions (whether written or oral) originating from Buyer that purport to modify, add to, or otherwise vary the terms and conditions stated herein. Buyer's acceptance of these terms and conditions shall be indicated by any of the foregoing: (a) Buyer's written acknowledgement or other act or expression of acceptance, (b) Buyer's offer to purchase Products from Seller, (c) Buyer's acceptance of shipment from Seller, or (d) Buyer's payment for any Products. To facilitate future cross-reference, Buyer shall note on the face of each submitted purchase order that the terms of this agreement control; provided however, if Buyer fails to include any such notation, the parties hereby agree that the terms and conditions of this agreement shall still control.
2. **Shipment/Title/Risk of Loss/Taxes.** Title to the Products shall pass to Buyer upon delivery of the Products to (1) the common carrier or (2) Buyer's representative at Seller's dock. Seller's delivery of the Products shall be Ex Works Seller's shipping point, with all risk of loss, damage, theft or destruction passing to Buyer at such point, subject to Seller's rights under applicable law. No such loss, damage, theft or destruction to the Products, in whole or in part, shall impair the obligations of Buyer under this agreement, all of which shall continue in full force and effect. Seller shall not be liable for any shipping delays. Buyer shall bear all applicable federal, state, municipal or other governmental tax, as well as any applicable import or customs duties, license fees and similar charges, however designated or levied on the sale of Products (or delivery thereof) or measured by the purchase price paid for the Products.
3. **Shortages/Rejection of Delivery.** All claims for shortages or rejection of delivery must be made by Buyer to Seller in writing within a period of forty-eight (48) hours from receipt of Products and must state in reasonable detail the grounds therefore. Unless such notice is given within the stated period of time, Buyer agrees that it shall be conclusively presumed that Buyer has fully inspected the Products and acknowledged that NO shortage or grounds for rejection exists.
4. **Security Interest.** Buyer grants Seller a security interest in all Products sold hereunder and to all Products now or hereafter acquired by Buyer from Seller, and to any proceeds thereof, until the purchase price and any other amounts due to Seller have been paid in their entirety. Buyer hereby authorizes Seller to prepare and file any financing statement listing the Products as collateral and to file any such financing statement in such filing offices as the Seller may deem appropriate. Buyer further agrees promptly to execute any other documents requested by Seller in order to protect Seller's security interest. Upon any default by Buyer of any of its obligations to Seller, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive.
5. **Payment.** Unless otherwise agreed in writing by Seller, all credit purchases must be paid in accordance with Seller's normal terms of sale, which are Net twenty (20) days from date of invoice. All past due amounts are subject to a one and a half percent (1.5%) monthly financing charge or the maximum permissible under applicable law, whichever is lower. All drafts dishonored for any reason shall be assessed a twenty-five dollar and 00/100 (\$25.00) service charge. In the event that Buyer stops payment on any drafts issued to Seller, for any reason, Buyer hereby recognizes that Seller would suffer damage, the exact amount of which cannot be determined with certainty, and Buyer shall pay Seller liquidated damages in the amount of five hundred and 00/100 (\$500) for each such draft in addition to the purchase price. Buyer may not use anticipated credit memos before Seller issues the credit on account. Payment using an anticipated credit memo before Seller has issued credit will be considered a short payment and may result in delayed shipments. It is not Seller's policy to issue refunds. Credit memos must be used on current outstanding balances or future purchases. In the event that Buyer utilizes a credit card to purchase Products, Buyer must provide Seller with the credit card information as requested. Buyer acknowledges and agrees that all credit card purchases hereunder are duly authorized. Seller has no continuing obligation to deliver Products on credit and credit approval may be withdrawn by Seller at any time without prior notice. Seller may extend credit to Buyer for purchasing Products to the extent Buyer may be eligible under the applicable Seller's programs and consistent with Buyer's credit capability, as determined by Seller from time to time in Seller's absolute discretion. Seller may, in its absolute discretion, refuse to establish an account with Buyer, place Buyer's account on hold, and/or refuse to deliver Products or accept orders from Buyer to the extent any principal(s) or shareholder(s) of Buyer, any entity with which such principal(s) or shareholder(s) are affiliated, or any subsidiary or affiliate of Buyer has a delinquent or past due account with Seller. In the event that Buyer's account with Seller is dormant for more than six (6) months and has a credit balance, Buyer agrees that Seller may impose a monthly administrative charge for inactivity at a rate of the lesser of ten and 00/100 dollars (\$10.00) a month or the credit balance outstanding on Buyer's account. Seller, without waiver or limitation of any rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Seller any and all amounts owed by Seller to Buyer.
6. **Returns.** The terms for all Product returns, for whatever reason, are limited to those set forth in Seller's return merchandise authorization ("RMA") policies and procedures, which are located on Seller's website and in Seller's catalog. These policies and procedures may be modified in any manner by Seller at any time. All returns must be accompanied by an RMA from Seller. All returns are subject to in-house credit only. The time periods allowed for returns are determined by manufacturers of the Products and are printed in Seller's catalog.
7. **No Warranties by Seller.** Product warranties, if any, are provided by the manufacturer or publisher of the Products. Seller makes no warranties whatsoever. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. SELLER DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER FROM AND AGAINST ANY OR ALL DAMAGES OR COSTS INCURRED BY BUYER ARISING FROM THE INFRINGEMENT OR VIOLATION OF ANY PATENTS, TRADEMARKS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS BY ANY PRODUCTS. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED. NOTWITHSTANDING ANY OTHER TERMS OR CONDITIONS TO THE CONTRARY, SELLER'S LIABILITY UNDER THIS SECTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE ALLEGED LIABILITY.
8. **Events of Default.** Buyer shall be in default under this agreement upon the happening of any of the following events or conditions: (a) default by Buyer on payment of any installment, invoice, bill or any other indebtedness or obligation now or hereafter owed by Buyer to Seller, (b) default in the performance of any obligation, covenant or liability contained in this agreement or any other agreement or document between Buyer and Seller, (c) any inaccuracy with respect to any warranty, representation or statement made or furnished by Buyer, (d) dissolution, termination of existence, insolvency, business failure, or discontinuance of Buyer's business or the appointment of a receiver for any part of the property of, or assignment for the benefit of creditors by, Buyer or the commencement of any proceedings under any bankruptcy reorganization or arrangement laws by or against Buyer or the attachment, levy, seizure or garnishment of any of Buyer's property, rights, assets (contingent or otherwise) including the Products, or (e) any change in control of the ownership or management of Buyer, unless prior to the occurrence of such change of control Seller shall have been notified in writing and Buyer shall have obtained Seller's prior written approval to such change in control.
9. **Remedies of Seller.**
 - a. **In General.** Upon the occurrence of any event of default or any time thereafter, Seller may, at its option and without notice to Buyer, exercise one or more of the following remedies as Seller, in its sole discretion, shall elect: (1) declare immediately due and payable all outstanding invoices under this or any other contract and demand or, without demand, sue for amounts then due or thereafter accruing under this invoice or under any other invoice, bill or other document evidencing Buyer's indebtedness to Seller, (2) suspend deliveries as to any or all Products, (3) take possession of the Products wherever found and for this purpose enter upon any premises of Buyer and remove the Products, without court order or other process of law, without any liability for damages, suit, action or other proceeding by Buyer as a result of such entry and/or removal, (4) cause Buyer, at its expense, to promptly return the Products to Seller in good, like-new condition, (5) sell the Products, or any part thereof at public or private sale (for cash or credit) at such time or times as Seller shall determine, free and clear of any rights of Buyer, and if notice thereof is required by law, any notice in writing of any such sale by Seller to Buyer not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Buyer, and (6) exercise any and all rights accruing to Seller under any applicable contract or law upon a default by Buyer, including all rights and remedies accorded to sellers or secured parties under the Uniform Commercial Code.
 - b. **Mitigation of Damages.** Should Seller repossess any of the Products because of Buyer's default, Seller may make a commercially reasonable effort to sell such Products at a reasonable price to a third party, provided, however, that Seller shall have no obligation to actively seek out and solicit potential third party Buyers for said Products.
 - c. **Collection Costs.** In the event of any default on the part of Buyer hereunder, Buyer shall pay any and all collection costs, including reasonable attorneys' fees and costs, incurred by Seller.
 - d. **Rights and Remedies Not Exclusive.** No right or remedy conferred upon or reserved to Seller by this agreement shall be exclusive of any other right or remedy provided herein or by law. All rights or remedies conferred upon Seller by this agreement and by law shall be cumulative and in addition to any other right or remedy available to Seller.
10. **Time of the Essence.** Time is of the essence with respect to each of the provisions of this agreement.
11. **Indemnification.** Buyer agrees to indemnify and hold Seller and its officers, directors, servants, employees, agents and advisors harmless from and against any and all claims, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) or liabilities that may result, in whole or in part, from any third party using the Products provided under this agreement. Any defense provided hereunder shall be by counsel of Seller's choice.
12. **Limitation of Liability.** In the event that any of the Products malfunction and such malfunction leads to damage or injuries to the Products, to Buyer's business, the end-user's business, to other equipment, or residence, or to employees or to other persons, Seller shall not be liable for such damages or injuries. Buyer understands and agrees that if Seller shall be found liable for loss or damage caused by failure of Seller to perform any of Seller's obligations hereunder or the failure of the Products in any respect whatsoever, Seller's liability shall be limited to the price paid for such Products, and this liability shall be exclusive. Buyer understands and agrees that the provisions of this section shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property, from performance or non-performance of any of Seller's obligations or from negligence, active or otherwise, of Seller, or its agents, servants, assignees or employees. IN NO EVENT SHALL SELLER BE LIABLE FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **Assignment.** This agreement and all rights, obligations and performance hereunder may not be assigned by Buyer without prior written consent of Seller.
14. **Waiver.** No delay or omission by Seller to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by Seller of any term, condition or agreements to be performed by Buyer or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other term, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless presented in writing to Seller and signed by an authorized representative of Seller.
15. **Severability.** If any section, term, condition or portion of this agreement shall be found to be illegal or void as being against public policy, it shall be stricken and the remainder of this document shall stand as the original.
16. **Governing Law/Venue.** This agreement shall be construed and enforced in accordance with the laws of South Carolina without regard to the conflicts of law provisions thereof. ALL SALES TRANSACTIONS EXCLUDE THE APPLICATION OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS. IF OTHERWISE APPLICABLE. All claims, actions, disputes, controversies or suits shall be litigated exclusively in the courts of South Carolina. Each party specifically consents to service of process by and the jurisdiction of and venue in those courts and Buyer, if not a resident of the United States, hereby appoints the Secretary of State of South Carolina as its agent for service of process in the United States.
17. **Entire Agreement/Modification.** The parties intend this agreement to be the complete statement of the terms of their agreement. This agreement replaces and supersedes any prior agreements between them with respect to the subject matter hereof. No course of prior dealing or usage of trade shall be relevant to amend or interpret this agreement. This agreement may not be changed, modified or amended except by an instrument in writing signed by both Seller and Buyer. All Products delivered to Buyer hereunder are for resale only and Buyer acknowledges and shall advise its customer that the Products may be controlled for export by the U.S. Department of Commerce and that the Products may require authorization prior to export from the United States.
18. **Non-solicitation.** Each party agrees that during the term of this agreement and for a period of eighteen (18) months following the expiration or termination of this agreement, such party shall not, without the prior written consent of the other party, either separately or on behalf of or through any third party (i) directly or indirectly, solicit, entice or persuade or attempt to solicit, entice or persuade any employee of the other party to leave the services of the other party for any reason, or (ii) hire or attempt to hire any such persons.
19. **Compliance with Laws.** The parties agree to comply with the laws, regulations and requirements of the United States. This includes, without limitation, the applicable export control and economic sanctions laws, regulations and requirements administered by the Commerce Department's Bureau of Industry and Security and the Treasury Department's Office of Foreign Assets Control as they may govern the export and re-export of items supplied under these Terms and Conditions. Buyer further agrees that it will not make any payment, directly or indirectly, that would cause a violation of the anti-bribery laws of any country or jurisdiction, including without limitation the U.S. Foreign Corrupt Practices Act which, inter alia, prohibits certain payments to foreign government officials for the purpose of obtaining or retaining business. The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applications on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with law concerning the creditor is the Federal Trade Commission, Division of Credit Practices, 600 Pennsylvania Avenue, NW, Washington, DC 20580.
20. **No Agent.** It is understood that Buyer is not an agent of Seller and shall not refer to the Seller's corporate name in any of its products or literature without the express written consent of the Seller.
21. **Notices.** All notices and other communications relating to this Agreement or its terms must be either: (1) in writing and sent via first class United States Postal Service certified or registered mail with return receipt requested; or (2) via FedEx or other similar overnight courier to the address set forth above. All such notices must be sent to Vice President of Reseller Financial Services and copy will General Counsel at 6 Logue Court, Greenville, SC 29615. All notices sent by Seller hereunder will be deemed received two (2) days after postmark or shipping date, or on the day of actual receipt if earlier. In addition, Seller may provide notices hereunder to Buyer via facsimile to the facsimile number(s) Buyer provided to Seller via Buyer's completion of Seller's credit application, with such facsimile notices being deemed received upon Seller's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received by Buyer is not a business day or is after five (5) p.m. on a business day, then such facsimile shall be deemed to have been received on the next following business day.

Exhibit B

OPTIONAL**INDIVIDUAL PERSONAL GUARANTEE**

In conjunction with my individual personal guarantee and customer application to ScanSource, Inc. and its subsidiaries and/or affiliates (hereinafter "Creditor") on behalf of Dependable Tech Center (hereinafter "Debtor") of
(company name)

which I, George G. MORAN residing at 6510 New Utrecht Avenue
(guarantor) (guarantor's address, city, state & zip code)

am an officer, principal, partner, or major shareholder, I represent to Creditor that neither Debtor nor any company in which have been an officer, principal, partner, or major shareholder, nor have I personally never experienced any type of insolvency including bankruptcy.

I for good and valuable consideration, including the extension of trade credit to debtor which I hereby acknowledge as having been received, do hereby personally guarantee and promise to pay any obligation to Creditor on demand for any indebtedness of Debtor to Creditor now due and/or which may hereafter become due to Creditor for merchandise and other property hereafter sold and delivered by it to Debtor. This guarantee is one of payment, not of collection.

This guarantee is given individually, not in my capacity as _____ of Dependable Tech Center
(guarantor's title) (company name)

This guarantee shall be an irrevocable guarantee and indemnity to Creditor. Further, I hereby subrogate any indebtedness of Debtor, which it may have to me to the indebtedness of Creditor.

I do hereby waive notice of default, non-payment and notice thereof and to jury trial and consent to (i) changes in the terms of the guaranteed indebtedness and (ii) any and all renewals or modifications of extension of trade credit. I agree that Creditor may take any action with regard to the disposition of the collateral, including releasing it, and still enforce this guarantee without foreclosing on the collateral first. I agree that this guarantee shall be governed by the substantive law of the State of South Carolina without regard to its provisions concerning conflicts of law. I grant permission to Creditor to obtain information from any and all sources required to properly ascertain my capability to meet my financial obligations.

Date: <u>4/12/13</u>	Signature: 	Social Security Number:
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Please attach personal financial statements or tax return of guarantor.

Exhibit C

STATE OF South Carolina)
) AFFIDAVIT OF ACCOUNT
 COUNTY OF Greenville)

PERSONALLY appeared William Harrison, (hereinafter the "Affiant"), who after being duly sworn does state that Affiant is Account Recovery Specialist of ScanSource, Inc., (hereinafter the "Plaintiff"), a corporation organized under the laws of the State of South Carolina, and has been duly authorized by said company to make this Affidavit; that Affiant is familiar with the books and business of Plaintiff; that the attached Statement of Account against Dependable Technology Center LLC, and George G. Moraru, as guarantor, (hereinafter the "Defendant(s)") is just and correct within the knowledge of Affiant; that Plaintiff has given Defendant(s) credit for all payments and just and lawful offsets to which Defendant(s) is entitled, as shown on the Statement of Account attached hereto; and that the balance due Plaintiff by Defendant(s) in the sum of Seventy-Two Thousand Nine Hundred Twenty-Three and 39/100 (\$72,923.39) Dollars, plus interest thereon at the rate of 1.5% per month from December 21, 2016, is justly due and remains unpaid.

SWORN TO AND SUBSCRIBED)
 before me this 23)
 day of July, 2019.)

Hayley T Clark)
 Notary Public for)
 My Comm. Expires: 7/26/2023

Will Harrison

HAYLEY T. CLARK
 Notary Public, State of South Carolina
 My Commission Expires 7/26/2023



DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219
USA

Account 1000014909

Dear Sir or Madam,

Please note that invoice(s) on your account remain past due. For your reference a list of open invoice(s) has been provided. For those that have been paid, please forward payment details including check number, amount paid and date mailed. Please remit payment for any outstanding invoices as soon as possible. We appreciate your prompt attention to this matter and we thank you for your business.



Invoice #	Purchase Order #	Invoice Date	Due Date	Days Past Due	Balance	Currency
5401736436	55	Nov 21, 2016	Dec 11, 2016	130	24,068.85	USD
5401739153	55	Nov 22, 2016	Dec 12, 2016	129	32,862.93	USD
5401766127	55	Dec 1, 2016	Dec 21, 2016	120	6,720.76	USD
5401766128	55	Dec 1, 2016	Dec 21, 2016	120	9,270.85	USD

SCSC Inc Communicat. Overdue Balance (USD): 72,923.39

SCSC Inc Communicat. Total Balance (USD): 72,923.39

Total Overdue Balance (USD): 72,923.39

Total Balance (USD): 72,923.39

Regards,
Maya Adams
us -
maya.adams@scansource.com

ELECTRONICALLY FILED - 2019 Sep 13 11:47 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2305406



Invoice

Fed. ID NO 06-1783099
GST ID 83055 9522 RT0001

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Invoice No.	5401736436
Page	1 of 1
Invoice Date	11/21/2016
Due Date	12/11/2016
Total Due	36,068.85 USD

BILL TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

SOLD TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

Purchase Order No.	Order No.	Ship Date	Salesperson	Payment Terms	Tax Code	Ship Via
55	11728537	11/21/2016	Jon Eveslage	Net 20	NY01101511	LTL STANDARD (2-5 DAYS)

Item	Description	Ordered	Shipped	Back Order	Unit Price	Extended Price
MIT-54005777 54005777	MiVoice Bus Ent 3300 Hospitality Base	2 EA	2 EA	0 EA	1,710.00	3,420.00
MIT-54005778 54005778	MiVoice Bus Enterprise AnalogTheme	1 EA	1 EA	0 EA	3,420.00	3,420.00
MIT-54000297 54000297	MCD Mailbox license	2 EA	2 EA	0 EA	28.50	57.00
MIT-54000303 54000303	MiVoice Business License - Digital Link	1 EA	1 EA	0 EA	855.00	855.00
MIT-54002701 54002701	MiVoice Business License - Analog Ext	426 EA	426 EA	0 EA	42.75	18,211.50
MIT-54005765 54005765	MiVoice Bus License Ent Hospitality User	45 EA	45 EA	0 EA	76.95	3,462.75
MIT-54005768 54005768	MiVoice Bus Hospitality License Group	1 EA	1 EA	0 EA	570.00	570.00
MIT-54005195 54005195	Stnd S/W Assur MiVoice Bus Base Usersx16	2 EA	2 EA	0 EA	75.00	150.00
MIT-54005897 54005897	StndS/WAssurMiVoiceBus HospitlyAnlg Port	720 EA	720 EA	0 EA	1.20	864.00
MIT-54005899 54005899	Stnd S/W Assur MiVoice Bus HospitalityUser	45 EA	45 EA	0 EA	2.40	108.00
MIT-54005767 54005767	MiVoice Bus Centralized HospitalityTheme	1 EA	1 EA	0 EA	4,446.00	4,446.00
MIT-54005654 54005654	Prem SW Assur MiVBUS Base w/Monitor	2 EA	2 EA	0 EA	22.80	45.60
MIT-54005898 54005898	PremS/WAssurMiVBUS Hospitality AnlgPort	720 EA	720 EA	0 EA	0.60	432.00
MIT-54005900 54005900	Prem S/W Assur MiVBUS Hospitality User	45 EA	45 EA	0 EA	0.60	27.00

Remit To

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Sub Total

36,068.85

Sub Total	Freight	Insurance	Tax	Total Due
36,068.85	0.00	0.00	0.00	36,068.85 USD

Approval:

Ship To: DEPENDABLE TECHNOLOGY CENTER LLC , 6424 Utrecht Ave , BROOKLYN NY 11219 , USA

Please Note: To ensure that your payments are posted accurately, please include your customer number and invoice number on your remittance advice.

To contact your Account Analyst call 1-800-944-2439 ext. 4007. Thank you.

For the purposes of this document, "Seller" refers to ScanSource. This invoice expressly limits acceptance to the terms and conditions on the face and reverse side hereof, it supersedes all other previous agreements or buyer's purchase order, if any. Objection is hereby made to any additional terms in the buyer's purchase order or other writing of any other party. This invoice does not insist that an expression of acceptance mirror this offer before a contract will be formed. It shall become a contract when the common carrier has received delivery of the whole or any part thereof, or when the buyer has otherwise consented to the terms and conditions hereof, whichever occurs first. SEE REVERSE SIDE HEREOF.
THANK YOU



Invoice

Fed. ID NO 06-1783099
GST ID 83055 9522 RT0001

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Invoice No.	5401739153
Page	1 of 1
Invoice Date	11/22/2016
Due Date	12/12/2016
Total Due	32,862.93 USD

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

BILL TO

SOLD TO

Purchase Order No.	Order No.	Ship Date	Salesperson	Payment Terms	Tax Code	Ship Via
55	11728537	11/22/2016	Jon Eveslage	Net 20	NY01101511	LTL STANDARD (2-5 DAYS)

Item	Description	Ordered	Shipped	Back Order	Unit Price	Extended Price
MIT-50006271 50006271	PWR CRD C13 10A 125V - NA Plug	14 EA	14 EA	0 EA	14.25	199.50
MIT-50003560 50003560	DUAL T1/E1 TRUNK MMC	1 EA	1 EA	0 EA	855.00	855.00
MIT-50004451 50004451	QUAD CIM	2 EA	2 EA	0 EA	427.50	855.00
MIT-50005105 50005105	ASU II	12 EA	12 EA	0 EA	399.00	4,788.00
MIT-50005731 50005731	24 port ONSp card	30 EA	30 EA	0 EA	490.20	14,706.00
MIT-50006513 50006513	3300 MXe III Controller SATA HDD	1 EA	1 EA	0 EA	100.00	100.00
MIT-50006731 50006731	3300 MXe III w/ 1GB RAM Controller	1 EA	1 EA	0 EA	1,710.00	1,710.00
MIT-52002581 52002581	3300 MXe III Expansion Kit	1 EA	1 EA	0 EA	1,282.50	1,282.50
MIT-50005811 50005811	5540 IP CONSOLE	1 EA	1 EA	0 EA	1,026.00	1,026.00
MIT-50005991 50005991	5360 IP PHONE	1 EA	1 EA	0 EA	339.15	339.15
MIT-50006212 50006212	GN Cordless Headset Cable (for5540)	1 EA	1 EA	0 EA	11.40	11.40
MIT-50006634 50006634	5320e IP Phone (Backlit)	27 EA	27 EA	0 EA	185.25	5,001.75
MIT-50006507 50006507	AX Controller	1 EA	1 EA	0 EA	1,710.00	1,710.00
MIT-50006509 50006509	3300 AX 2G&4G Flash SSD	1 EA	1 EA	0 EA	100.00	100.00

Remit To

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Sub Total

32,684.30

Sub Total	Freight	Insurance	Tax	Total Due
32,684.30	178.63	0.00	0.00	32,862.93 USD

Approval:

Ship To: DEPENDABLE TECHNOLOGY CENTER LLC , 6424 Utrecht Ave , BROOKLYN NY 11219 , USA

Please Note: To ensure that your payments are posted accurately, please include your customer number and invoice number on your remittance advice.

To contact your Account Analyst call 1-800-944-2439 ext. 4007. Thank you.

For the purposes of this document, "Seller" refers to ScanSource. This invoice expressly limits acceptance to the terms and conditions on the face and reverse side hereof; it supersedes all other previous agreements or buyer's purchase order, if any. Objection is hereby made to any additional terms in the buyer's purchase order or other writing of any other party. This invoice does not insist that an expression of acceptance mirror this offer before a contract will be formed. It shall become a contract when the common carrier has received delivery of the whole or any part thereof, or when the buyer has otherwise consented to the terms and conditions hereof, whichever occurs first. SEE REVERSE SIDE HEREOF.
THANK YOU



Invoice

Fed. ID NO 06-1783099
GST ID 83055 9522 RT0001

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Invoice No.	5401766128
Page	1 of 1
Invoice Date	12/01/2016
Due Date	12/21/2016
Total Due	9,270.85 USD

BILL TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

SOLD TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

Purchase Order No.	Order No.	Ship Date	Salesperson	Payment Terms	Tax Code	Ship Via
55	11728537	12/01/2016	Jon Eveslage	Net 20	NY01101511	LTN STANDARD (2-5 DAYS)

Item	Description	Ordered	Shipped	Back Order	Unit Price	Extended Price
MIT-51215769	Off-loading wake calls to 3300	1 EA	1 EA	0 EA	549.90	549.90
MIT-51219829	iCharge-CUB Base License	1 EA	1 EA	0 EA	1,516.45	1,516.45
MIT-51219830	iCharge-CUB 1 Rm License	630 EA	630 EA	0 EA	7.80	4,914.00
MIT-51219732	Additional TSSAP with new system 16	1 EA	1 EA	0 EA	1,040.00	1,040.00
MIT-51305087	assisted remote install iCharge/iLink	1 EA	1 EA	0 EA	625.50	625.50
MIT-51219726	VM install training 1-6 techs	1 EA	1 EA	0 EA	625.00	625.00

Remit To

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Sub Total

9,270.85

Sub Total	Freight	Insurance	Tax	Total Due
9,270.85	0.00	0.00	0.00	9,270.85 USD

Approval:

Ship To: DEPENDABLE TECHNOLOGY CENTER LLC, 6424 Utrecht Ave, BROOKLYN NY 11219, USA

Please Note: To ensure that your payments are posted accurately, please include your customer number and invoice number on your remittance advice.

To contact your Account Analyst call 1-800-944-2439 ext. 4007. Thank you.

For the purposes of this document, "Seller" refers to ScanSource. This invoice expressly limits acceptance to the terms and conditions on the face and reverse side hereof; it supersedes all other previous agreements or buyer's purchase order, if any. Objection is hereby made to any additional terms in the buyer's purchase order or other writing of any other party. This invoice does not insist that an expression of acceptance mirror this offer before a contract will be formed. It shall become a contract when the common carrier has received delivery of the whole or any part thereof, or when the buyer has otherwise consented to the terms and conditions hereof, whichever occurs first. SEE REVERSE SIDE HEREOF.

THANK YOU

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	13 th Judicial Circuit
	)	
ScanSource, Inc.,	)	
	)	
Plaintiff,	)	
	)	ANSWER
v.	)	(Jury Trial Demanded)
	)	
Dependable Technology Center LLC, and	)	
George G. Moraru	)	
	)	
Defendant.	)	

Come now Defendants Dependable Technology Center, LLC (“DTC”) and George G. Moraru (“Moraru”) and file this their Answer to Plaintiff’s Complaint. Any allegation contained in the Complaint not hereinafter expressly admitted or denied is hereby denied.

1. Paragraphs I and II are admitted except insofar as it alleges that Moraru is principal officer of Dependable, which is denied at this time. Defendants also deny that DTC is operational or doing business in South Carolina.
2. Responding to paragraphs III and IV, Defendants aver that the referenced documents speak for themselves insofar as they contain language to which Plaintiff has recited or referred. Defendants deny that the mere existence of the documents referred to make them enforceable or valid and Defendants require Plaintiff’s strict proof thereof. The remainder of the allegations therein are denied. Defendants further affirmatively allege that to the degree any application were made by Defendant, it was limited to \$5000.00, and as to any Guarantee alleged in this case, if any validly existed (which is denied), it would be limited to \$5000.00.
3. Responding to paragraph V, Defendants admit, upon information and belief, that it did in fact purchase goods from Plaintiff. Defendants are without sufficient information to form

a belief as to the remaining allegations therein and they are therefore denied and strict proof is demanded thereof.

4. Responding to paragraph VI, Defendants state that the referenced Exhibit speaks for itself as to the words it contains, but deny liability thereunder and therefore deny the allegations contained herein, demanding strict proof thereof.

AFFIRMATIVE DEFENSES

5. Plaintiff has failed to state a cause of action against Defendants upon which relief may be granted.
6. Plaintiff's claims are barred by the doctrines of mutual mistake, waiver, estoppel or laches.
7. Plaintiff's claims are barred by equitable estoppel.
8. Plaintiff's claims are barred or limited by limitation of liability.

WHEREFORE Defendants pray that for the following relief:

- a. Dismissal of Plaintiff's Complaint;
- b. Assessment of costs and fees as against Plaintiff; and
- c. For such other relief as is just and proper.

s/William R. McKibbon III
(S.C. Bar No. 68454)
601 E. McBee Avenue
Suite 204
Greenville, SC 29601
P: 864.235.0071
F: 864.235.0072
will@legalcarolina.com
Attorney for the Defendants

Greenville, South Carolina
December 17, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

SCANSOURCE, INC.,)
)
PLAINTIFF,)
)
-VS-)
)
DEPENDABLE TECHNOLOGY)
CENTER, LLC AND)
GEORGE G. MORARU,)
)
DEFENDANTS.)
_____)

2019-CP-23-05406

TRANSCRIPT OF RECORD

OCTOBER 17, 2022
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDWARD W. MILLER

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

ATTORNEY FOR PLAINTIFF:

CRAIG H. ALLEN, ESQ.

ATTORNEY FOR DEFENDANT:

WILLIAM R. McKIBBON, III, ESQ.
MELISSA ADORNO, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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1 **Monday, October 17, 2022:**

2 (Whereupon Plaintiff's exhibits 1 - 8 were marked for
3 identification)

4 (Whereupon court convened at 11:19 am)

5 **THE COURT:** Any special voir dire you want asked?

6 **MR. McKIBBON:** No, Your Honor, none from the Defense.

7 **MR. ALLEN:** No, Your Honor.

8 **THE COURT:** Okay. Y'all ready?

9 **MR. ALLEN:** Yes, Your Honor.

10 **MR. McKIBBON:** Yes, Your Honor.

11 **THE COURT:** Okay.

12 (Whereupon the jury pool entered the courtroom at 11:20
13 am)

14 **THE COURT:** Okay. Ladies and gentlemen, welcome up to
15 courtroom four. As I told you downstairs, you're qualified to
16 serve, generally, for the week. And now we're going to
17 qualify you to serve for this particular case. So in order to
18 do that, let me introduce the case to you.

19 It's the State of South Carolina, County of Greenville,
20 court of common pleas, ScanSource, Inc., Plaintiff, versus
21 Dependable Technology Center, LLC and George G. Moraru. This
22 is an action where the Plaintiff has alleged that a debt is
23 owed. And the Defense has denied that the debt is owed. And
24 so you all -- that's what this case is about.

25 Before I start asking you any of these questions, which

1 won't take long, I'll ask the attorneys to stand and introduce
2 themselves and their client.

3 **MR. ALLEN:** My name is Craig Allen. And I'm the attorney
4 for ScanSource.

5 **THE COURT:** Okay.

6 **MR. McKIBBON:** Good morning, everyone. My name is Will
7 McKibbon. I'm the attorney for Mr. George Moraru sitting
8 here. Also with me is my associate, Melissa Adorno.

9 **THE COURT:** Okay. Ladies and gentlemen, is there any
10 member of the jury panel who is related by blood or marriage
11 or who has a business, personal, or social relationship with
12 any of the attorneys involved in the case? If so, please
13 stand.

14 (No response)

15 **THE COURT:** There are two witnesses, I understand, in
16 this case. The first one is Steven Zielinski. And the next
17 witness is George G. Moraru. And so I ask you all is there
18 any member of the jury panel related by blood or marriage or
19 who has a business, personal, or social relationship with any
20 of the potential witnesses listed in this case? If so, please
21 stand.

22 (No response)

23 **THE COURT:** Is there any member of the jury panel related
24 by blood or marriage or have a business, personal, or social
25 relationship with ScanSource, Inc. or Dependable Technology

1 Center, LLC? If so, please stand.

2 (No response)

3 **THE COURT:** Does any member of the jury panel know --
4 have any knowledge about the subject of this lawsuit? If so,
5 please stand.

6 (No response)

7 **THE COURT:** Okay. Well, ladies and gentlemen, I think
8 that's -- anything further from the Plaintiff?

9 **MR. ALLEN:** Nothing further, Your Honor.

10 **THE COURT:** From the Defense?

11 **MR. McKIBBON:** Nothing, Your Honor.

12 **THE COURT:** All right. And we will now proceed to what
13 we call striking the jury.

14 **MADAM CLERK:** Using the numbers on the left, numbers 1
15 through 20, four strikes each, Plaintiff strikes first.

16 **MR. ALLEN:** Plaintiff strikes number 4.

17 **MADAM CLERK:** Plaintiff strikes 4.

18 **MR. McKIBBON:** Plaintiff [sic] strikes 5.

19 **MADAM CLERK:** Defendant strikes ---

20 **MR. McKIBBON:** I'm sorry.

21 **MADAM CLERK:** --- 5.

22 **MR. McKIBBON:** Defense strikes 5.

23 **MR. ALLEN:** Plaintiff strikes 17.

24 **MADAM CLERK:** Plaintiff strikes 17.

25 **MR. McKIBBON:** Defendant strikes 32.

1 **MADAM CLERK:** Using the numbers on the left, 1 through
2 20.

3 **MR. McKIBBON:** Defendant strikes 11.

4 **MADAM CLERK:** Defendant strikes 11.

5 **MR. ALLEN:** Plaintiff strikes 18.

6 **MADAM CLERK:** Plaintiff strikes 18.

7 **MR. McKIBBON:** Defendant strikes 20.

8 **MADAM CLERK:** Defendant strikes 20.

9 **MR. ALLEN:** Plaintiff strikes 2.

10 **MADAM CLERK:** Plaintiff strikes 2.

11 **MR. McKIBBON:** Defendant strikes 9.

12 **MADAM CLERK:** 9? Defendant strikes 9.

13 Do we need an alternate?

14 **THE COURT:** No alternate. No.

15 **MADAM CLERK:** Gentlemen, I'll call these back to you.

16 Plaintiff strikes 2, 4, 17, and 18. Defendant strikes 5, 9,
17 11, and 20.

18 **MR. McKIBBON:** That is correct.

19 **THE COURT:** Okay.

20 **MADAM CLERK:** Ladies and gentlemen, when I call your
21 name, please bring your things and have a seat in our jury
22 box.

23 Ryland Johnson, Linda Ferrell, Yelina Trejo-Resendiz,
24 Alexis Gabela, Lindsay Bryant, Mark Barnes, Linda Whisenhunt,
25 Miles Harrison, Shemia Dogan, Jewell Mayes, Cody Hamilton, and

1 Robert Fitzgerald.

2 (Whereupon all jurors selected were seated in the jury
3 box)

4 **THE COURT:** Okay. Any exception or objection to the jury
5 as empaneled subject to Batson or J.E.B. from the Plaintiff?

6 **MR. ALLEN:** None, Your Honor.

7 **THE COURT:** Defense?

8 **MR. McKIBBON:** None, Your Honor.

9 **THE COURT:** Okay. All right. Ladies and gentlemen, two
10 distinct groups in here. One of you thinks you've won the
11 lottery and the other thinks you lost. I think the group that
12 got selected won the lottery.

13 It's a rare thing to be called up to the courthouse for
14 jury duty, rarer still to get called up to the courtroom, and
15 it really is surprisingly rare to be selected on a jury. And
16 it is a great privilege and a great responsibility.

17 So while you all do not get the opportunity today, I hope
18 that you will get an opportunity later in the week or if not
19 this year, then at some time in the future. But with that, I
20 would excuse you all back down to the jury room.

21 (Whereupon the remaining jurors exited the courtroom at
22 11:29 am)

23 **THE COURT:** Lyndall, let's swear them in.

24 **MADAM CLERK:** Ladies and gentlemen, please stand and
25 raise your right hand for the oath. Your response will be I

1 will.

2 You shall well and truly try case number 2019-CP-23-5406,
3 ScanSource, Inc. versus Dependable Technology Center, LLC and
4 George G. Moraru and a true verdict rendered according to the
5 law and the evidence so help you God.

6 **THE JURY:** I will.

7 **MADAM CLERK:** Please be seated.

8 **THE COURT:** Great. Thank you all. I'm very sincere
9 about y'all being the fortunate ones to be selected to serve.
10 And I hope that my comments about this being a rewarding
11 experience will prove true when you've completed your service
12 this week.

13 I want to tell you we have a dispute about the facts in
14 this case, which can't be resolved in any fashion other than
15 to ask a jury to come up and listen to the evidence presented
16 in this courtroom and to make a determination which resolves
17 this dispute between our citizens. That's your job and what
18 we ask you to do.

19 You might think, well, how do I do that? How do I make
20 that decision? And you do it based on what we call a
21 preponderance of the evidence. The burden of proof is always
22 on the moving party. And in a civil case it is by a
23 preponderance of the evidence or simply -- more simply stated
24 by a greater weight of the evidence.

25 So as the case starts the scales -- if you can imagine

1 the blind lady of justice holding the scales, the scales are
2 dead even. If, at the conclusion of the trial, you all
3 determine that the scales remain even or tilt in favor of the
4 Defendant, the Plaintiff will have failed to meet their burden
5 of proof and would not be entitled to a verdict.

6 If, on the other hand, the Plaintiff, at the conclusion
7 of the case, in your determination, has moved those scales in
8 their favor, then they would have prevailed and would be
9 entitled to a verdict. So please keep that in mind throughout
10 the course of this trial.

11 I break a trial into five parts so you'd have a
12 procedural roadmap to tell you where you are in the case and
13 where -- and what's coming next. The first part, I guess,
14 we're sort of engaged in right now, but I generally define it
15 as the opening statements of the attorneys. And those are
16 brief, non-argumentative statements about the case.

17 The second part of the trial is the meat and potatoes of
18 every case, and that is the presentation of the evidence in
19 the case. And the evidence will come to you in generally one
20 of three ways. The most commonly thought of way in my mind is
21 through oral testimony from this witness stand.

22 The second most common way is through the introduction of
23 tangible items or documents. And the third most common way is
24 when the parties agree that some fact is so beyond dispute
25 that you should accept it as true. And that's what we call a

1 stipulation of the attorneys. I don't know what combination
2 or how the evidence will be presented to you, but it will
3 generally come to you in one of those three ways.

4 The third part of the trial will be after all of the
5 evidence is presented, the attorneys make their closing
6 arguments to you. So it's an opening statement, brief and
7 non-argumentative, and a closing argument. And that's where
8 the attorneys advocate their position and urge you to resolve
9 the dispute in their client's favor.

10 The fourth part of the trial will be when I charge you as
11 to what the law is in this case. And the fifth part of the
12 trial will be when you all retire to your jury room to
13 deliberate the case and resolve the dispute. So the parts are
14 not of equal length, but if you can kind of remember that
15 little map, you'll know where you are and what's coming next.

16 I ask juries in every case to do many things, I'm sure.
17 But there are three main things I ask you to do. The first
18 thing is to keep an open mind. We go through the
19 qualification process to ensure that we don't have a jury in
20 this or any case that comes in with a preset notion about how
21 a case should be decided. So keep an open mind throughout the
22 course of the trial.

23 The second thing I ask you to do is kind of simple.
24 Sometimes difficult for me, I've been hearing it all my life,
25 pay attention. If you were to let your mind wander off, you

1 might miss an answer given to a question or the way a witness
2 answers a question. And that could be important in your
3 deliberations. And if you had let your mind wander, you would
4 be at a disadvantage when you are resolving this dispute.

5 And then the third thing I ask you to do and instruct you
6 to do, and this is vital, is not to discuss the facts of this
7 case with anyone until you are free to deliberate at the end
8 of the case. That means you can't talk about it with any of
9 the bailiffs.

10 I suspect we'll break for lunch before the case is
11 concluded. So if you go to lunch with a friend, a family
12 member, or co-worker, you can't talk about the facts of the
13 case with them, and you can't talk about the facts of the case
14 among yourselves until you are free to deliberate at the end
15 of the case.

16 If you were to do that -- and that includes not doing any
17 independent research. So if you hear about some location or
18 something that you want to look up in a book, you can't do
19 that. You've sworn an oath not to do that because even an
20 innocent comment from someone who you like and trust might
21 impact your state of mind.

22 And we're not interested in what those people say. They
23 are not making the sacrifices that each of you are making to
24 be up here and perform your civic duty. So we don't want them
25 to have any input into the outcome of this case.

1 It wouldn't be fair to the parties. It wouldn't be fair
2 to your fellow jurors. It wouldn't be fair to yourself to
3 allow someone or something that's not making the sacrifices
4 that you're making to have any input in the outcome. So just
5 don't talk about it.

6 There may -- I want to tell you that I may -- a couple of
7 things. I may ask the lawyers to come up here and talk to me
8 so you all can't hear. It's not that we are trying to deceive
9 you in any way, but it may well be that we are trying to keep
10 something from you.

11 If it's a disputed piece of evidence that should not be
12 admitted, I think you could fully understand why you shouldn't
13 hear about it. And that may include me excusing y'all to your
14 jury room so we can talk about some point of law or something
15 like that. But that -- so don't be surprised if that happens.

16 I do want to tell you that you, the jury, are the sole
17 judge of the facts. By law a trial judge cannot have an
18 opinion about the facts of the case. So don't think by
19 anything I say or do throughout the course of the trial that I
20 have such an opinion. I don't. It is up to you all to make a
21 determination about what to believe and what not to believe.

22 And that same law that makes you the sole judge of the
23 facts makes me the sole judge of the law. So if you had any
24 ideas as to what you think the law is or what the law ought to
25 be and I -- it differs from what I tell you the law is, you

1 have sworn an oath to set aside your own opinion and apply the
2 law precisely as I state it to you. That ensures that
3 everybody who's engaged in a trial up here is tried under the
4 same law.

5 Okay, ladies and gentlemen, I'm done with my opening
6 comments. I'm going to turn it over to the attorneys for
7 their comments.

8 **MR. ALLEN:** May it please the Court?

9 **THE COURT:** Yes, sir.

10 **MR. ALLEN:** Good morning.

11 **THE JURY:** Good morning.

12 **MR. ALLEN:** It's still morning. As I said at the outset,
13 my name is Craig Allen. I'm the attorney representing
14 ScanSource in this case. And this is a fairly straightforward
15 case. It's probably not going to be very exciting. But we're
16 here today because of unpaid invoices that are due to my
17 client for goods and services that they sold to Dependable
18 Technology Center, LLC.

19 We intend to show you at this trial that Dependable
20 Technology Center applied for credit with my client so that
21 they could purchase goods on a short-term credit basis. We'll
22 show you that the Defendant, the individual Defendant, George
23 Moraru, personally guaranteed payment of that account for
24 Dependable Technology Center.

25 Thereafter, Dependable Technology Center ordered goods

1 from time to time. My client sold and delivered those goods
2 to Dependable Technology Center. Invoices were issued to
3 them. Some invoices got paid, others did not. So we're here
4 today because of the invoices that are unpaid.

5 We'll show you that the balance due to my client,
6 ScanSource, on the account, the principal balance, is seventy-
7 two thousand, nine hundred and twenty-three dollars and
8 thirty-nine cent (\$72,923.39). We'll show you that under the
9 credit terms they agreed to -- interest runs on that account
10 at the rate of 1.5 percent per month. And that interest would
11 run from December 21, 2016.

12 At the conclusion of the evidence we'll then request that
13 you return a verdict in favor of ScanSource and against both
14 Defendants, Dependable Technology Center, LLC and George
15 Moraru. As I said, it's not that exciting a case. That's
16 pretty much it. Thank you.

17 **THE COURT:** All right. From the Defense.

18 **MR. McKIBBON:** Thank you. May it please the Court?

19 Morning everybody. Again, my name's Will McKibbon. I am
20 here representing Mr. George Moraru. When he testifies I will
21 likely refer to him as Gabriel, is what he goes by. Also with
22 me is my associate attorney, Melissa Adorno.

23 Mr. Moraru comes to us from -- he lives in New York,
24 lives in Brooklyn. Although he is Romanian by birth, he's an
25 American citizen since, I think, six years now he's been a

1 citizen and business owner. He's -- and you'll hear him
2 testify about his work history as a software developer at
3 Dependable Technology and his role in it.

4 Mr. Allen said it's not that exciting a case, as a debt
5 collection case, which is -- that's true, but it's very
6 important because you heard him testify -- I'm sorry. You
7 heard Mr. Allen state that at the end he'd be asking you for a
8 verdict for the Plaintiff. And you heard him state that the
9 actual amount owed for the products and goods were sold was
10 about seventy-two thousand dollars (\$72,000.00).

11 Well, what you're going to hear somewhere near the -- at
12 the end with all that interest and everything that he was
13 speaking about is the total, today, is more like a hundred and
14 fifty thousand dollars (\$150,000.00).

15 And that's very important about why we're here today
16 because you're going to hear why they should not be allowed to
17 collect that kind of money from either the Defendant company
18 or the Defendant as an individual. You are going to hear
19 testimony and see evidence why my client as an individual is
20 not liable for any debt to ScanSource even if the company were
21 to be liable to ScanSource.

22 And you are going to hear the differences between the
23 individual considerations for Mr. Moraru and why he is not a
24 guarantor of any debt that's -- that Dependable may have.
25 And you will also see and hear evidence of why Dependable does

1 not owe the funds that are being requested.

2 You heard Judge Miller mention stipulations. And I can
3 tell you this, there's not going to be a dispute about goods
4 that ScanSource has stated were sold to Dependable. We just
5 need to get that clear right off the bat. That did happen.
6 There's no dispute about whether or not my client's company
7 received goods for the benefit of a customer.

8 What we're going to be dealing with and what you're going
9 to be hearing about is why my client, Mr. Moraru, is not a
10 guarantor of that debt, this 12 percent owner of the company
11 that's being sued and why ScanSource is not entitled to
12 recover from the corporate company as well.

13 I thank you for your attention today. We all do. This
14 is a very important matter for both clients, both parties.
15 And we look forward to presenting our evidence and for your
16 deliberation to come to a conclusion very possibly today.
17 Thank you.

18 **THE COURT:** Okay. Call your first witness.

19 **MR. ALLEN:** Plaintiff calls Steven Zielinski.

20 **MADAM CLERK:** Place your left hand on the Bible and raise
21 your right hand.

22 **Steven Zielinski,** being
23 duly sworn testified as follows;

24 **MADAM CLERK:** State your name, please.

25 **MR. ZIELINSKI:** Steven Zielinski.

1 **MADAM CLERK:** Thank you. Please be seated.

2 **Direct Examination by Mr. Allen:**

3 Q. Steven, you work for ScanSource?

4 A. Yes.

5 Q. All right. What's your position with ScanSource?

6 A. Director of financial services.

7 Q. And as the director of financial services, what are some
8 of your duties and responsibilities?

9 A. Some of the responsibilities are the overall credit
10 collections of our North American business.

11 Q. Okay. Would that include the account that we're here
12 talking about today?

13 A. Yes.

14 Q. All right. And as the director of financial services are
15 you familiar with the books and records of ScanSource
16 regarding the general accounts in North America including the
17 account we're talking about today?

18 A. I am.

19 Q. All right. What does ScanSource do in general?

20 A. We're a distributor of technology, products, and
21 solutions.

22 Q. Okay. And does ScanSource sell just in the U.S., or
23 globally, or ...

24 A. We have locations in the U.K. and Brazil as well.

25 Q. Okay. And did ScanSource sell goods and services to

1 Dependable Technology Center, LLC?

2 A. Yes.

3 Q. Do you recall when ScanSource began doing business with
4 Dependable Technology Center?

5 A. I believe our first invoice was in 2014.

6 Q. Mr. Zielinski, I am handing up to you a document that's
7 been marked exhibit 1. Can you tell me what that is?

8 A. It's a customer application for ScanSource.

9 Q. Okay. Now let me show you this document that's marked as
10 exhibit 2. And exhibit 2 at the top says terms and conditions
11 of sale, is that correct?

12 A. That's correct.

13 Q. Now is this the terms and conditions of the sale that
14 were attached to the -- exhibit 1, the customer application?

15 A. Yes.

16 Q. Okay. Now the customer application refers to the
17 defendant company, Dependable Tech Center, is that correct?

18 A. That's correct.

19 Q. All right. And at the bottom of that page it's got
20 applicant authorized name, is that right?

21 A. Yes.

22 Q. And whose name is in there?

23 A. George G. Moraru.

24 Q. Okay. And it's got title for that person. And what is
25 the title written in there?

1 A. Owner.

2 Q. Okay. And then it's got his signature on that, is that
3 correct?

4 A. Correct.

5 Q. All right. And the date of that application was April 12
6 of 2013, is that correct?

7 A. Correct.

8 Q. Okay. Now at the top of that application -- well, let me
9 ask you this. How did ScanSource receive this signed credit
10 application?

11 A. This would have been received either via email or fax.

12 Q. Okay. Is there a fax telltale at the top?

13 A. Yes.

14 Q. Okay. And that indicates a date of 4/18?

15 A. 2013.

16 Q. Yes. Okay. All right. The fax number on that telltale,
17 is that the same fax number that's listed for the company in
18 the middle of the document?

19 A. Yes.

20 Q. Okay. All right. Now based on -- based on this credit
21 application that y'all -- you received, that ScanSource
22 received, did y'all open a credit account for Dependable
23 Technology Center?

24 A. Yes.

25 Q. Now looking at the exhibit 2, I'm looking specifically at

1 paragraph 5. At the start it says all past due amounts are
2 subject to a one and a half percent monthly financing charge
3 or the maximum permissible under applicable law. Does it say
4 that?

5 A. Yes.

6 Q. Okay. And then looking at paragraph 9(c) it says
7 collection costs in the event of any default on the part of
8 the buyer hereunder, buyer shall pay any and all collection
9 costs including reasonable attorney's fees and costs incurred
10 by seller, is that correct?

11 A. Yes.

12 Q. Okay. All right. And are these -- and based on the
13 credit application then y'all began selling to Dependable
14 Technology?

15 A. Yes.

16 Q. I'm going to show you a document marked exhibit 3. And
17 what is this document, exhibit 3?

18 A. It's an individual personal guarantee.

19 Q. Okay. And did ScanSource receive this from the
20 Defendants as well?

21 A. Yes.

22 Q. And did y'all also receive this via fax?

23 A. Yes.

24 Q. The fax telltale at the top the same date, same number as
25 exhibit 1, is that correct?

1 A. Correct.

2 Q. And in fact this says page 2, doesn't it?

3 A. Correct.

4 Q. Okay. All right. And this guarantee is made out in
5 whose name?

6 A. Individually, George G. Moraru.

7 Q. Okay. And it's got a signature that looks signature --
8 similar to the signature on exhibit 1?

9 A. Correct.

10 Q. All right. And it's also dated the same date as exhibit
11 1?

12 A. Yes.

13 Q. Okay. Now this guarantee says in the middle section, I,
14 for getting valuable consideration, including the extension of
15 trade credit together, which I hereby acknowledge as having
16 been received do hereby personally guarantee and promise to
17 pay any obligation to creditor on demand for any indebtedness
18 of debtor to creditor now due and/or which may hereafter
19 become due to creditor for merchandise and other property here
20 and after sold and delivered to it by debtor. It says that?

21 A. It does.

22 Q. And then it goes on and says this guarantee is one of
23 payment, not of collection, is that correct?

24 A. Correct.

25 Q. Thereafter it says this guarantee is given individually,

1 not in my capacity as blank of Dependable Technology Center.

2 It says that?

3 A. Correct.

4 Q. All right. Then it says this guarantee shall be an
5 irrevocable guarantee and indemnity to creditor, is that
6 correct?

7 A. That's correct.

8 Q. And then the first sentence of the last paragraph says I
9 do not hereby waive -- excuse me. It says I do hereby waive
10 notice of default, nonpayment and notice thereof and to jury
11 trial and consent to, one, changes in the terms of the
12 guarantee indebtedness and, two, any and all renewals or
13 modifications of extension of trade credit. Does it say that?

14 A. It does.

15 Q. All right. Now the opening of the credit account and the
16 commencement of selling goods on credit to Dependable
17 Technology Center, was that done in reliance on exhibit 1, 2
18 and 3?

19 A. Yes.

20 Q. All right. Now the -- exhibit 3, the guarantee, has a
21 space on it for a Social Security number, is that correct?

22 A. Yes.

23 Q. All right. That number's been redacted out for purposes
24 of this hearing today.

25 A. Correct.

1 Q. But do you recall whether a Social Security number was
2 actually inserted in the original?

3 A. There was a Social Security number.

4 Q. All right. And did y'all check and verify that that
5 appeared to be the Social Security number for George Moraru?

6 A. Yes.

7 Q. Okay. All right. So ScanSource began making sells to
8 Dependable Technology Center in 2013?

9 A. (Affirmative nod).

10 Q. How long did ScanSource sell goods on this credit account
11 to Dependable Technology Center?

12 A. I believe the last invoices were in 2016.

13 Q. Okay. And can you tell me in general how purchases were
14 to be made by Dependable Technology Center?

15 A. Sure. Typically anyone -- someone on our sales team
16 would receive requests or purchase order to place -- place an
17 order and deliver products from ScanSource. From there we
18 would turn around and either ship the product directly from
19 our warehouse or it would be drop-shipped from our supplies
20 directly to either the customer in this case, Dependable Tech,
21 or their end user. And then at that point we'd generate an
22 invoice that would be sent.

23 Q. Okay. And when you generated the invoices, were they
24 then sent to Dependable Technology Center?

25 A. Yes.

1 Q. Okay. Over the course of your dealing with Dependable
2 Technology Center were there subsequent updated credit
3 applications that were submitted?

4 A. Yes.

5 Q. I'm going to show you a document -- show you a document
6 marked exhibit 4. Can you tell me what this is?

7 A. It's a customer application.

8 Q. Okay. And the date of this application is?

9 A. December 7th, 2013.

10 Q. Okay. So six months or so after the initial application?

11 A. Um-hum (affirmative).

12 Q. Okay. And does this credit application also -- were
13 there terms and conditions for this credit application as
14 well?

15 A. Yes.

16 Q. They would have been, I believe, the same that were on
17 exhibit 1, is that correct?

18 A. That's correct.

19 Q. All right. And the applicant name at the bottom of this
20 application is?

21 A. The authorized name is George Moraru.

22 Q. Okay. And then the signature at the bottom of this
23 document as well, is that correct?

24 A. Correct.

25 Q. Okay. Mr. Zielinski, I'm showing you a document marked

1 exhibit 5. Can you tell me what this one is?

2 A. It's another credit application, customer application.

3 Q. Okay. And date -- is this another updated application?

4 A. It is.

5 Q. Okay. The date on this application is what?

6 A. September 10th, 2014.

7 Q. Okay. And again for Dependable Technology Center?

8 A. Yes.

9 Q. All right. And the name -- the applicant authorized name
10 at the bottom is what?

11 A. George Moraru.

12 Q. Okay. And it appears to be signed as well, is that
13 correct?

14 A. Correct.

15 Q. All right. And does it have the same information in it
16 in terms of phone numbers and fax numbers as the other
17 applications?

18 A. Yes.

19 Q. Okay. Now this credit application also had a page of
20 terms and conditions, is that correct?

21 A. Correct.

22 Q. At the bottom of that page there's a date that looks like
23 11/2013?

24 A. That's correct.

25 Q. All right. So that would have been some sort of revised

1 terms and conditions?

2 A. Correct.

3 Q. All right. The terms -- the terms for interest on this
4 credit application is the same as was on the original credit
5 application, is that correct?

6 A. Yes.

7 Q. And it had the same terms of collection costs and
8 attorney's fees recovery, is that right?

9 A. Correct.

10 Q. Okay. Can you tell me some reasons why an updated credit
11 application was given to ScanSource?

12 A. If we go a period of time without purchases, we would
13 request one to make sure that we have the updated contact
14 information and legal entity information.

15 Q. Okay. Does the account change or is it the same account
16 that was originally started?

17 A. It's the same account.

18 Q. Okay. Next, Mr. Zielinski, I'm showing you what's
19 document 2, this is marked as Plaintiff's exhibit 6. The
20 first page on this document is what?

21 A. It's a statement of amounts owed.

22 Q. Okay. Now these are past due invoices, is that right?

23 A. That's correct.

24 Q. All right. Were there other invoices issued to
25 Dependable Technology Center that had, in fact, been paid?

1 A. Yes.

2 Q. Over the course of time?

3 A. Yes.

4 Q. Okay. And now attached as the other pages to this
5 exhibit, are these copies of the invoices that are listed on
6 the statement?

7 A. Uh-huh (affirmative).

8 Q. I'm sorry?

9 A. Correct. Yes.

10 Q. Okay. So looking at the invoices, the invoice date for
11 the first invoice in this list is November 21 of 2016, is that
12 correct?

13 A. That's correct.

14 Q. And it shows a due date for payment of this invoice of
15 what?

16 A. December 11th, 2016.

17 Q. Okay. The original amount of this invoice is how much?

18 A. Thirty-six thousand, sixty-eight dollars and eighty-five
19 cents (\$36,068.85).

20 Q. Okay. And the second invoice is dated what date?

21 A. November 22nd, 2016.

22 Q. Okay. The due date is what?

23 A. December 12th of 2016.

24 Q. Okay. And the amount of that invoice is?

25 A. Thirty-two thousand, eight hundred and sixty-two dollars

1 and ninety-three cents (\$32,862.93).

2 Q. All right. The third invoice is dated what?

3 A. December 1st, 2016.

4 Q. And the due date is what?

5 A. December 21st, 2016.

6 Q. And the amount of that invoice is how much?

7 A. Six thousand, seven hundred and twenty dollars and
8 seventy-six cents (\$6,720.76).

9 Q. Okay. And the last invoice in this group is dated what?

10 A. December 1st, 2016.

11 Q. And the due date is what?

12 A. December 21st, 2016.

13 Q. And the amount of that invoice is how much?

14 A. Nine thousand, two hundred and seventy dollars and
15 eighty-five cents (\$9,270.85).

16 Q. Okay. Now were all these goods ordered by the Defendant,
17 Dependable Technology Center?

18 A. Yes.

19 Q. Okay. Were they all ordered about the same time?

20 A. Yes.

21 Q. Okay. And were these goods then shipped -- shipped out
22 by ScanSource?

23 A. They're shipped from our supplier.

24 Q. From your supplier? Is that the drop-ship you were
25 talking about?

1 A. Yes.

2 Q. Okay. All right. And did -- and these invoices -- were
3 these invoices sent to Dependable Technology Center?

4 A. Yes.

5 Q. All right.

6 **MR. ALLEN:** Your Honor, at this time we would move into
7 evidence exhibits 1 through 6.

8 **THE COURT:** Any objection?

9 **MR. McKIBBON:** No objection, Your Honor.

10 **THE COURT:** Okay.

11 **MR. ALLEN:** Thank you, Your Honor.

12 (Whereupon Plaintiff's exhibits 1 through 6 were admitted
13 into evidence)

14 Q. Now I noticed just looking back at the statement of
15 account -- I noticed that the original balance of the first
16 invoice on that statement of account was some thirty-six
17 thousand dollars (\$36,000.00). The balance shown on the
18 statement of account is twenty-four thousand, oh sixty-eight,
19 eighty-five (24,068.85), is that right?

20 A. That's correct.

21 Q. All right. I'm going to show you a document marked
22 exhibit 7. Tell me what this is.

23 A. This is a copy of a check received.

24 Q. Is the check from Dependable Technology Center?

25 A. Yes.

1 Q. All right. And attached to that check is a -- what do
2 you call that?

3 A. Remittance.

4 Q. Remittance. Okay. And does it reflect a payment being
5 made toward this first invoice, which was originally thirty-
6 six thousand, oh -- oh sixty-eight, eighty-five (36,068.85)?

7 A. Yes.

8 Q. All right. And how much was being paid by this check
9 toward that first invoice?

10 A. Five thousand dollars (\$5,000.00).

11 Q. Five thousand dollars (\$5,000.00). This check also paid
12 another invoice, is that correct?

13 A. That's correct.

14 Q. But that invoice has been paid and no longer outstanding?

15 A. Correct.

16 Q. Okay. All right. And ScanSource received this check and
17 applied it to that -- that first invoice on the statement of
18 account, is that correct?

19 A. That's correct.

20 Q. I'm going to show you a document that's been marked
21 exhibit 8. Let me ask you, is that -- that is another check,
22 is that correct?

23 A. That's correct.

24 Q. And that check is paying what amount?

25 A. Seven thousand dollars (\$7,000.00).

1 Q. Okay. From Dependable Technology Center?

2 A. Correct.

3 Q. The remittance on that check reflects all this seven
4 thousand dollars (\$7,000.00) to be applied to what invoice?

5 A. 540 173 6436.

6 Q. And that's that first invoice on the statement of
7 account?

8 A. That's correct.

9 Q. Okay. So the five thousand dollar (\$5,000.00) payment,
10 the seven thousand dollar (\$7,000.00) payment reduced that
11 first invoice by twelve thousand dollars (\$12,000.00), is that
12 right?

13 A. Correct.

14 Q. So you have a balance as shown on the statement of
15 account of twenty-four thousand, oh sixty-eight, eighty-five
16 (24,068.85) for that first invoice?

17 A. Correct.

18 Q. Now after applying those payments to the invoices what is
19 the balance due as per your statement of account?

20 A. For that particular invoice, twenty-four thousand, sixty-
21 eight dollars and eighty-five cents (\$24,068.85).

22 Q. And what is the total balance due on the account?

23 A. Seventy-two thousand, nine hundred and twenty-three
24 dollars and thirty-nine cents (\$72,923.39).

25 Q. Okay. Now does this statement of account accurately

1 reflect the balance due to ScanSource by Dependable Technology
2 Center?

3 A. Yes.

4 Q. All right. The latest payment due date on these invoices
5 is what date?

6 A. The latest due date is December 21st, 2016.

7 Q. Okay. So are you requesting an award of interest on this
8 account balance at the rate of one and a half percent per
9 month under the terms of your credit agreement on this
10 balance?

11 A. Yes.

12 Q. Okay. Now did ScanSource make demands or requests to
13 Dependable Technology Center and George Moraru for payment of
14 this outstanding balance prior to proceeding with suit?

15 A. Yes.

16 Q. All right. Did you receive any disputes from George
17 Moraru prior to proceeding with suit alleging that he was not
18 responsible on the guarantee?

19 A. No.

20 Q. Okay. Did he give you any excuse or give ScanSource any
21 excuse for why the debt had not been paid?

22 A. That he had not been paid by his customer.

23 Q. All right. Prior to you commencing suit did Dependable
24 Technology Center ever deny that they owed this outstanding
25 account?

1 A. No.

2 (Whereupon Plaintiff's exhibit 9 was marked for
3 identification)

4 Q. Mr. Zielinski, I'm showing you a document marked exhibit
5 9. Can you tell me what that document is?

6 A. It's a calculation for the total balance owed.

7 Q. Okay. And who prepared that?

8 A. I did.

9 Q. All right. And what is -- with interest what is the
10 total balance owed on this account?

11 A. One hundred and forty-nine thousand, three hundred and
12 seventy-nine dollars and seven cents (\$149,379.07).

13 Q. Okay. And are you also asking the Court to award you
14 costs and reasonable attorney's fees on this account?

15 A. Yes.

16 Q. And other than the -- and I may have already asked this.
17 Other than the two checks that we presented -- that you
18 presented there, have any other payments been made on these
19 invoices that are shown on the statement of account?

20 A. On these invoices, no.

21 Q. Okay.

22 **MR. ALLEN:** Your Honor, at this time I'd move the
23 remaining exhibits into evidence.

24 **THE COURT:** Any objection?

25 **MR. McKIBBON:** No objection, Your Honor.

1 **THE COURT:** Okay.

2 (Whereupon Plaintiff's exhibits 7, 8, and 9 were admitted
3 into evidence)

4 **MR. ALLEN:** That's all the questions I've got at this
5 time.

6 **THE COURT:** All right. Cross-exam.

7 **MR. McKIBBON:** Thank you, Your Honor. Thank you, Mr.
8 Allen.

9 **Cross-examination by Mr. McKibbon:**

10 Q. Pronounce your last name again for me.

11 A. Zielinski.

12 Q. Zielinski. And your specific title?

13 A. It's director of financial services.

14 Q. And are you based here in Greenville?

15 A. Yes, sir.

16 Q. Work at headquarters?

17 A. Yes.

18 Q. Okay. How long have you been in that position?

19 A. In that position, since 2019.

20 Q. Were you with the company before that as well?

21 A. Yes.

22 Q. But you are the director of this department?

23 A. Yes.

24 Q. With regard to the account that we are here about today,
25 when is the first time that you got involved with this current

1 lawsuit?

2 A. Me, individually?

3 Q. Yes.

4 A. 2019.

5 Q. 2019?

6 A. Yes.

7 Q. Okay. And in what capacity were you involved?

8 A. I had the individual that's responsible for our third
9 party collections, ultimately reported through me.

10 Q. And would you be the person that would be most
11 knowledgeable in the accounts and amounts due?

12 A. Yes.

13 Q. Okay. If you've been involved since 2019 why are you not
14 the person that verified the amounts due when this lawsuit was
15 filed?

16 A. The amounts due when the lawsuit was filed?

17 Q. Um-hum (affirmative).

18 A. William Garrison, I guess, verified the amounts due. He
19 is our -- at the time, account recovery coordinator.

20 Q. Account recovery coordinator?

21 A. Yes.

22 Q. And that would be not the director, correct?

23 A. Correct.

24 Q. All right. As the man that verified this, why is he not
25 testifying today?

1 A. He is unavailable.

2 Q. Okay. Why did you not verify this since you're going to
3 be the one testifying for this jury to believe your accounts?

4 A. I believe I was on there, if not, there would have been
5 another individual, Rod Williant (ph.), who's the manager over
6 that position.

7 Q. I'm sorry. You stated that you believed you would be --
8 I wasn't following that part.

9 A. If I wasn't named as a witness, we believe that the
10 individuals listed would have been present.

11 Q. But you agree that you were not a party to the complaint
12 in this lawsuit verifying this account, correct?

13 A. Individually, no.

14 Q. Okay. Did you have anything at all to do with the
15 business that took place between ScanSource and Dependable
16 Technology Center?

17 A. Could you elaborate on that?

18 Q. Did you have anything personally to do with the alleged
19 2013 contract?

20 A. Personally, no.

21 Q. Okay. Did you have anything to do with the application
22 of credit in 2013?

23 A. Personally, no.

24 Q. And did you have anything to do with the alleged
25 guarantee of 2013?

1 A. Personally, no.

2 Q. And did you have anything to do with the other alleged
3 applications that you have presented today?

4 A. Personally, no.

5 Q. Did you have anything to do with the orders that were
6 submitted by Dependable Technology to ScanSource?

7 A. Personally, no.

8 Q. How is it that you're able to testify to all of these
9 when you had absolutely nothing to do with them?

10 A. We keep records on file for our partners.

11 Q. You keep records on file? Okay. And you haven't
12 introduced any of those records, have you?

13 A. They're these exhibits.

14 Q. They're these exhibits?

15 A. Um-hum (affirmative).

16 Q. Okay. So your entire testimony, then, based on -- is
17 based upon the exhibits?

18 A. Yes.

19 Q. Okay. All right. Having utilized these exhibits and
20 only these exhibits in testifying as to the account with my
21 client, that you claim owes a hundred and fifty thousand
22 dollars (\$150,000.00) plus, let's turn to exhibit number 1, 2,
23 and 3. For purposes of the jury and reminding them, exhibit 1
24 is an application, customer application dated April 12th,
25 2013. These dates are going to be very important. 2013, you

1 agree with that, right?

2 A. Yes.

3 Q. Exhibit 1? And that's signed by Mr. Moraru, right?

4 A. Correct.

5 Q. Okay. And then exhibit 2 is actually the second page of
6 an application, correct?

7 A. Correct.

8 Q. And that's the one that's got all the tiny stuff on it?

9 A. Correct.

10 Q. Which would be paragraphs 1 through 21 of what most
11 people would call the fine print. Would you agree with that?

12 A. Agreed.

13 Q. Okay. And then exhibit 3 would be the alleged personal
14 guarantee of Gabriel, correct?

15 A. Correct.

16 Q. All right. That was executed April 12th, 2013, correct?

17 A. Correct.

18 Q. The same as the application?

19 A. Correct.

20 Q. Correct. Now you testified earlier that based on these
21 three documents you opened up an account with Dependable in
22 2013, correct?

23 A. Correct.

24 Q. If ScanSource opened an account based on those three
25 documents in 2013, then why did ScanSource -- that was April

1 of 2013, correct?

2 A. Yes.

3 Q. Okay. Why on May 21st, 2013 did ScanSource very clearly
4 state we are currently unable to open an account, and your
5 application has been declined?

6 **MR. ALLEN:** Your Honor, I'm going to have to object.

7 **MR. McKIBBON:** Well, ---

8 **THE COURT:** Wait. Whoa, whoa, whoa. Basis -- what's it
9 based on?

10 **MR. ALLEN:** This is based on information and documents
11 that I have not received. We served interrogatories ---

12 **THE COURT:** Okay. Okay. All right. I'll tell you what,
13 ladies and gentlemen, let's just take -- probably a good time
14 for a morning break. We'll get back with you in just a couple
15 of minutes. Don't talk about the case. Thank you. Y'all --
16 back to the jury room, Kurt.

17 (Whereupon the jury exited the courtroom at 12:20 pm)

18 **THE COURT:** Okay.

19 **MR. ALLEN:** Your Honor, we served discovery in this case
20 sometime ago ---

21 **MR. McKIBBON:** Your Honor, there's no ---

22 **THE COURT:** Let him finish.

23 **MR. McKIBBON:** Yes, Your Honor.

24 **MR. ALLEN:** --- sometime ago. We got a response to
25 request for admissions. Got no response to the

1 interrogatories, no response to the request for production of
2 documents. I asked numerous times for them to respond.
3 Ultimately I had said, well, if I don't get anything, I
4 presume there is no response. To this day, to this moment, I
5 haven't received it. So I don't know, I mean, ---

6 **THE COURT:** What is this document?

7 **MR. McKIBBON:** Your Honor, this is a document from
8 ScanSource, itself, that specifically declines giving any
9 credit to my company.

10 And, Your Honor, I haven't seen any of the documents that
11 they provided. In fact, the Plaintiff just based the contract
12 on a completely different document than they pled in the
13 complaint. The complaint tries to make a claim for a 2014
14 contract and today comes in here arguing about a 2013. We've
15 never seen that. And the Plaintiff is limited to pleading and
16 proving the case as it is pled. And that is not done.

17 **THE COURT:** Show him the document that you're -- that he
18 objected to.

19 **MR. McKIBBON:** Oh. Yes, Your Honor.

20 (Pause)

21 **MR. ALLEN:** I mean, I'd have to ask him about this
22 because I -- I'm not -- I don't have access to their records.
23 I don't know what it is.

24 **THE COURT:** Well, he has claimed that you didn't supply
25 documents that -- but he didn't object to them when they were

1 entered. I don't know ...

2 **MR. ALLEN:** I never received any discovery requests from
3 them, Your Honor.

4 **THE COURT:** All right. Well, they're in the record and
5 they're unobjected to. So that's not the issue.

6 **MR. ALLEN:** I mean, I don't know -- I don't know what the
7 objection -- all the documents or the exhibits to the
8 complaint are all in the record.

9 **THE COURT:** Okay.

10 **MR. ALLEN:** So, I mean, I don't understand the objection
11 from that standpoint. This is a situation where I've been
12 unable to, quite frankly, prepare a response to whatever this
13 document is that I'm just seeing this morning.

14 **THE COURT:** Okay.

15 **MR. ALLEN:** So I object on that basis.

16 **THE COURT:** Well, why don't you find out what it is -- go
17 ahead and make a proffer. Let Mr. McKibbon make the proffer
18 so we can see what he's trying to do.

19 **MR. McKIBBON:** Yes, Your Honor.

20 **Proffered Testimony by Mr. McKibbon:**

21 Q. If a customer makes an application for credit, ---

22 A. Uh-huh (affirmative).

23 Q. --- you would agree that it's either granted or it's
24 declined credit, correct?

25 A. Ultimately.

1 Q. Ultimately. Okay. And if a representative -- director
2 of resale or financial services were to send an email to one
3 who applied saying we decline your application, that would be
4 a declining of credit, correct?

5 A. Correct.

6 Q. All right. So if your company issued an email declining
7 credit to my client to the -- to the 2013 application, then
8 that means that your company declined credit to that
9 application, does it not?

10 A. Yes, sir.

11 Q. Okay. And yet you testified that that application was
12 accepted and that you granted credit, and the account was
13 opened based on that application, didn't ---

14 A. That's my understanding.

15 Q. Okay. And that guarantee was also submitted as part of
16 the rejected application, wasn't it?

17 A. I'm not -- if that's the ---

18 **THE COURT:** Show him the document. Let him take a look
19 at it. That's what we're fighting about.

20 **MR. McKIBBON:** Thank you, Your Honor.

21 A. Thank you.

22 (Pause)

23 A. What was your question again?

24 Q. Have you read these?

25 A. Just now, yes.

1 Q. Okay. Based on reading this, wouldn't you agree that the
2 2013 application was declined?

3 A. Yes. The application was declined due to non-response on
4 the missing incomplete resale tax certificate. It says
5 incorrect legal name on application and incomplete required
6 section of personal guarantee form.

7 Q. Okay. Now what you're reading is an email that's dated
8 Friday, April 19th, correct? On the bottom?

9 A. That's correct.

10 Q. All right. Now you see one above?

11 A. Yes.

12 Q. And that is after April 19th, correct?

13 A. Yes.

14 Q. May 21st?

15 A. Correct.

16 Q. And it says, your application has been declined, very
17 clearly.

18 A. Yes.

19 Q. You also testified earlier that an account was opened
20 based on three documents submitted, yet your own team wrote
21 and said, we've got to have all this other stuff.

22 A. That's correct.

23 Q. Okay. Well, your testimony didn't suggest anything else
24 was needed to open an account, and yet your own team here back
25 on 2/13/2013 said, one, we need this. And then after giving

1 them that chance to do it in 2013 denied credit.

2 A. We require these -- these pieces, but we require
3 additional information as well.

4 Q. I understand, but 2013 was declined.

5 A. Because we didn't receive the resale tax certificate.

6 Q. Your company declined credit to the 2013 application,
7 correct?

8 A. According to this email, appears to be so.

9 Q. Appears to be so. And that is the application of April
10 2013, correct? Exhibit 1.

11 A. Correct.

12 Q. Exhibit 2 and exhibit 3, correct?

13 A. Correct.

14 Q. And exhibit 3 was the same date as the application. And
15 that is the individual guarantee that is alleged in this case,
16 is it not?

17 A. Yes.

18 Q. So that application was denied, correct?

19 A. Correct.

20 Q. If an application is denied, you didn't give him any
21 credit, correct?

22 A. Correct.

23 Q. So you didn't have a contract with him, did you, in 2013?

24 A. We had the signed -- signed agreement.

25 Q. No, sir, you had an application, correct?

- 1 A. Yes, sir.
- 2 Q. Which you declined?
- 3 A. Appears to be so, yes.
- 4 Q. Yes. So you did not have an agreement?
- 5 A. (No response).
- 6 Q. As of 2013 they couldn't buy anything from you on credit,
- 7 could they?
- 8 A. As of the date of this email, May 27 or May 21st, 2013 it
- 9 appears to be so.
- 10 Q. That's correct. And that's after the application,
- 11 correct?
- 12 A. Correct.
- 13 Q. And part of the application was the personal guarantee,
- 14 correct?
- 15 A. Correct.
- 16 Q. And it was rejected, correct?
- 17 A. The application was declined.
- 18 Q. Meaning ScanSource was not going to do credit business
- 19 with my client, correct?
- 20 A. Based on the missing information, yes.
- 21 Q. We're going around and around. But you had no agreement
- 22 with my client in 2013, did you? Don't look to your counsel,
- 23 please. Answer my question.
- 24 A. From my perspective, we did, but ---
- 25 Q. Well, let's talk about your perspective. How do you have

1 perspective -- your company refused to give my client credit.

2 Not only that, you have not produced one single purchase in

3 2013. And if my client has to testify, he's going to say

4 there wasn't one. Do you know of one?

5 A. Not in 2013.

6 Q. No, you don't, but you testified that there were.

7 A. Well, I think I said the first invoice was from 2014.

8 Q. I don't think so. You said you started doing business

9 with him in 2013, but that's neither here nor there. You

10 didn't produce a single invoice until the ones that we're here

11 for today, correct?

12 A. That's incorrect. We produced invoices starting in 2014

13 that were subsequently paid.

14 Q. Sir, I believe all we've seen in evidence are the

15 invoices you're here to try to collect upon.

16 A. Yeah, that's correct.

17 Q. That's correct. Okay. Explain to me again, how do you

18 believe that there was a contract entered into when you

19 declined the application.

20 A. That we received information that we were -- based on the

21 email you have as Friday, April 19th, reaching out to George

22 and Nelson, after reviewing the information submitted, we're

23 currently unable to process the application due to the

24 following reasons. Then it listed those three -- three

25 reasons. So we had requested that information to proceed with

1 providing credit, and we did not receive a response.

2 Q. Well, you're mainly leaving out the next email, the
3 important one. Does it not clearly state based on information
4 submitted, your application has been declined?

5 A. Correct, because we didn't receive the response in the
6 requested 30 day ---

7 Q. I understand. But you said -- and at the end doesn't it
8 say you have a right to a written statement of specific
9 reasons for this denial? To obtain this statement you must
10 submit your request within 60 days from the date of this
11 notification.

12 A. Correct.

13 Q. Okay. So pretty clear they had no deal with you in 2013,
14 did they?

15 A. In 2013 I believe -- yes, we had received a second
16 application also in 2013.

17 Q. April 2013 they had no deal with you, correct?

18 A. We had no invoices and no purchase history at that time,
19 no.

20 **THE COURT:** So when was the second application? Is that
21 what ---

22 A. It's December 7, 2013.

23 **THE COURT:** Okay. And, apparently, the Defendant
24 rectified whatever ...

25 A. Apparently, the missing tax information. It says missing

1 incomplete sales tax exemption certificate. So in order for
2 us to resell the product, we require that from our partners.

3 **THE COURT:** But you went -- you got a credit application
4 in December of 2013 upon which you had a relationship with the
5 Defendant, is that ...

6 A. Yes.

7 **THE COURT:** So ...

8 **MR. McKIBBON:** Your Honor, the point here is there is
9 only one grouping of documents that they allege created a
10 contract with a personal guarantee by my client. And that was
11 April of 2013, and it was declined.

12 That is no different from if I go apply for a loan from a
13 bank and they give me a batch of documents and say sign, sign,
14 sign, sign, sign, which includes a personal guarantee and then
15 they decline my loan ---

16 **THE COURT:** Well, let me ask you this. You're saying
17 that the -- so there was -- was there a personal guarantee in
18 December?

19 A. Not to my knowledge.

20 **THE COURT:** Okay.

21 **MR. McKIBBON:** The whole point of this is the guarantee,
22 Your Honor, because the complaint, by the way, Your Honor,
23 makes no reference to any application except one in September
24 of 2014. That's the exhibit in the complaint.

25 In the complaint they say ---

1 **THE COURT:** Okay. All right. Mr. Allen.

2 **MR. ALLEN:** That was the last updated credit application.
3 Your Honor, it's not clear, and I don't know if my client even
4 knows when the first sale was actually made. The point is
5 these documents were submitted, a credit account was opened up
6 based on these documents, and they thereafter purchased goods
7 on credit.

8 The fact that there was something missing from a prior
9 credit application, and that information was delivered at a
10 later time, and then the account was opened up doesn't nullify
11 all of the documents. And I'll continue to stand on my
12 objection to not getting any notice of any of this
13 information.

14 **MR. McKIBBON:** It's impeaching evidence. The witness
15 testified that an account was opened. He obviously didn't
16 even know.

17 **THE COURT:** Let me see the April and December -- thank
18 you.

19 (Pause)

20 **THE COURT:** Where's the guarantee?

21 **MR. ALLEN:** Guarantee there.

22 **THE COURT:** Okay. There it is. Okay.

23 (Pause)

24 **THE COURT:** Well, there is nothing in this personal
25 guarantee that ties it to the April '13 application.

1 **MR. McKIBBON:** The date -- it's signed the exact same
2 day, Your Honor.

3 **THE COURT:** Yeah, that's fine, but there's nothing in the
4 document -- the document says it shall be an irrevocable
5 guarantee and indemnity to creditor. It doesn't say based on
6 granting an application in April of 2013. So ---

7 **MR. McKIBBON:** Yes, Your Honor, but a gaurantee would be
8 a contract and has to be supported by getting something in
9 return. You can't promise something ---

10 **THE COURT:** Did ---

11 **MR. McKIBBON:** --- for nothing.

12 **THE COURT:** --- he get credit?

13 **MR. McKIBBON:** Not then. He got declined, Your Honor.

14 **THE COURT:** Did he subsequently get materials, sales of
15 materials from the Plaintiff on credit?

16 **MR. McKIBBON:** A year and a half later the company was
17 granted credit with absolutely no individual guarantee. The
18 loan ---

19 **THE COURT:** No, they ---

20 **MR. McKIBBON:** --- was denied.

21 **THE COURT:** --- had a guarantee. So I'm going to rule as
22 a matter of law that that guarantee is valid. Okay? All
23 right.

24 With respect to him being -- using this email, it is
25 impeachment. Okay? I'm going to allow him to cross-examine

1 based on that even though I agree with you that it is --
2 failure to answer interrogatories -- wow. How come this
3 didn't get handled in some kind of motion hearing?

4 **MR. ALLEN:** Your Honor, it was my understanding that
5 Defense counsel was having trouble communicating with his
6 client. I kept asking. I kept getting nothing in return.

7 **THE COURT:** Okay. All right. Well, let's get the jury
8 back, Kurt.

9 **MR. McKIBBON:** One moment, Your Honor. Given that you
10 have ruled as a matter of law on the guarantee, I don't see
11 any ---

12 **THE COURT:** Well, do you want to ---

13 **MR. McKIBBON:** --- point ---

14 **THE COURT:** --- y'all want to talk about something for a
15 few minutes?

16 **MR. McKIBBON:** --- point in -- no, Your Honor. We're not
17 going to have a settlement. But I don't -- I mean, you've
18 ruled as a matter of law on the guarantee. So since you have,
19 I don't know why any testimony on behalf of ---

20 **THE COURT:** Well, you want to stop your cross? Is that
21 what you ---

22 **MR. McKIBBON:** --- of ScanSource -- no. But I don't need
23 to -- I don't need to discuss ...

24 **THE COURT:** Okay. We'll just get the jury back and you
25 can continue your ---

1 **MR. McKIBBON:** Well, I suppose I should ask the Court a
2 question because I don't particularly know procedurally --
3 given that that was not a motion for an issue to be decided as
4 a matter of law. Is all of that on the record for purposes of
5 appealing that issue or ---

6 **THE COURT:** Everything is on the record, ---

7 **MR. McKIBBON:** Do I need ---

8 **THE COURT:** --- yes.

9 **MR. McKIBBON:** Okay. In that case, I believe the only
10 thing left for me to do would be to introduce the document as
11 an exhibit.

12 **THE COURT:** No, it's impeachable information. Did he
13 write -- did he -- is his name on the email?

14 **MR. McKIBBON:** No, but it's a statement of a party
15 opponent.

16 **THE COURT:** Um-hum (affirmative). Well, -- and you're
17 representing both the company and this individual?

18 **MR. McKIBBON:** Yes, Your Honor. And there are very
19 different issues, one which you've already ruled upon.

20 **THE COURT:** Yeah. Well, let's finish your cross-
21 examination. I mean, is that -- yeah.

22 **MR. ALLEN:** Could I ask at this time are there any more
23 documents that we haven't seen?

24 **MR. McKIBBON:** No.

25 **THE COURT:** Did y'all take any depositions or anything

1 like that?

2 **MR. ALLEN:** No, Your Honor.

3 **MR. McKIBBON:** No, Your Honor.

4 **THE COURT:** Okay. Let's get the jury.

5 **MR. McKIBBON:** Your Honor, I believe there may be one
6 more issue to take up with you without the jury.

7 (Whereupon the Court was speaking with the bailiff)

8 **MR. McKIBBON:** Your Honor, at this point my client is
9 going to confess judgment on behalf of the LLC, which is a
10 defunct LLC, which Mr. Allen knows. We've talked about that a
11 lot. You've ruled as a matter of law as to the guarantee.
12 And we've not doubted the accounting. I believe that's going
13 to end the case.

14 **THE COURT:** I'm not sure I -- you're going to do it on
15 behalf of the company, but not on behalf of the individual?

16 **MR. McKIBBON:** No, Your Honor. You've ruled as a matter
17 of law that the guarantee is valid.

18 **THE COURT:** Yeah.

19 **MR. McKIBBON:** Well, we don't doubt the debt from the
20 company's standpoint. And since you had ruled the guarantee
21 is valid and enforceable, I don't know how there's an issue
22 left.

23 **MR. ALLEN:** In that case, we'd move for a directed
24 verdict.

25 **THE COURT:** Okay. Any -- you don't have any response to

1 that?

2 **MR. McKIBBON:** No, Your Honor, because you already -- you
3 already granted a directed verdict against my client. You
4 granted a directed verdict without a motion against my client
5 on the guarantee.

6 **THE COURT:** No, I did not, Mr. McKibbon. God Almighty.
7 Are you -- you want to confess judgment?

8 **MR. McKIBBON:** For the ---

9 **THE COURT:** Is that what I'm hearing?

10 **MR. McKIBBON:** No, Your Honor. For the -- for the
11 company, yes. The company will confess judgment. It is a --
12 it is a defunct company. And there's no reason to burden the
13 jury or the Court any further. You ---

14 **THE COURT:** Well, they want a judgment against your
15 client individually. Are you -- I mean, I ...

16 **MR. McKIBBON:** Well, Your Honor, you've ruled that the
17 guarantee is valid and enforceable. Did you not?

18 **THE COURT:** Yes.

19 **MR. McKIBBON:** Well, what am I ---

20 **THE COURT:** There's nothing ---

21 **MR. McKIBBON:** What am I missing?

22 **THE COURT:** There's -- wow. This should have been
23 fleshed out a long time ago in a motion practice. And the
24 fact that you didn't supply that email chain to counsel
25 constitutes a little bit of what I would call sharp practice.

1 So if you're -- there's nothing on the face of that document
2 that ties it to the application solely to the April
3 application.

4 **MR. McKIBBON:** Well, Your Honor, as in the proffer Mr.
5 Zielinski testified in agreement that the application for
6 credit was denied, ---

7 **THE COURT:** Yeah.

8 **MR. McKIBBON:** --- no contract was formed in any form or
9 fashion. I can't just ---

10 **THE COURT:** The personal guarantee stands on its own two
11 feet.

12 **MR. McKIBBON:** He also testified that the guarantee was a
13 requirement to form the contract to purchase -- to get credit.
14 It was declined.

15 **THE COURT:** That application was declined. Correct,
16 that's what he said. And then in December apparently they
17 satisfied whatever contingencies needed to be satisfied. They
18 didn't say the personal guarantee was no good when they denied
19 the application.

20 **MR. McKIBBON:** The personal ---

21 **THE COURT:** So I -- I'll tell you, we'll make it easy.
22 I'm going to grant the directed verdict. He's making -- you
23 don't want anymore cross-examination?

24 **MR. McKIBBON:** No, Your Honor.

25 **THE COURT:** Do you have any other witnesses?

1 **MR. ALLEN:** I have no other witnesses, Your Honor.

2 **THE COURT:** You want to do any redirect or anything like
3 that?

4 **MR. ALLEN:** No redirect, Your Honor.

5 **THE COURT:** Okay. And you made a motion for directed
6 verdict?

7 **MR. ALLEN:** I did, Your Honor.

8 **THE COURT:** Granted. Okay.

9 **MR. ALLEN:** Thank you, Your Honor.

10 **THE COURT:** Thank you. You can stand down. We'll mark
11 the email chain, I guess, as a Court's exhibit number 1.

12 (Whereupon Court's exhibit 1 was marked)

13 **MR. ALLEN:** Thank you, Your Honor.

14 **THE COURT:** All right. Okay.

15 **MR. ALLEN:** We're free to go, Your Honor?

16 **THE COURT:** Yep, all done.

17 **MR. ALLEN:** Thank you, Your Honor.

18 **THE COURT:** Yep.

19 (Hearing Ended at 12:47 pm)

20 (End of Requested Transcript of Record)

PLAINTIFF Scan Source, Inc. ATTORNEY Craig Allen
 DEFENDANT Dependable Technology Center ATTORNEY William M. Kibben
 CASE NO. 2019-CP-23-05406 JUDGE Miller
 DATE 10/17/22 COURT REPORTER Susan Hudgins
 DATE ENDED 10/17/22

[illegible][illegible]

L. J. Lee Cohen
CLERK OF COURT

DATE 10-17-22

ScanSource

INC.
(800) 944-2439 ext. 4007
(864) 286-4544 FAX
You can apply online at
www.scansourceinc.com
Reseller Financial Services



CUSTOMER APPLICATION

DATE OF APPLICATION

4/12/13

CREDIT LIMIT REQUESTED

As much AS P.

PAYMENT METHOD

☐ Credit Card ☐ Net 20 Days ☐ Prepay Via Wire

☐	☐	☐	☒	☒	☒
Catalyst Telecom	OUI Managed Services	Partner Services	ScanSource COMMUNICATIONS	ScanSource POS & BARCODING	ScanSource SECURITY

Type: ☐ C Corporation ☐ S Corporation ☒ Limited Liability Company ☐ Partnership ☐ Proprietor	
COMPANY'S COMPLETE LEGAL NAME (Please Print or Type) Dependable Tech Center	DOING BUSINESS AS NAME Comptool
COMPANY WEBSITE www.DTCNEWYork.com	YEAR STARTED 1995
MAILING ADDRESS OF CORPORATE OFFICE 6510 New Utrecht Avenue	STATE OF INCORPORATION NY
STREET ADDRESS OF CORPORATE OFFICE (if different than above)	CITY Brooklyn
CORPORATE PHONE NUMBER 718 256 3976	POSTAL CODE 11219
	CITY STATE / PROVINCE POSTAL CODE
	CORPORATE FAX NUMBER

EXECUTIVE CONTACT NAME AND TITLE Nelson Leung		ACCOUNTS PAYABLE MANAGER NAME GBNA ~~BADR~~ BADR	
EXECUTIVE CONTACT PHONE 718 256 -3976		ACCOUNTS PAYABLE MANAGER PHONE	
EXECUTIVE CONTACT FAX 718 256 -9531		ACCOUNTS PAYABLE MANAGER FAX	
EXECUTIVE CONTACT E-MAIL ADDRESS L11219 us@yahoo.com		ACCOUNTS PAYABLE MANAGER E-MAIL ADDRESS invoice@Comptools.net	

Please indicate if you authorize ScanSource to communicate with your company via fax and e-mail ☒ Yes ☐ No

Please indicate if you would like to receive invoices in PDF format in place of paper invoices ☒ Yes ☐ No

If so, please indicate the email address to receive the invoices: L11219 us@yahoo.com

FEDERAL EMPLOYER IDENTIFICATION NUMBER:	
Sales Tax Exempt Number:	
Note: Please attach a copy of exemption certificate(s) for each state or use the Multijurisdiction Form Tax Certificate also available to download at http://www.scansource.com/downloads/Multijurisdiction_Form.pdf .	

Do you require a purchase order number before we accept an order? ☒ Yes ☐ No

AUTHORIZED SIGNATURES	
By signing this application Applicant hereby acknowledges that it is submitting this Application to ScanSource, Inc. and each of its subsidiaries and/or affiliates. Applicant hereby gives the right to each of ScanSource, Inc. and its subsidiaries and affiliates to rely on this application in considering the extension of trade credit at any time. Applicant's authorized signature constitutes a representation of the trust and accuracy of all statements made on this Application and its express agreement to abide by the Terms and Conditions of Sale on the second page hereof. A faxed copy of the signature will be considered an original.	
APPLICANT AUTHORIZED NAME (Please Print or Type) GEORGE G MORAN	TITLE Owner
Signature 	Date 4/12/13

FINANCIAL INFORMATION
Please attach the applicant's latest two (2) fiscal year end financial statements for ScanSource Reseller Financial Service's processing. This information will be for the exclusive use of ScanSource Reseller Financial Services and will remain confidential.



TERMS AND CONDITIONS OF SALE

ScanSource, Inc., including its subsidiaries and/or affiliates ("Seller"), makes all sales of its products and services ("Products") to buyer ("Buyer") subject to the following terms and conditions:

1. **Pricing/Purchase Orders/Acceptance of Terms and Conditions.** All Products sold by Seller to Buyer shall be at the standard prices set forth in Seller's current catalog of Products at the time the order is submitted to Seller. Buyer shall submit all orders for Products to Seller using a method approved in writing by Seller, which includes by telephone and by electronic data interchange if Buyer has executed and provided to Seller Seller's standard EDI Trading Partner Agreement. Seller's acceptance of all orders, however made, is expressly conditioned upon Buyer's consent, either express or implied, to these terms and conditions, and Seller will not accept, and expressly objects to and rejects, any other terms and conditions (whether written or oral) originating from acceptance, (b) Buyer's offer to purchase Products from Seller, (c) Buyer's acceptance of shipment from Seller, or (d) Buyer's payment for any Products. To facilitate future cross-reference, Buyer shall note on the face of each submitted purchase order that the terms of this agreement control, provided however, if Buyer fails to include any such notation, the parties hereby agree that the terms and conditions of this agreement shall still control.

2. **Shipment/Title/Risk of Loss/Taxes.** Title to the Products shall pass to Buyer upon delivery of the Products to (1) the common carrier or (2) Buyer's representative at Seller's dock. Seller's delivery of the Products shall be Ex Works Seller's shipping point, with all risk of loss, damage, theft or destruction passing to Buyer at such point, subject to Seller's rights under applicable law. No such loss, damage, theft or destruction to the Products, in whole or in part, shall impair the obligations of Buyer under this agreement, all of which shall continue in full force and effect. Seller shall not be liable for any shipping delays. Buyer shall bear all applicable federal, state, municipal or other governmental tax, as well as any applicable import or customs duties, license fees and similar charges, however designated or levied on the sale of Products (or delivery thereof) or measured by the purchase price paid for the Products.

3. **Shortages/Rejection of Delivery.** All claims for shortages or rejection of delivery must be made by Buyer to Seller in writing within a period of forty-eight (48) hours from receipt of Products and must state in reasonable detail the grounds therefore. Unless such notice is given within the stated period of time, Buyer agrees that it shall be conclusively presumed that Buyer has fully inspected the Products and acknowledged that NO shortage or grounds for rejection exists.

4. **Security Interest.** Buyer grants Seller a security interest in all Products sold hereunder and to all Products now or hereafter acquired by Buyer from Seller, and to any proceeds thereof, until the purchase price and any other amounts due to Seller have been paid in their entirety. Buyer hereby authorizes Seller to prepare and file any financing statement listing the Products as collateral and to file any such financing statement in such filing offices as the Seller may deem appropriate. Buyer further agrees promptly to execute any other documents requested by Seller in order to protect Seller's security interest. Upon any default by Buyer of any of its obligations to Seller, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code, to which rights and remedies shall be cumulative and not exclusive.

5. **Payment.** Unless otherwise agreed in writing by Seller, all credit purchases must be paid in accordance with Seller's normal terms of sale, which are Net twenty (20) days from date of invoice. All past due amounts are subject to a one and a half percent (1.5%) monthly financing charge or the maximum permissible under applicable law, whichever is lower. All drafts dishonored for any reason shall be assessed a twenty-five dollar and 00/100 (\$25.00) service charge. In the event that Buyer stops payment on any drafts issued to Seller, for any reason, Buyer hereby recognizes that Seller would suffer damage, the exact amount of which cannot be determined with certainty, and Buyer shall pay Seller liquidated damages in the amount of five hundred and 00/100 (\$500.00) for each such draft in addition to the purchase price. Buyer acknowledges and agrees that Seller shall be entitled to apply all payments to Buyer's account(s) as Seller deems fit in its sole and absolute discretion. Buyer may not use anticipated credit memos before Seller issues the credit on account. Payment using an anticipated credit memo before Seller has issued credit will be considered a short payment and may result in delayed shipments. It is not Seller's policy to issue refunds. Credit memos must be used on current outstanding balances or future purchases. In the event that Buyer utilizes a credit card to purchase Products, Buyer must provide Seller with the credit card information as requested. Buyer acknowledges and agrees that all credit card purchases are irrevocable under the applicable Seller's programs and consistent with Buyer's credit capability, as determined by Seller from time to time in Seller's absolute discretion. Seller may, in its absolute discretion, refuse to establish an account with Buyer, place Buyer's account on hold, and/or refuse to deliver Products or accept orders from Buyer to the extent any principal(s) or shareholder(s) of Buyer, any entity with which such principal(s) or shareholder(s) are affiliated, or any subsidiary or affiliate of Buyer has a net ten and 00/100 dollars (\$10.00) a month or the credit balance outstanding on Buyer's account. Seller, without waiver or limitation of any rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Seller any and all amounts owed by Seller to Buyer.

6. **Returns.** The terms for all Product returns, for whatever reason, are limited to those set forth in Seller's return merchandise authorization ("RMA") policies and procedures, which are located on Seller's website and in Seller's catalog. These policies and procedures may be modified in any manner by Seller at any time. All returns must be accompanied by an RMA from Seller. All returns are subject to in-house credit only. The time periods allowed for returns are determined by manufacturers of the Products and are printed in Seller's catalog.

7. **No Warranties by Seller.** Product warranties, if any, are provided by the manufacturer or publisher of the Products. Seller makes no warranties whatsoever. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. SELLER DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER FROM AND AGAINST ANY OTHER DAMAGES OR COSTS INCURRED BY BUYER ARISING FROM THE INFRINGEMENT OR VIOLATION OF ANY PATENTS, TRADEMARKS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS BY ANY PRODUCTS. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED. NOTWITHSTANDING ANY OTHER TERMS OR CONDITIONS TO THE CONTRARY, SELLER'S LIABILITY UNDER THIS SECTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE ALLEGED LIABILITY.

8. **Events of Default.** Buyer shall be in default under this agreement upon the happening of any of the following events or conditions: (a) default by Buyer on payment of any installment, invoice, bill or any other indebtedness or obligation now or hereafter owed by Buyer to Seller, (b) default in the performance of any obligation, covenant or liability contained in this agreement or any other agreement or document between Buyer and Seller, (c) any inaccuracy with respect to any warranty, representation or statement made or furnished by Buyer, (d) dissolution, termination of existence, insolvency, business failure, or discontinuance of Buyer's business or the appointment of a receiver for any part of the property of, or assignment for the benefit of creditors by Buyer, or the commencement of any proceedings under any bankruptcy reorganization or arrangement laws by or against Buyer or the attachment, levy, seizure or garnishment of any of Buyer's property, rights, assets (contingent or otherwise) including the Products, or (e) any change in control of the ownership or management of Buyer, unless prior to the occurrence of such change of control Seller shall have been notified in writing and Buyer shall have obtained Seller's prior written approval to such change in control.

Remedies of Seller.

a. **In General.** Upon the occurrence of any event of default or any time thereafter, Seller may, at its option and without notice to Buyer, exercise one or more of the following remedies as Seller, in its sole discretion, shall elect: (1) declare immediately due and payable all outstanding invoices under this or any other contract and demand or, without demand, sue for amounts then due or thereafter accruing under this invoice or under any other invoice, bill or other document evidencing Buyer's indebtedness to Seller, (2) suspend deliveries as to any or all Products, (3) take possession of the Products wherever found and for this purpose enter upon any premises of Buyer and remove the Products, without court order or other process of law, without any liability for damages, suit, action or other proceeding by Buyer as a result of such entry and/or removal, (4) cause Buyer, at its expense, to promptly return the Products to Seller in good, like-new condition, (5) sell the Products, or any part thereof at public or private sale (for cash or credit) at such time or times as Seller shall determine, free and clear of any rights of Buyer, and if notice thereof is required by law, any notice in writing of any such sale by Seller to Buyer not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Buyer, and (6) exercise any and all rights accruing to Seller under any applicable contract or law upon a default by Buyer, including all rights and remedies accorded to sellers or secured parties under the Uniform Commercial Code.

b. **Mitigation of Damages.** Should Seller repossess any of the Products because of Buyer's default, Seller may make a commercially reasonable effort to sell such Products at a reasonable price to a third party, provided, however, that Seller shall have no obligation to actively seek out and solicit potential third party Buyers for said Products.

c. **Collection Costs.** In the event of any default on the part of Buyer hereunder, Buyer shall pay any and all collection costs, including reasonable attorneys' fees and costs, incurred by Seller.

d. **Rights and Remedies Not Exclusive.** No right or remedy conferred upon or reserved to Seller by this agreement shall be exclusive of any other right or remedy provided herein or by law. All rights or remedies conferred upon Seller by this agreement and by law shall be cumulative and in addition to any other right or remedy available to Seller.

9. **Time of the Essence.** Time is of the essence with respect to each of the provisions of this agreement.

10. **Indemnification.** Buyer agrees to indemnify and hold Seller and its officers, directors, servants, employees, agents and advisors harmless from and against any and all claims, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) or liabilities that may result, in whole or in part, from any third party using the Products provided under this agreement. Any defense provided hereunder shall be by counsel of Seller's choice.

11. **Limitation of Liability.** In the event that any of the Products malfunction and such malfunction leads to damage or injuries to the Products, to Buyer's business, the end-user's business, to other equipment, or residence, or to employees or to other persons, Seller shall not be liable for such damages or injuries. Buyer understands and agrees that if Seller shall be found liable for loss or damage caused by failure of Seller to perform any of Seller's obligations hereunder or the failure of the Products in any respect whatsoever, Seller's liability shall be limited to the price paid for such Products, and this liability shall be exclusive. Buyer understands and agrees that the provisions of this section shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property from performance or non-performance of any of Seller's obligations or from negligence, active or otherwise, of Seller, or its agents, servants, assignees or employees. IN NO EVENT SHALL SELLER BE LIABLE FOR DAMAGES REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **Assignment.** This agreement and all rights, obligations and performance hereunder may not be assigned by Buyer without prior written consent of Seller.

13. **Waiver.** No delay or omission by Seller to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by Seller of any term, condition or agreement to be performed by Buyer or any breach thereof shall be construed to be a waiver of any succeeding breach thereof or of any other term, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless presented in writing to Seller and signed by an authorized representative of Seller.

14. **Severability.** If any section, term, condition or portion of this agreement shall be found to be illegal or void as being against public policy, it shall be stricken and the remainder of this document shall stand as the original.

15. **Governing Law/Venue.** This agreement shall be construed and enforced in accordance with the laws of South Carolina without regard to the conflicts of law provisions thereof. ALL SALES TRANSACTIONS EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS, IF OTHERWISE APPLICABLE. All claims, actions, disputes, controversies or suits shall be litigated exclusively in the courts of South Carolina. Each party specifically consents to service of process by and the jurisdiction of and venue in those courts and Buyer, if not a resident of the United States, hereby appoints the Secretary of State of South Carolina as its agent for service of process in the United States.

16. **Entire Agreement/Modification.** The parties intend this agreement to be the complete statement of the terms of their agreement. This agreement replaces and supersedes any prior agreements between them with respect to the subject matter hereof. No use of prior dealing or usage of trade shall be relevant to amend or interpret this agreement. This agreement may not be changed, modified or amended except by an instrument in writing signed by both Seller and Buyer. All Products delivered to Buyer under are for resale only and Buyer acknowledges and shall advise its customer that the Products may be controlled for export by the U.S. Department of Commerce and that the Products may require authorization prior to export from the United States.

17. **Non-solicitation.** Each party agrees that during the term of this agreement and for a period of eighteen (18) months following the expiration or termination of this agreement, such party shall not, without the prior written consent of the other party, either directly or on behalf of or through any third party (i) directly or indirectly, solicit, entice or persuade or attempt to solicit, entice or persuade any employee of the other party to leave the services of the other party for any reason, or (ii) hire or attempt to hire such persons.

18. **Compliance with Laws.** The parties agree to comply with the laws, regulations and requirements of the United States. This includes, without limitation, the applicable export control and economic sanctions laws, regulations and requirements administered by the Commerce Department's Bureau of Industry and Security and the Treasury Department's Office of Foreign Assets Control as they may govern the export and re-export of items supplied under these Terms and Conditions. Buyer further agrees that it will make any payment, directly or indirectly, that would cause a violation of the anti-bribery laws of any country or jurisdiction, including without limitation the U.S. Foreign Corrupt Practices Act which, *inter alia*, prohibits certain payments to foreign government officials for the purpose of obtaining or retaining business. The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applications on the basis of race, color, religion, national origin, sex, marital status, (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with law concerning the creditor is the Federal Trade Commission, Division of Credit Practices, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

19. **No Agent.** It is understood that Buyer is not an agent of Seller and shall not refer to the Seller's corporate name in any of its products or literature without the express written consent of the Seller.

20. **Notices.** All notices and other communications relating to this Agreement or its terms must be either: (1) in writing and sent via first class United States Postal Service certified or registered mail with return receipt requested; or (2) via FedEx or other similar overnight courier to the address set forth above. All such notices must be sent to Vice President of Reseller Financial Services and copy will General Counsel at 6 Logue Court, Greenville, SC 29615. All notices sent by Seller hereunder will be deemed received two (2) days after postmark or shipping date, or on the day of actual receipt if earlier. In addition, Seller may provide notices hereunder to Buyer via facsimile to the facsimile number(s) Buyer provided to Seller via Buyer's completion of Seller's credit application, with such facsimile notices being deemed received upon Seller's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received by Buyer is not a business day or is after five (5) p.m. on a business day, then such facsimile shall be deemed to have been received on the next following business day.



OPTIONAL

INDIVIDUAL PERSONAL GUARANTEE

In conjunction with my individual personal guarantee and customer application to ScanSource, Inc. and its subsidiaries and/or affiliates (hereinafter "Creditor") on behalf of Dependable Tech Center (hereinafter "Debtor") of (company name)

which I, George A. MORARY (guarantor) residing at 6510 New Utrecht Avenue (guarantor's address, city, state & zip code)

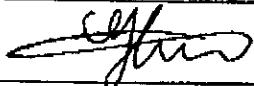
am an officer, principal, partner, or major shareholder, I represent to Creditor that neither Debtor nor any company in which I have been an officer, principal, partner, or major shareholder, nor have I personally never experienced any type of insolvency including bankruptcy.

I for good and valuable consideration, including the extension of trade credit to debtor which I hereby acknowledge as having been received, do hereby personally guarantee and promise to pay any obligation to Creditor on demand for any indebtedness of Debtor to Creditor now due and/or which may hereafter become due to Creditor for merchandise and other property hereafter sold and delivered by it to Debtor. This guarantee is one of payment, not of collection.

This guarantee is given individually, not in my capacity as _____ of Dependable Tech Center (guarantor's title) (company name)

This guarantee shall be an irrevocable guarantee and indemnity to Creditor. Further, I hereby subrogate any indebtedness of Debtor, which it may have to me to the indebtedness of Creditor

I do hereby waive notice of default, non-payment and notice thereof and to jury trial and consent to (i) changes in the terms of the guaranteed indebtedness and (ii) any and all renewals or modifications of extension of trade credit. I agree that Creditor may take any action with regard to the disposition of the collateral, including releasing it, and still enforce this guarantee without foreclosing on the collateral first. I agree that this guarantee shall be governed by the substantive law of the State of South Carolina without regard to its provisions concerning conflicts of law. I grant permission to Creditor to obtain information from any and all sources required to properly ascertain my capability to meet my financial obligations

Date: <u>4/12/13</u>	Signature: 	Social Security Number
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Please attach personal financial statements or tax return of guarantor

scan

(800) 944.2439 ext. 4007
(864) 286.4544 FAX
You can apply online at
www.scansource.com
Reseller Financial Services



CUSTOMER APPLICATION

DATE OF APPLICATION

12/7/13

CREDIT LIMIT REQUESTED

PAYMENT METHOD

☐ CREDIT CARD ☒ NET 20 DAYS ☐ PREPAY VIA WIRE

SALES UNITS

☐ scan ☐ scan ☐ scan ☐ scan ☐ scan

COMPANY INFORMATION

TYPE:	☐ C Corporation	☐ S Corporation	☒ Limited Liability Company	☐ Partnership	☐ Proprietor
COMPANY'S COMPLETE LEGAL NAME (Please print or type)			DOING BUSINESS AS NAME		
DEPENDABLE TECHNOLOGY CENTER LLC			COMP TOOLS		
COMPANY WEBSITE			YEAR STARTED		
www.comptools.net					
MARKING ADDRESS OF CORPORATE OFFICE			STATE OF INCORPORATION		
6510 NEW URBENT AVE			N.Y.		
STREET ADDRESS OF CORPORATE OFFICE (If different than above)			CITY	STATE/PROVINCE	POSTAL CODE
			BROOKLYN	N.Y.	11219
CORPORATE PHONE NUMBER			CORPORATE FAX NUMBER		
(718) 256-3976			(718) 256-9531		

CONTACT INFORMATION

EXECUTIVE CONTACT NAME AND TITLE	ACCOUNTS PAYABLE MANAGER NAME
GEORGE MORARU V.P.	
EXECUTIVE CONTACT PHONE	ACCOUNTS PAYABLE MANAGER PHONE
EXECUTIVE CONTACT FAX	ACCOUNTS PAYABLE MANAGER FAX
EXECUTIVE CONTACT EMAIL ADDRESS	ACCOUNTS PAYABLE MANAGER EMAIL ADDRESS

Please indicate if you authorize ScanSource, Inc. to communicate with your company via fax and email. ☒ YES ☐ NO

Please indicate if you would like to receive invoices in PDF format in lieu of paper invoices: ☒ YES ☐ NO

If so, please indicate the email address to receive the invoices: invoice@comptools.net, eugene@comptools.net

TAX INFORMATION

Federal Employer Identification Number:	Note: Please attach a copy of exemption certificate(s) for each state or use the Multijurisdiction Form Tax Certificate also available to download at http://www.scansource.com/downloads/Multijurisdiction_Form.pdf
Sales Tax Exempt Number:	

PURCHASING INFORMATION

Do you require a purchase order number before we accept an order? ☐ YES ☐ NO

AUTHORIZED SIGNATURES

By signing this application Applicant hereby acknowledges that it is submitting the Application to ScanSource and each of its subsidiaries and/or affiliates. Applicant hereby gives the right to each of ScanSource and its subsidiaries and affiliates to rely on this application in considering the extension of trade credit at any time. Applicant's authorized signature constitutes a representation of the trust and accuracy of all statements made on this Application and its express agreement to abide by the Terms and Conditions of Sale on the second page hereof. A faxed copy of the signature will be considered an original.

APPLICANT AUTHORIZED NAME (Please print or type)	TITLE	SIGNATURE	DATE
GEORGE MORARU	V.P.	<i>[Signature]</i>	12-07-2013

FINANCIAL INFORMATION

Please attach the applicant's latest two (2) fiscal year end financial statements for ScanSource Reseller Financial Services' processing. This information will be for the exclusive use of ScanSource Reseller Financial Services and will remain confidential.

11-2013



scansource

(800) 944.2439 ext. 4007
(864) 286.4544 FAX
You can apply online at
www.scansource.com
Reseller Financial Services



DATE OF APPLICATION 9/10/2014
CREDIT LIMIT REQUESTED \$5,000

CUSTOMER APPLICATION

PAYMENT METHOD		
☐ CREDIT CARD	☒ NET 20 DAYS	☐ PREPAY VIA WIRE

SALES UNITS



COMPANY INFORMATION

TYPE:	☐ C Corporation	☐ S Corporation	☒ Limited Liability Company	☐ Partnership	☐ Proprietor
COMPANY'S COMPLETE LEGAL NAME (Please print or type) Dependable Technology Center			DOING BUSINESS AS NAME Dependable Technology Center		
COMPANY WEBSITE			YEAR STARTED 2010	STATE OF INCORPORATION New York	
MAILING ADDRESS OF CORPORATE OFFICE 6510 New Utrecht Ave			CITY Brooklyn	STATE/PROVINCE NY	POSTAL CODE
STREET ADDRESS OF CORPORATE OFFICE (If different than above)			CITY	STATE/PROVINCE	POSTAL CODE
CORPORATE PHONE NUMBER 718-256-3976			CORPORATE FAX NUMBER 718-256-9531		

CONTACT INFORMATION

EXECUTIVE CONTACT NAME AND TITLE George Moraru	ACCOUNTS PAYABLE MANAGER NAME George Moraru
EXECUTIVE CONTACT PHONE 347-267-8262	ACCOUNTS PAYABLE MANAGER PHONE 347-267-8262
EXECUTIVE CONTACT FAX 718-256-9531	ACCOUNTS PAYABLE MANAGER FAX 718-256-9531
EXECUTIVE CONTACT EMAIL ADDRESS gabriel@mtsny.com	ACCOUNTS PAYABLE MANAGER EMAIL ADDRESS gabriel@mtsny.com

Please indicate if you authorize ScanSource, Inc. to communicate with your company via fax and email: ☒ YES ☐ NO

Please indicate if you would like to receive invoices in PDF format in lieu of paper invoices: ☐ YES ☐ NO

If so, please indicate the email address to receive the invoices:

TAX INFORMATION

Federal Employer Identification Number:	
Sales Tax Exempt Number:	Note: Please attach a copy of exemption certificate(s) for each state or use the Multijurisdiction Form Tax Certificate also available to download at http://www.scansource.com/downloads/Multijurisdiction_Form.pdf .

PURCHASING INFORMATION

Do you require a purchase order number before we accept an order? ☐ YES ☒ NO

AUTHORIZED SIGNATURES

By signing this application Applicant hereby acknowledges that it is submitting the Application to ScanSource and each of its subsidiaries and/or affiliates. Applicant hereby gives the right to each of ScanSource and its subsidiaries and affiliates to rely on this application in considering the extension of trade credit at any time. Applicant's authorized signature constitutes a representation of the trust and accuracy of all statements made on this Application and its express agreement to abide by the Terms and Conditions of Sale on the second page hereof. A faxed copy of the signature will be considered an original.

APPLICANT AUTHORIZED NAME (Please print or type) George Moraru	TITLE Part	SIGNATURE [Signature]	DATE
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FINANCIAL INFORMATION

Please attach the applicant's latest two (2) fiscal year end financial statements for ScanSource Reseller Financial Services' processing. This information will be for the exclusive use of ScanSource Reseller Financial Services and will remain confidential.

11-2013

TERMS AND CONDITIONS OF SALE

ScanSource, Inc., including its subsidiaries and/or affiliates ("Seller"), makes all sales of its products and services ("Products") to buyer ("Buyer") subject to the following terms and conditions:

1. **Pricing/Purchase Orders/Acceptance of Terms and Conditions.** All Products sold by Seller to Buyer shall be at the standard prices set forth in Seller's current catalog of Products at the time the order is submitted to Seller. Buyer shall submit all orders for Products to Seller using a method approved in writing by Seller, which includes by telephone and by electronic data interchange if Buyer has executed and provided to Seller Seller's standard EDI Trading Partner Agreement. Seller's acceptance of all orders, however made, is expressly conditioned upon Buyer's consent, either express or implied, to these terms and conditions, and Seller will not accept, and expressly objects to and rejects, any other terms and conditions (whether written or oral) originating from Buyer that purport to modify, add to, or otherwise vary the terms and conditions stated herein. Buyer's acceptance of these terms and conditions shall be indicated by any of the foregoing: (a) Buyer's written acknowledgement or other act or expression of acceptance; (b) Buyer's offer to purchase Products from Seller; (c) Buyer's acceptance of shipment from Seller; or (d) Buyer's payment for any Products. To facilitate future cross-reference, Buyer shall note on the face of each submitted purchase order that the terms of this agreement control; provided however, if Buyer fails to include any such notation, the parties hereby agree that the terms and conditions of this agreement shall still control.
2. **Shipment/Risk of Loss/Taxes.** Title to the Products shall pass to Buyer upon delivery of the Products to (1) the common carrier or (2) Buyer's representative at Seller's dock. Seller's delivery of the Products shall be Ex Works Seller's shipping point, with all risk of loss, damage, theft or destruction passing to Buyer at such point, subject to Seller's rights under applicable law. No such loss, damage, theft or destruction to the Products, in whole or in part, shall impair the obligations of Buyer under this agreement, all of which shall continue in full force and effect. Seller shall not be liable for any shipping delays. Buyer shall bear all applicable federal, state, municipal or other governmental tax, as well as any applicable import or customs duties, license fees and similar charges, however designated or levied on the sale of Products (or delivery thereof) or measured by the purchase price paid for the Products.
3. **Shortages/Rejection of Delivery.** All claims for shortages or rejection of delivery must be made by Buyer to Seller in writing within a period of forty-eight (48) hours from receipt of Products and must state in reasonable detail the grounds therefore. Unless such notice is given within the stated period of time, Buyer agrees that it shall be conclusively presumed that Buyer has fully inspected the Products and acknowledged that NO shortage or grounds for rejection exists.
4. **Security Interest.** Buyer grants Seller a security interest in all Products sold hereunder and to all Products now or hereafter acquired by Buyer from Seller, and to any proceeds thereof, until the purchase price and any other amounts due to Seller have been paid in their entirety. Buyer hereby authorizes Seller to prepare and file any financing statement listing the Products as collateral and to file any such financing statement in such filing offices as the Seller may deem appropriate. Buyer further agrees promptly to execute any other documents requested by Seller in order to protect Seller's security interest. Upon any default by Buyer of any of its obligations to Seller, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive.
5. **Payment.** Unless otherwise agreed in writing by Seller, all credit purchases must be paid in accordance with Seller's normal terms of sale, which are Net twenty (20) days from date of invoice. All past due amounts are subject to a one and a half percent (1.5%) monthly financing charge or the maximum permissible under applicable law, whichever is lower. All drafts dishonored for any reason shall be assessed a twenty-five dollar and 00/100 (\$25.00) service charge. In the event that Buyer stops payment on any drafts issued to Seller, for any reason, Buyer hereby recognizes that Seller would suffer damage, the exact amount of which cannot be determined with certainty, and Buyer shall pay Seller liquidated damages in the amount of five hundred and 00/100 (\$500) for each such draft in addition to the purchase price. Buyer may not use anticipated credit memo before Seller issues the credit on account. Payment using an anticipated credit memo before Seller has issued credit will be considered a short payment and may result in delayed shipments. It is not Seller's policy to issue refunds. Credit memos must be used on current outstanding balances or future purchases. In the event that Buyer utilizes a credit card to purchase Products, Buyer must provide Seller with the credit card information as requested. Buyer acknowledges and agrees that all credit card purchases hereunder are duty authorized. Seller has no continuing obligation to deliver Products on credit and credit approval may be withdrawn by Seller at any time without prior notice. Seller may extend credit to Buyer for purchasing Products to the extent Buyer may be eligible under the applicable Seller's programs and consistent with Buyer's credit capability, as determined by Seller from time to time in Seller's absolute discretion. Seller may, in its absolute discretion, refuse to establish an account with Buyer, place Buyer's account on hold, and/or refuse to deliver Products or accept orders from Buyer to the extent any principal(s) or shareholder(s) of Buyer, any entity with which such principal(s) or shareholder(s) are affiliated, or any subsidiary or affiliate of Buyer has a delinquent or past due account with Seller. In the event that Buyer's account with Seller is dormant for more than six (6) months and has a credit balance, Buyer agrees that Seller may impose a monthly administrative charge for inactivity at a rate of the lesser of ten and 00/100 dollars (\$10.00) a month or the credit balance outstanding on Buyer's account. Seller, without waiver or limitation of any rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Seller any and all amounts owed by Seller to Buyer.
6. **Returns.** The terms for all Product returns, for whatever reason, are limited to those set forth in Seller's return merchandise authorization ("RMA") policies and procedures, which are located on Seller's website and in Seller's catalog. These policies and procedures may be modified in any manner by Seller at any time. All returns must be accompanied by an RMA from Seller. All returns are subject to in-house credit only. The time periods allowed for returns are determined by manufacturers of the Products and are printed in Seller's catalog.
7. **No Warranties by Seller.** Product warranties, if any, are provided by the manufacturer or publisher of the Products. Seller makes no warranties whatsoever. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. SELLER DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER FROM AND AGAINST ANY OR ALL DAMAGES OR COSTS INCURRED BY BUYER ARISING FROM THE INFRINGEMENT OR VIOLATION OF ANY PATENTS, TRADEMARKS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS BY ANY PRODUCTS. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, NOTWITHSTANDING ANY OTHER TERMS OR CONDITIONS TO THE CONTRARY, SELLER'S LIABILITY UNDER THIS SECTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE ALLEGED LIABILITY.
8. **Events of Default.** Buyer shall be in default under this agreement upon the happening of any of the following events or conditions: (a) default by Buyer on payment of any installment, invoice, bill or any other indebtedness or obligation now or hereafter owed by Buyer to Seller; (b) default in the performance of any obligation, covenant or liability contained in this agreement or any other agreement or document between Buyer and Seller; (c) any inaccuracy with respect to any warranty, representation or statement made or furnished by Buyer; (d) dissolution, termination of existence, insolvency, business failure, or discontinuance of Buyer's business or the appointment of a receiver for any part of the property of, or assignment for the benefit of creditors by, Buyer or the commencement of any proceedings under any bankruptcy reorganization or arrangement laws by or against Buyer or the attachment, levy, seizure or garnishment of any of Buyer's property, rights, assets (contingent or otherwise) including the Products; or (e) any change in control of the ownership or management of Buyer, unless prior to the occurrence of such change of control Seller shall have been notified in writing and Buyer shall have obtained Seller's prior written approval to such change in control.
9. **Remedies of Seller.**
 - a. **In General.** Upon the occurrence of any event of default or any time thereafter, Seller may, at its option and without notice to Buyer, exercise one or more of the following remedies as Seller, in its sole discretion, shall elect: (1) declare immediately due and payable all outstanding invoices under this or any other contract and demand or, without demand, sue for amounts then due or thereafter accruing under this invoice or under any other invoice, bill or other document evidencing Buyer's indebtedness to Seller; (2) suspend deliveries as to any or all Products; (3) take possession of the Products wherever found and for this purpose enter upon any premises of Buyer and remove the Products, without court order or other process of law, without any liability for damages, suit, action or other proceeding by Buyer as a result of such entry and/or removal; (4) cause Buyer, at its expense, to promptly return the Products to Seller in good, like-new condition; (5) sell the Products, or any part thereof at public or private sale (for cash or credit) at such time or times as Seller shall determine, free and clear of any rights of Buyer, and if notice thereof is required by law, any notice in writing of any such sale by Seller to Buyer not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Buyer; and (6) exercise any and all rights accruing to Seller under any applicable contract or law upon a default by Buyer, including all rights and remedies accorded to sellers or secured parties under the Uniform Commercial Code.
 - b. **Mitigation of Damages.** Should Seller repossess any of the Products because of Buyer's default, Seller may make a commercially reasonable effort to sell such Products at a reasonable price to a third party, provided, however, that Seller shall have no obligation to actively seek out and solicit potential third party Buyers for said Products.
 - c. **Collection Costs.** In the event of any default on the part of Buyer hereunder, Buyer shall pay any and all collection costs, including reasonable attorneys' fees and costs, incurred by Seller.
 - d. **Rights and Remedies Not Exclusive.** No right or remedy conferred upon or reserved to Seller by this agreement shall be exclusive of any other right or remedy provided herein or by law. All rights or remedies conferred upon Seller by this agreement and by law shall be cumulative and in addition to any other right or remedy available to Seller.
10. **Time of the Essence.** Time is of the essence with respect to each of the provisions of this agreement.
11. **Indemnification.** Buyer agrees to indemnify and hold Seller and its officers, directors, servants, employees, agents and advisors harmless from and against any and all claims, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) or liabilities that may result, in whole or in part, from any third party using the Products provided under this agreement. Any defense provided hereunder shall be by counsel of Seller's choice.
12. **Limitation of Liability.** In the event that any of the Products malfunction and such malfunction leads to damage or injuries to the Products, to Buyer's business, the end-user's business, to other equipment, or residence, or to employees or to other persons, Seller shall not be liable for such damages or injuries. Buyer understands and agrees that if Seller shall be found liable for loss or damage caused by failure of Seller to perform any of Seller's obligations hereunder or the failure of the Products in any respect whatsoever, Seller's liability shall be limited to the price paid for such Products, and this liability shall be exclusive. Buyer understands and agrees that the provisions of this section shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property, from performance or non-performance of any of Seller's obligations or from negligence, active or otherwise, of Seller, or its agents, servants, assignees or employees. IN NO EVENT SHALL SELLER BE LIABLE FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **Assignment.** This agreement and all rights, obligations and performance hereunder may not be assigned by Buyer without prior written consent of Seller.
14. **Waiver.** No delay or omission by Seller to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by Seller of any term, condition or agreement to be performed by Buyer or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other term, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless presented in writing to Seller and signed by an authorized representative of Seller.
15. **Severability.** If any section, term, condition or portion of this agreement shall be found to be illegal or void as being against public policy, it shall be stricken and the remainder of this document shall stand as the original.
16. **Governing Law/Venue.** This agreement shall be construed and enforced in accordance with the laws of South Carolina without regard to the conflicts of law provisions thereof. ALL SALES TRANSACTIONS EXCLUDE THE APPLICATION OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS, IF OTHERWISE APPLICABLE. All claims, actions, disputes, controversies or suits shall be litigated exclusively in the courts of South Carolina. Each party specifically consents to service of process by and the jurisdiction of and venue in those courts and Buyer, if not a resident of the United States, hereby appoints the Secretary of State of South Carolina as its agent for service of process in the United States.
17. **Entire Agreement/Modification.** The parties intend this agreement to be the complete statement of the terms of their agreement. This agreement replaces and supersedes any prior agreements between them with respect to the subject matter hereof. No course of prior dealing or usage of trade shall be relevant to amend or interpret this agreement. This agreement may not be changed, modified or amended except by an instrument in writing signed by both Seller and Buyer. All Products delivered to Buyer hereunder are for resale only and Buyer acknowledges and shall advise its customer that the Products may be controlled for export by the U.S. Department of Commerce and that the Products may require authorization prior to export from the United States.
18. **Non-solicitation.** Each party agrees that during the term of this agreement and for a period of eighteen (18) months following the expiration or termination of this agreement, such party shall not, without the prior written consent of the other party, either separately or on behalf of or through any third party (i) directly or indirectly, solicit, entice or persuade or attempt to solicit, entice or persuade any employee of the other party to leave the services of the other party for any reason, or (ii) hire or attempt to hire any such persons.
19. **Compliance with Laws.** The parties agree to comply with the laws, regulations and requirements of the United States. This includes, without limitation, the applicable export control and economic sanctions laws, regulations and requirements administered by the Commerce Department's Bureau of Industry and Security and the Treasury Department's Office of Foreign Assets Control as they may govern the export and re-export of items supplied under these Terms and Conditions. Buyer further agrees that it will not make any payment, directly or indirectly, that would cause a violation of the anti-bribery laws of any country or jurisdiction, including without limitation the U.S. Foreign Corrupt Practices Act which, inter alia, prohibits certain payments to foreign government officials for the purpose of obtaining or retaining business. The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applications on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with law concerning the creditor is the Federal Trade Commission, Division of Credit Practices, 600 Pennsylvania Avenue, NW, Washington, DC 20580.
20. **No Agent.** It is understood that Buyer is not an agent of Seller and shall not refer to the Seller's corporate name in any of its products or literature without the express written consent of the Seller.
21. **Notices.** All notices and other communications relating to this Agreement or its terms must be either: (1) in writing and sent via first class United States Postal Service certified or registered mail with return receipt requested; or (2) via FedEx or other similar overnight courier to the address set forth above. All such notices must be sent to Vice President of Reseller Financial Services and copy will General Counsel at 6 Logue Court, Greenville, SC 29615. All notices sent by Seller hereunder will be deemed received two (2) days after postmark or shipping date, or on the day of actual receipt if earlier. In addition, Seller may provide notices hereunder to Buyer via facsimile to the facsimile number(s) Buyer provided to Seller via Buyer's completion of Seller's credit application, with such facsimile notices being deemed received upon Seller's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received by Buyer is not a business day or is after five (5) p.m. on a business day, then such facsimile shall be deemed to have been received on the next following business day.



DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219
USA

Account 1000014909

Dear Sir or Madam,

Please note that invoice(s) on your account remain past due. For your reference a list of open invoice(s) has been provided. For those that have been paid, please forward payment details including check number, amount paid and date mailed. Please remit payment for any outstanding invoices as soon as possible. -We appreciate your prompt attention to this matter and we thank you for your business.



Invoice #	Purchase Order #	Invoice Date	Due Date	Days Past Due	Balance	Currency
5401736436	55	Nov 21, 2016	Dec 11, 2016	130	24,068.85	USD
5401739153	55	Nov 22, 2016	Dec 12, 2016	129	32,862.93	USD
5401766127	55	Dec 1, 2016	Dec 21, 2016	120	6,720.76	USD
5401766128	55	Dec 1, 2016	Dec 21, 2016	120	9,270.85	USD

SCSC Inc Communicat. Overdue Balance (USD): 72,923.39

SCSC Inc Communicat. Total Balance (USD): 72,923.39

Total Overdue Balance (USD): 72,923.39

Total Balance (USD): 72,923.39

Regards,
Maya Adams
us -
maya.adams@scansource.com



Invoice

Fed. ID NO 06-1783099
GST ID 83055 9522 RT0001

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Invoice No.	5401736436
Page	1 of 1
Invoice Date	11/21/2016
Due Date	12/11/2016
Total Due	36,068.85 USD

BILL TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

SOLD TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

Purchase Order No.	Order No.	Ship Date	Salesperson	Payment Terms	Tax Code	Ship Via
55	11728537	11/21/2016	Jon Eveslage	Net 20	NY01101511	LTl STANDARD (2-5 DAYS)

Item	Description	Ordered	Shipped	Back Order	Unit Price	Extended Price
MIT-54005777 54005777	MiVoice Bus Ent 3300 Hospitality Base	2 EA	2 EA	0 EA	1,710.00	3,420.00
MIT-54005778 54005778	MiVoice Bus Enterprise AnalogTheme	1 EA	1 EA	0 EA	3,420.00	3,420.00
MIT-54000297 54000297	MCD Mailbox license	2 EA	2 EA	0 EA	28.50	57.00
MIT-54000303 54000303	MiVoice Business License - Digital Link	1 EA	1 EA	0 EA	855.00	855.00
MIT-54002701 54002701	MiVoice Business License - Analog Ext	426 EA	426 EA	0 EA	42.75	18,211.50
MIT-54005765 54005765	MiVoice Bus License Ent Hospitality User	45 EA	45 EA	0 EA	76.95	3,462.75
MIT-54005768 54005768	MiVoice Bus Hospitality License Group	1 EA	1 EA	0 EA	570.00	570.00
VIT-54005195 54005195	Std SW Assur MiVoice Bus Base Usersx16	2 EA	2 EA	0 EA	75.00	150.00
VIT-54005897 54005897	StdSWAssurMiVoiceBus HospitAnlg Port	720 EA	720 EA	0 EA	1.20	864.00
VIT-54005899 54005899	Std SW Assur MiVoice Bus HospitalityUser	45 EA	45 EA	0 EA	2.40	108.00
VIT-54005767 54005767	MiVoice Bus Centralized HospitalityTheme	1 EA	1 EA	0 EA	4,446.00	4,446.00
VIT-54005654 54005654	Prem SW Assur MiVBUS Base w/Monitor	2 EA	2 EA	0 EA	22.80	45.60
VIT-54005898 54005898	PremSWAssurMiVBUS Hospitly AntgPort	720 EA	720 EA	0 EA	0.60	432.00
VIT-54005900 54005900	Prem SW Assur MiVBUS Hospitality User	45 EA	45 EA	0 EA	0.60	27.00

Remit To
ScanSource, Inc.
1263 Network Place
Chicago IL 60673-1242

Sub Total				36,068.85	
Sub Total	Freight	Insurance	Tax	Total Due	
36,068.85	0.00	0.00	0.00	36,068.85 USD	

Approval:

Ship To: DEPENDABLE TECHNOLOGY CENTER LLC, 6424 Utrecht Ave, BROOKLYN NY 11219, USA

Please Note: To ensure that your payments are posted accurately please include your customer number and invoice number on your remittance advice.

Contact your Account Analyst call 1-800-944-2439 ext. 4007 Thank you.

For the purposes of this document, "Seller" refers to ScanSource. This invoice expressly limits acceptance to the terms and conditions on the face and reverse side hereof; it supersedes all other previous agreements or buyer's purchase order. If any objection is hereby made to any additional terms in the buyer's purchase order or other writing of any other party, this invoice does not insist that an expression of acceptance mirror this or before a contract will be formed. It shall become a contract when the common carrier has received delivery of the whole or any part thereof, or when the buyer has otherwise consented to the terms and conditions hereof, whichever occurs first. SEE REVERSE SIDE HEREOF.

THANK YOU



Invoice

Fed. ID NO 06-1783099
GST ID 83055 9522 RT0001ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Invoice No.	5401739153
Page	1 of 1
Invoice Date	11/22/2016
Due Date	12/12/2016
Total Due	32,862.93 USD

BILL TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

SOLD TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

Purchase Order No.	Order No.	Ship Date	Salesperson	Payment Terms	Tax Code	Ship Via
55	11728537	11/22/2016	Jon Eveslage	Net 20	NY01101511	LTL STANDARD (2-5 DAYS)

Item	Description	Ordered	Shipped	Back Order	Unit Price	Extended Price
MIT-50006271 50006271	PWR CRD C13 10A 125V - NA Plug	14 EA	14 EA	0 EA	14.25	199.50
MIT-50003560 50003560	DUAL T1/E1 TRUNK MMC	1 EA	1 EA	0 EA	855.00	855.00
MIT-50004451 50004451	QUAD CIM	2 EA	2 EA	0 EA	427.50	855.00
MIT-50005105 50005105	ASU II	12 EA	12 EA	0 EA	399.00	4,788.00
MIT-50005731 50005731	24 port ONSp card	30 EA	30 EA	0 EA	490.20	14,706.00
MIT-50006513 50006513	3300 MXe III Controller SATA HDD	1 EA	1 EA	0 EA	100.00	100.00
MIT-50006731 50006731	3300 MXe III w/ 1GB RAM Controller	1 EA	1 EA	0 EA	1,710.00	1,710.00
MIT-52002581 52002581	3300 MXe III Expansion Kit	1 EA	1 EA	0 EA	1,282.50	1,282.50
MIT-50005811 50005811	5540 IP CONSOLE	1 EA	1 EA	0 EA	1,026.00	1,026.00
MIT-50005991 50005991	5360 IP PHONE	1 EA	1 EA	0 EA	339.15	339.15
MIT-50006212 50006212	GN Cordless Headset Cable (for 5540)	1 EA	1 EA	0 EA	11.40	11.40
MIT-50006634 50006634	5320e IP Phone (Backlit)	27 EA	27 EA	0 EA	185.25	5,001.75
MIT-50006507 50006507	AX Controller	1 EA	1 EA	0 EA	1,710.00	1,710.00
MIT-50006509 50006509	3300 AX 2G&4G Flash SSD	1 EA	1 EA	0 EA	100.00	100.00

Remit To

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Sub Total				32,684.30
Sub Total	Freight	Insurance	Tax	Total Due
32,684.30	178.63	0.00	0.00	32,862.93 USD

Approval:

Ship To: DEPENDABLE TECHNOLOGY CENTER LLC, 6424 Utrecht Ave, BROOKLYN NY 11219, USA

Please Note: To ensure that your payments are posted accurately please include your customer number and invoice number on your remittance advice.

To contact your Account Analyst call 1-800-944-2439 ext. 4007 Thank you.

For the purposes of this document, "Seller" refers to ScanSource. This invoice expressly limits acceptance to the terms and conditions on the face and reverse side hereof. It supersedes all other previous agreements or your purchase order, if any. Objection is hereby made to any additional terms in the buyer's purchase order or other writing of any other party. This invoice does not insist that an expression of acceptance mirror this or before a contract will be formed. It shall become a contract when the common carrier has received delivery of the whole or any part thereof, or when the buyer has otherwise consented to the terms and conditions hereof, whichever occurs first. SEE REVERSE SIDE HEREOF

THANK YOU



Invoice

Fed. ID NO 06-1783099
GST ID 83055 9522 RT0001

ScanSource, Inc.
24263 Network Place
Chicago IL 60673-1242

Invoice No.	5401766128
Page	1 of 1
Invoice Date	12/01/2016
Due Date	12/21/2016
Total Due	9,270.85 USD

BILL TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

SOLD TO

Account 1000014909
DEPENDABLE TECHNOLOGY CENTER LLC
6424 Utrecht Ave
BROOKLYN NY 11219

Purchase Order No.	Order No.	Ship Date	Salesperson	Payment Terms	Tax Code	Ship Via
55	11728537	12/01/2016	Jon Eveslage	Net 20	NY01101511	LTL STANDARD (2-5 DAYS)

Item	Description	Ordered	Shipped	Back Order	Unit Price	Extended Price
MIT-51215769 51215769	Off-loading wake calls to 3300	1 EA	1 EA	0 EA	549.90	549.90
MIT-51219829 51219829	iCharge-CUB Base License	1 EA	1 EA	0 EA	1,516.45	1,516.45
MIT-51219830 51219830	iCharge-CUB 1 Rm License	630 EA	630 EA	0 EA	7.80	4,914.00
MIT-51219732 51219732	Additional TSSAP with new system 16	1 EA	1 EA	0 EA	1,040.00	1,040.00
MIT-51305087 51305087	assisted remote install iCharge/iLink	1 EA	1 EA	0 EA	625.50	625.50
MIT-51219726 51219726	VM install training 1-6 techs	1 EA	1 EA	0 EA	625.00	625.00

Remit To

ScanSource, Inc.
1263 Network Place
Chicago IL 60673-1242

Sub Total 9,270.85

Sub Total	Freight	Insurance	Tax	Total Due
9,270.85	0.00	0.00	0.00	9,270.85 USD

Approval:

Ship To: DEPENDABLE TECHNOLOGY CENTER LLC , 6424 Utrecht Ave , BROOKLYN NY 11219 , USA

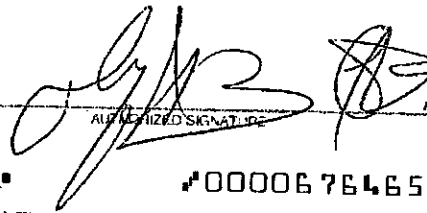
Please Note: To ensure that your payments are posted accurately, please include your customer number and invoice number on your remittance advice.

contact your Account Analyst call 1-800-944-2439 ext. 4007 Thank you.

For the purposes of this document, "Seller" refers to ScanSource. This invoice expressly limits acceptance to the terms and conditions on the face and reverse side hereof; it supersedes all other previous agreements or your purchase order if any. Objection is hereby made to any additional terms in the buyer's purchase order or other writing of any other party. This invoice does not insist that an expression of acceptance mirror this or before a contract will be formed. It shall become a contract when the common carrier has received delivery of the whole or any part thereof, or when the buyer has otherwise consented to the terms and conditions hereof, whichever occurs first. SEE REVERSE SIDE HEREOF

credit: 03/06/2017 process: 03/04/2017 lockbox: 24263 batch. 661 item: 6
check: 1410 amount: USD 6,764.65 remitter:



DEPENDABLE TECHNOLOGY CENTER LLC		TO BANK AMERICA'S MOST CONVENIENT BANK	1410
			1-1367/280 128 CHECK AMOUNT
			2/24/2017
PAY TO THE ORDER OF <u>ScanSource</u>			\$ **6,764.65
Six Thousand Seven Hundred Sixty-Four and 65/100*****			DOLLARS
ScanSource 24263 Network Place Chicago IL 60673		 AUTHORIZED SIGNATURE	
MEMO			
⑈001410⑈ 121		⑈0000676465⑈	

Details on Back

Security Features Included

DEPENDABLE TECHNOLOGY CENTER LLC

1410

ScanSource					2/24/2017	
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/21/2016	Bill	5401734453	1,764.65	1,764.65		1,764.65
11/21/2016	Bill	5401736436	36,068.85	36,068.85		5,000.00
					Check Amount	6,764.65

DTC-TD Bank

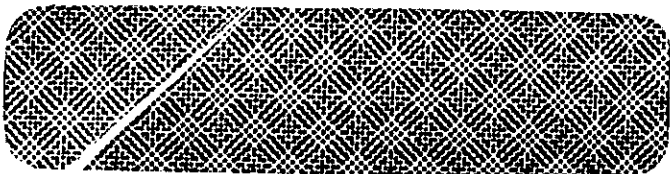
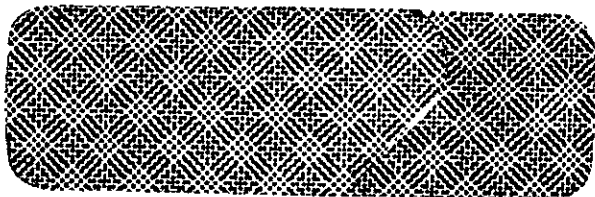
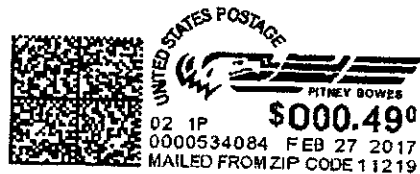
6,764.65

NEW YORK

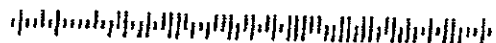
NY 100

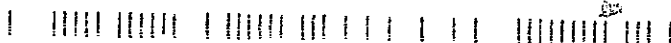
28 FEB '17

PM 12 L



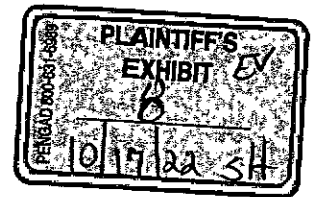
60673-124263





Faint, illegible text or markings located below the barcode-like structure.

credit: 03/29/2017 process: 03/29/2017 lockbox: 24263 batch: 822 item: 19
check: 1421 amount: USD 7,000.00 remitter:



DEPENDABLE TECHNOLOGY CENTER LLC		TD BANK AMERICA'S MOST CONVENIENT BANK	1421
			1-1367/260 128 CHECK NUMBER
			3/20/2017
PAY TO THE ORDER OF <u>ScanSource</u>		\$ **7,000.00	
Seven Thousand and 00/100*****		DOLLARS	
ScanSource 24263 Network Place Chicago IL 60673		AUTHORIZED SIGNATURE	
MEMO	Purchase		
⑈001421⑈		⑈0000700000⑈	

Details on Back

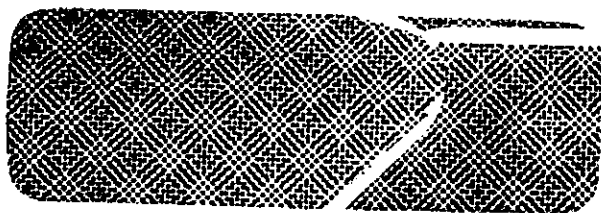
Security Features Included

DEPENDABLE TECHNOLOGY CENTER LLC

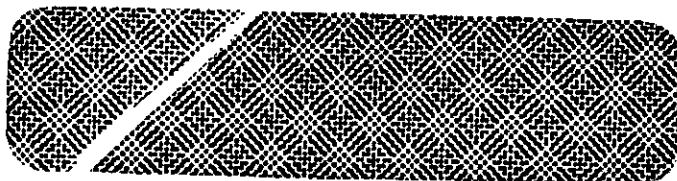
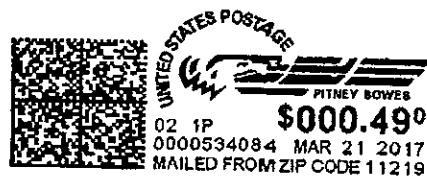
1421

ScanSource					3/20/2017	
Date	Type	Reference	Original Amt	Balance Due	Discount	Payment
11/21/2016	Bill	5401736436	36,068.85	31,068.85		7,000.00
					Check Amount	7,000.00

DTC-TD Bank	Purchase					7,000.00
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NEW YORK
NY 100
24 MAR '17
PM 14 L



60673-124263





Dependable Technology Center LLC – NY (Account# 1000014909)

Started doing business: 2013

Demand Letter sent: 2017

Principal balance owed: \$72,923.39

Interest owed: \$76,455.68

Interest calculation: $\$72,923.39 * (1 + ((1.5\% \times 12 \text{ months}) * (2126 \text{ days [December 21, 2016 to October 17, 2022]} / 365 \text{ days}) - \$72,923.39 = \$76,455.68$

Principal plus Interest owed: \$149,379.07

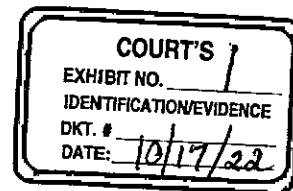
From: George Badr <gb@bgpsalarm.com>

Sent: Wednesday, May 27, 2020 8:34 PM

To: Andrew H. Kulak <kulzas1@kulaklaw.com>

Subject: Fwd: FW: Declined ScanSource Application Requirements - Dependable Technology Center LLC (d/b/a Comptool) - NY

fwd



From: Cary Medlin [mailto:cary.medlin@scansource.com]

Sent: Tuesday, May 21, 2013 11:29 AM

To: 'sales@comptools.net' <sales@comptools.net>; 'invoice@comptools.net' <invoice@comptools.net>

Subject: Declined ScanSource Application Requirements - Dependable Technology Center LLC (d/b/a Comptool) - NY

George & Nelson:

Based on the information submitted, we are currently unable to open an account for Dependable Technology Center LLC and, consequently, your application has been declined.

The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applications on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with law concerning ScanSource is the Federal Trade Commission, Division of Credit Practices, 600 Pennsylvania Avenue, NW, Washington, SC 20580.

If you would like additional information, you have the right to a written statement of specific reasons for the denial. To obtain this statement, you must submit your request within 60 days from the date of this notification to the following address:

ScanSource, Inc.
Director of Reseller Financial Services
6 Logue Court
Greenville, SC 29615

Following receipt of your statement request, we will send you a written statement of reasons for the denial within 30 days.

We appreciate your interest in ScanSource.
Regards,

Cary H. Medlin

Financial Account Analyst, New Accounts Team
Reseller Financial Services

ScanSource, Inc.

Direct: 864-286-4372

Fax: 864-286-7708

Toll Free: 800-944-2439 ext 4372

Email: cary.medlin@scansource.com

From: Nathan Rounselle

Sent: Friday, April 19, 2013 12:09 PM

To: 'Sales@comptools.net'; 'invoice@comptools.net'

Cc: New Accounts Team; ScanSource Communications - Business Development; ScanSource Security - Business Development

Subject: ScanSource Application Requirements - Dependable Technology Center LLC (d/b/a Comptool) - NY

George & Nelson:

Thank you for your recent application to become a ScanSource, Inc. reseller. After reviewing the information submitted, we are currently unable to process your application due to the following reason(s):

- **Missing/incomplete sales tax exemption certificate:** Missing valid, completed, and executed NY resale certificate; also please provide any other resale certificates that Dependable Technology Center LLC (d/b/a Comptool)

<https://mail.google.com/mail/u/1?ik=22bc64be0f&view=pt&search=all&permthid=thread-f%3A1667957515281534612%7Cmsg-f%3A16679704000031...> 2/3

may also hold (**See Attached**).

- **Other 1:** Incorrect legal name on application. The NY secretary of state ("SOS") has the legal name as Dependable Technology Center LLC, not "Dependable Tech Center"; as such I have completed an updated customer application with this correction for your convenience (**See Attached**).
- **Other 2:** Incomplete required section in the personal guarantee form; also completed in the updated customer application that is attached.

At your convenience, please submit the required information to our New Accounts team at newaccountsteam@scansource.com.

Your application will remain open with us for the next 30 days. If we do not receive the required information referenced above within this period, your application will be closed.

If you have any questions about your application, please feel free to contact me at the telephone number listed below. Again, we appreciate your interest and look forward to establishing a great partnership.

Regards,

Nathan K. Rounsville

Financial Account Analyst - New Accounts

Reseller Financial Services

ScanSource, Inc.

6 Logue Court

Greenville, SC 29615

Direct: 864-286-4548

Toll-Free: 800-944-2439 ext. 4548

nathan.rounsville@scansource.com

www.scansource.com

3 attachments

-  **APP-Dependable Technology Center LLC 13-04-19 unexecuted.pdf**
2348K
-  **TAX-New York Resale Certificate 10-04-01.pdf**
47K
-  **TAX-Uniform Sales & Use Tax Certificate - Multijurisdictional 09-10-22.pdf**
77K

RECEIVED

Jun 07 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Judge

Appellate Court Case No.: 2022-001619

ScanSource, Inc., ... Respondent
v.
Dependable Technology Center, LLC
and George G. Moraru, ... Appellants,

CERTIFICATE

I certify that the Record on Appeal contains all of the matter designated by the parties and no irrelevant matter.

I further certify that the Record on Appeal has been redacted in compliance with the Supreme Court's Order(s) and Rules pertaining to the redaction of appellate records.

Respectfully submitted,

s/J. Falkner Wilkes
J. Falkner Wilkes (SC Bar #12893)
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
jfalknerwilkes@gmail.com
Counsel for Appellants

May 24, 2023.

RECEIVED

Jan 27 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Hon. Edward W. Miller, Judge

Appellate Case No. 2024-001671

ScanSource, Inc., Respondent

v.

Dependable Technology Center, LLC

and George G. Moraru, Appellants,

CERTIFICATE

I certify that I have redacted the Appendix in accordance with the Supreme Court's rules on redaction of records.

Respectfully submitted,

s/J. Falkner Wilkes

J. Falkner Wilkes (SC Bar #12893)

248 Deerwood Park Drive

Oakland, MS 38948

(864) 421-4618

jfalknerwilkes@gmail.com

Counsel for Petitioners

January 27, 2025.