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Jan 09 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2016-CP-07-2541
Appellate Case No. 2022-000231

Forum Benefits, LLC,

Appellant,

v.

Brian Bannon and Assured Partners, NL,

Respondents.

RESPONDENTS' PETITION FOR REHEARING

January 9, 2025

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NOW COME Respondents, Brian Bannon (“Mr. Bannon”) and Assured Partners, NL, (“AssuredPartners”)(collectively “Respondents”), by and through their undersigned counsel, hereby petitioning this Honorable Court for rehearing of this matter. This Court decided this appeal by unpublished opinion dated December 11, 2024 (“Opinion”).

MATERIAL POINTS
OVERLOOKED OR MISAPPREHENDED

Respondents respectfully submit the following material points overlooked or misapprehended by the Court.

1. Directed Verdict Was Proper On Appellant’s Contract Claim Based On The Statute Of Frauds.

The Court’s Opinion states that directed verdict was not proper because there was evidence presented at trial that yields more than one reasonable inference regarding the existence of the employment agreement. However, the Court’s Opinion does not address the critical issues of (a) whether the Court is adopting a lost document exception to the Statute of Frauds, something no South Carolina court has adopted, (b) if so, what that exception requires in terms of proof, (c) if so, what standard applies to such exception (clear and convincing evidence or preponderance of the evidence), and (d) if so, what evidence would support the lost document rule actually applying in this case (or was the evidence presented based solely on the self-serving testimony of Appellant’s owner, Brian Stritt). Respondents contend that

answering all these issues will support affirmation of directed verdict related to the contract claim or will provide necessary guidance to the potential second trial court, and Respondents request reconsideration and a rehearing related to these specific issues as discussed further below.

There is no dispute related to the fact that Appellant has never produced and cannot produce a contract signed by Mr. Bannon. Appellant has admitted this (R. p. 968), and Mr. Bannon has at all times denied signing any contract (R. p. 145, line 11-p. 146, line 7). Rather, the only document produced was an unsigned, blank form document that does not even include Mr. Bannon's name, or any specifics related to his employment (the form document contains many blanks). (R. p. 968). Appellant has also admitted this. (R. p. 77, line 21-p. 78, line 9; R. p. 82, lines 3-22). There is no factual dispute that the alleged contract could not be performed in one year because it contained two-year restrictive covenants. Appellant has also admitted this. Accordingly, there is no dispute that the Statute of Frauds applies to bar Appellant's contract claim, something Appellant's attorney (Mr. Wyatt) and first witness at trial also admitted. (R. p. 91, lines 3-20).

Because of these undisputed facts, the only potential way this claim could have been submitted to a jury was the application of a lost document exception to the Statute of Frauds. The trial court refused to adopt such an exception and no South Carolina court has ever adopted such an exception. While this Court has

indirectly discussed this issue in Yadkin Valley Bank & Tr. v. Oaktree Homes, Inc., 2014 WL 3747342 (S.C. Ct. App. July 30, 2014), in that case this Court ruled that it was not adopting the exception, but that even if it did adopt it, there was not sufficient evidence to satisfy such an exception in that case. This Court ruled that even if a lost document exception were adopted in South Carolina, it would require the party seeking to establish the contract to provide more than self-serving or contradictory evidence and that such party must meet a clear and convincing evidence standard, not a preponderance of the evidence standard. Id.

Because this Court did not actually adopt a lost document exception in Yadkin (and has never done so), it is important for this Court to reassess and clarify this important and novel legal issue in this case prior to reversing the trial court's ruling. *Is the Court officially adopting an exception to the Statute of Frauds for a lost document? Does this exception require proof by clear and convincing evidence? If so, was there sufficient evidence presented at trial to satisfy a clear and convincing evidence standard and, if so, what was it?* These critical questions are not answered in this Court's Opinion.

The Statute of Frauds is an extremely important and long-standing legal protection in South Carolina. It is designed to protect individuals (like Mr. Bannon) from allegations of a breach where no signed contract can be produced. It puts the burden on the party claiming a breach to maintain a signed copy of the contract, a

burden Appellant clearly failed to satisfy. Adopting a broad exception to this important and long-standing protection requires specific clarity from our appellate courts and this Court's Opinion does not provide that clarity.

As Respondents argued in their Final Brief, even if this Court officially adopts a lost document exception to the Statute of Frauds, Appellant has completely failed to present evidence to satisfy a clear and convincing evidence standard. (See Respondents' Final Brief, Section I.A.1). It is indisputable that Appellant solely relies on the self-serving testimony of Appellant's owner (Brian Stritt) to argue that the contract was signed then lost. This is the exact issue that caused this Court to reject the "potential" application of a lost document exception in Yadkin and it should support the exact same result here. If it does not, Respondents request that this Court provide clarity on this novel legal issue, the specific standard that must be met to apply this exception under South Carolina law, why the application is different here than in Yadkin, and the specific evidence presented at trial that could support Appellant meeting a clear and convincing evidence standard sufficient to submit the issue to a jury.

2. Directed Verdict Was Proper On All Of Appellant's Claims Based On The Appellant's Failure To Present Evidence Of Proximately Caused Damages.

This Court's Opinion states that directed verdict was not proper because there was evidence presented at trial that yields more than one reasonable inference

regarding the nature of the trade secrets and measures in place to protect their secrecy, and whether the trade secrets merged with a physical document (presumably referring to the unsigned, blank form contract discussed in Section 1 above). However, the Court's Opinion does not specifically address the issue of whether Appellant submitted sufficient evidence to create an issue of fact related to its alleged damages. The indisputable evidence shows that Appellant did not submit any evidence for a reasonable fact finder to find that Respondents' alleged conduct proximately resulted in the damages Appellant has asserted it incurred -- the loss of clients.

All of Appellant's claims required proof of damages proximately caused by an alleged breach or alleged misconduct. Thus, this issue would be dispositive for all of Appellant's claims. For example, to prove a breach of contract claim, a plaintiff must prove by a preponderance of the evidence "the existence of a contract, its breach, and **damages caused by such breach.**" S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 732 S.E.2d 205, 209 (Ct. App. 2012) (emphasis added). Regarding a trade secret claim, according to the South Carolina Supreme Court, "The owner **must** also prove its damages were **proximately caused** by misappropriation." Wilson v. Gandis, 844 S.E. 2d 631, FN 7 (S.C. 2020). The South Carolina Trade Secrets Act also allows for an alternative damages analysis where actual damages cannot be proven by instead proving a "reasonable royalty" amount

related to the value of the information in question. South Carolina Code Section 39–8–40(B) states, “In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.” Respondents asked Appellant in discovery if it was seeking a reasonable royalty, and it continually said it was not. Appellant never presented any evidence, arguments or allegations related to a reasonable royalty at trial. Thus, it was required to prove that its alleged damages were proximately caused by Respondents’ alleged unlawful actions.

The trial court correctly ruled that Appellant failed to introduce any evidence proving a causal link between Mr. Bannon’s alleged retention of information and Appellant’s alleged damages. Appellant’s only claimed damages at trial related to the loss of clients who moved their business from Appellant to Respondents. (R. p. 576-579). But the fact that these clients moved when Mr. Bannon left Appellant does not prove causation. Insurance agents are generally hired based on client relationships, and that was certainly the case with Mr. Bannon and the clients at issue here. The only alleged testimony attempting to link Mr. Bannon’s retention of his clients’ information to Appellant’s loss of clients was the **self-serving opinions** of Appellant’s owner (Brian Stritt). Appellant did not call **any** client to attempt to support this element of its claim, not even one. This is telling because if any client

moved because Mr. Bannon had access to their information, Appellant would have certainly presented that evidence. The reason that Appellant did not call any client to testify at trial was because the **only** reason the clients moved with Mr. Bannon was because of his relationships with the clients.

Notably, after Appellant rested its case, Appellant did not object (and thus consented) to Respondents calling two clients who appeared for trial that day to testify prior to Respondents' directed verdict motion and argument. (R. 619, and Supp. R. 2259-2260¹). These clients clearly and unequivocally testified that it was their **relationship** with Mr. Bannon that was the **only** reason they moved their business to Respondents and that they expressly "authorized" Mr. Bannon to have access to all their client information. (See testimony of Paula Gant with the client Alpha Genesis, Supp. R. 2260-2265, and testimony of Christie Holderness with the St. Andrews Public Service District, R. 620 to 627).

¹ The Trial Transcript pages 603 – 609 are missing from the Record on Appeal. Respondents cited these transcript pages in their Initial Brief (footnote 6) and Final Brief (footnote 5) and noted these pages were not included in the official Record on Appeal in their Final Brief (footnote 5). By citing these pages in their Initial Brief, Respondents clearly intended these pages to be included in the Record on Appeal. Respondents assumed this was a copying error or an unintentional oversight in the original designations. Respondents have submitted a letter to the Court notifying it of this issue and providing these pages as a supplement to the Record on Appeal. These pages are bates marked 2259 to 2265 and cited herein as "Supp. R." followed by the relevant page number(s). Respondents request that the Court consider these seven pages and include them in the Record on Appeal, but regardless, the fact remains that Appellant did not present any evidence related to why any clients moved with Bannon to AssuredPartners.

Specifically, Ms. Gant testified as to the only reason she moved with Mr. Bannon to AssuredPartners as follows:

8	Q	At some point, did Mr. Bannon tell you that he
9		was moving to AssuredPartners?
10	A	Yes.
11	Q	Tell the Jury what you recall about that.
12	A	Not every word, of course, but I just remember
13		him -- a conversation that he mentioned that he was in the
14		process of, you know, possibly thinking about moving to a
15		different company.
16	Q	Did he give you the option to -- to move with
17		him?
18	A	Yes, he, you know, he said we could stay where we
19		were or have the choice of moving over.
20	Q	Did he -- did he use any type of specific
21		information, confidential-looking information to solicit
22		you to move?
23	A	No.
24	Q	What was your decision on moving with Mr. Bannon
25		to AssuredPartners?

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1	A	Definitely decided to move, because, as I stated
2		before, up until then, our needs hadn't been met, and it
3		was Brian, in my opinion, that, basically, provided what I
4		needed, so if Brian was moving to a different company, I,
5		of course, was going to follow.

(Supp. R. 2263-2264).

Ms. Gant clearly confirmed that “if Brian was moving to a different company, I, of course, was going to follow him.” This is a normal response in this industry because it is a relationship driven industry. This testimony unequivocally confirms that the client’s decision to move did not have **anything** to do with Mr. Bannon

taking or retaining any of Appellant's (really the client's) information. Rather, it was based solely on his relationship with the client. But it was not Respondents' burden to prove this, it was Appellant's burden to prove that the clients moved because Mr. Bannon allegedly had access to their information.

Similarly, Ms. Holderness confirmed the reason she decided to move with Mr. Bannon to AssuredPartners:

14	Q	At some point did Mr. Bannon talk to you about him
15		moving over to AssuredPartners?
16	A	Yes.
17	Q	Tell the Jury what you recall about that.
18	A	That he was looking to move to AssuredPartners
19		and wanted to know if we would like to switch. And our
20		conversation was the same reason why I went with him the
21		first time, as long as they were able to provide our needs,
22		which they were. We -- so I -- I solicited my Legal
23		Counsel to make sure, just because I don't know, I always
24		go to legal, and they assured me that there was nothing
25		wrong with that, and so we stayed with Brian.

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Furthermore, these clients both confirmed that they approved and requested that Mr. Bannon continue to have access to all their insurance information and even provided him access to that information.

1	Q	Was there ever a time in -- in that -- those two
2		years that you didn't think Mr. Bannon was your agent?
3	A	No.
4	Q	Did you at all times during those two years
5		authorize Mr. Bannon to have access to Alpha Genesis' plan
6		information?
7	A	Yes.

(Supp. R. 2263).

20	Q	Do you have any knowledge about whether Mr.
21		Bannon was given consent to use login -- the District's
22		login and password to obtain the District's information?
23	A	I authorized HR to provide that to him.

(R. 623, lines. 20-23).

The only evidence at trial regarding the reason clients moved with Mr. Bannon to AssuredPartners was his relationship with the clients (something Mr. Bannon also confirmed), not related to any access to alleged confidential or trade secret information of Appellant. It is not disputed that even if Mr. Bannon signed the alleged contract at issue in this case, which he did not, any restriction related to him soliciting his clients had long expired when he decided to move to AssuredPartners. (See Section I.A.2 of the Respondents' Final Brief.) Thus, it is not disputed that Mr. Bannon had the right to solicit his clients to move with him to AssuredPartners.

Furthermore, Appellant's owner's testimony supports the fact that clients moved their business to Respondents based on their relationship with Mr. Bannon.

Mr. Stritt admitted that the clients were free to leave Appellant at any time and for any reason. (R. p. 607-608). Mr. Stritt admitted that Mr. Bannon had good relationships with his clients. (R. 608, lines 9-11.) Unbelievably, Mr. Stritt admitted that he had “**no idea**” why the clients left Appellant. (R. p. 608, lines 18-24). Specifically, Mr. Stritt testified as follows:

18	Q And isn't it true that you do not know why Mr.
19	Bannon's clients left with him to AssuredPartners?
20	A I was not present for any of those conversations,
21	so I have no idea what he told them. I can speculate. I

(R. p. 608, lines 18-21). This is exactly the critical point here – Appellant could not speculate about the reason the clients moved because it never asked them, and it never called any client to testify at trial about the reason. According to Mr. Stritt's own sworn testimony, “We haven't gone after them or **talked to them**” in referring to not asking clients why they left Appellant. (R. p. 610, lines 6-12) (emphasis added). Appellant provided absolutely no testimony at trial that in any way supports that **any** clients moved with Mr. Bannon for any reason other than the fact that they had a good relationship with him. Appellant provided absolutely no evidence that in any way connected any alleged retention or misappropriation of its information to the reason clients followed Mr. Bannon to AssuredPartners.

The complete lack of evidence on this issue was exposed by Appellant's meager attempt to create an inference of causation through Mr. Stritt's self-serving

testimony claiming that clients with Employee Navigator accounts were, **in his opinion**, more likely to not move to AssuredPartners. In addition to this testimony being completely speculative, Mr. Stritt's **opinions** are not supported by any actual evidence. Here, the testimony at trial confirmed that clients with and without Employee Navigator accounts moved to AssuredPartners, and that clients with and without Employee Navigator accounts stayed with Appellant. (R. pp. 569-571). As such, Mr. Stritt's "**opinion**" completely failed to prove any causal relationship between the clients' use of Employee Navigator and their decision to move their business to AssuredPartners. Regardless, as confirmed by the clients' quotes above and Mr. Bannon's undisputed testimony, the clients approved Mr. Bannon having this information and provided him their log in information for Employee Navigator, something they were free to do.

The record is devoid of any evidence or reasonable inferences of proximately caused damages related to Mr. Bannon's access to Appellant's alleged confidential or trade secret information. Rather, the undisputed evidence proved the opposite. Appellant only sought damages related to the clients moving to Respondents, so this is fatal to all of Appellant's claims. This Court's Opinion does not address these critical issues or address what evidence could possibly support a reasonable inference that the alleged information at issue caused the clients to move. Respondents respectfully request that the Court reconsider this specific element of

Appellant's claims, grant rehearing on this issue, specifically address and provide clarity on this issue, and affirm the trial court's ruling related to the complete lack of evidence of proximately caused damages.

3. The Trial Court Was Required To Rule On Whether A Fiduciary Relationship Existed Because This Is An Equitable Issue For The Court To Decide.

The Court's Opinion does not specifically address Respondent's arguments and the trial court's ruling related to Appellant's fiduciary duty claim. The Court should re-assess this issue because whether a fiduciary relationship exists is an equitable issue that must be made by the court. Cowburn v. Leventis, 366 S.C. 20, 619 S.E.2d 437, 451 (Ct. App. 2005). Thus, the trial court was specifically required to determine whether a fiduciary duty existed between the parties, and it correctly made this determination. The Court must rule whether there was sufficient evidence to warrant the trial court's ruling that no fiduciary relationship existed because of Mr. Bannon's undisputed independent contractor relationship, or rule that a fiduciary relationship did exist and provide the basis for such a finding.

It is not disputed that Mr. Bannon and Appellant never entered into any contract related to his independent contractor relationship. (R. p. 593, lines 21-25). There is no basis for finding a fiduciary relationship exists between a company and an independent contractor in this case. As the South Carolina Supreme Court has

instructed, there must be a firm foundation for reposing the level of trust of a fiduciary on the other party. Burwell v. S.C. Nat. Bank, 288 S.C. 34, 340 S.E.2d 786, 790 (1986). Appellant failed to present any evidence to establish a firm foundation for imposing a fiduciary duty. Because this Court has ruled that an employer-employee relationship is not sufficient to create a fiduciary duty, it logically follows that an independent contractor relationship is also not sufficient to create a fiduciary duty. See Coves Darden, LLC v. Ibanez, No. 2014-000339, 2016 WL 4379419, at *5 (S.C. Ct. App. Aug. 17, 2016).

Respondents respectfully request that the Court specifically address this equitable issue and rule on whether a fiduciary relationship existed, and, if so, identify the firm foundation upon which it was based. Accordingly, Respondents respectfully request a rehearing and a specific ruling on this issue.

4. There Are Important Issues Of Law That Should Be Determined Related To Appellant's Conversion Claim.

The Court did not specifically address Appellant's conversion claim. There are legal issues upon which the trial court relied that, if in error, should be clarified by this Court. The primary legal issue this Court should address is whether there can be a conversion of property related to retaining copies of electronic information. It is undisputed that Mr. Bannon never exercised exclusive control over the information at issue in this case. Any information he had was electronic and

Appellant has never alleged that Mr. Bannon deleted any of the information from Appellant's systems. Thus, Appellant admittedly at all times had access to the same information and was never excluded from accessing the information. This Court should address whether a claim for conversion can exist related to copies of electronic information where the alleged owner still has complete access to all the information in question. Under South Carolina law, conversion is defined as, "the unauthorized assumption in the exercise of the right of the ownership over goods or personal chattels belonging to another **to the exclusion of the owner's rights.**" Am. Credit Sumter, Inc. v. Nationwide Mut. Ins. Co., 663 S.E. 2d 492, 295 (S.C. 2008) (emphasis added). The Court should address how it is possible to maintain a conversion claim when it is not disputed that Appellant maintained full and unrestricted access to the electronic information at issue. Accordingly, Respondents respectfully request a rehearing and a specific ruling on this issue.

5. Appellant Waived Its Recusal Argument And The Facts Did Not Require Recusal.

While the Court did not rule on the recusal issue, it did state that it does not condone the trial judge's behavior. While it is understandable that judges may disagree on whether the trial judge's action was preferable, this is not an issue the Court needs to decide if it affirms the trial court on the legal issues discussed above. First and foremost, Appellant waived its right to move to recuse the trial judge by

waiting to see how the testimony proceeded the remainder of the morning and the entire afternoon of the second day of trial. Respondents request that the Court review the transcript of the testimony from the afternoon **after** Appellant was fully aware of all the circumstances that it claims supports its recusal motion. (See R. 292-462). The trial judge's interaction with Mack Ward occurred the morning of the second day of trial. The trial judge asked for the parties' consent to speak to Mr. Ward and all agreed. The trial judge noted the record on these events as follows:

1	the record's clear, Mr. Ward came to Court, I think it was
2	yesterday, I can't recall, and I -- again, I went to
3	Wofford with Mr. Ward. We just agreed we haven't seen each
4	other in 17 years. I came to y'all and I said, "Is it okay
5	if I say hello to Mr. Ward, he's a -- I understand he's a
6	witness in this case?" And y'all said, "Yes." I said,
7	"Hello," to Mr. Ward, "how've you been?" And we went back
8	and talked and discussed -- and I -- I'll put on the record
9	what we talked about. He said, "How are your kids?" I
10	said, "They're doing great." I said, "How are the twins?"
11	He said, "They're doing great." And I said, "How's your
12	wife, I haven't seen her in forever," she went to Wofford
13	with us, as well. He said, "Everyone's doing great." He
14	said, "The guys will be excited to hear about you becoming
15	a judge." To be honest with you, I don't think Mack had
16	any clue before I walked out yesterday that I was a circuit
17	court judge. We haven't spoken in 17 years. I don't do

(R. 469.) Then, after the morning break and for the entire afternoon, Appellant decided to call **four** witnesses to testify prior to raising any recusal issue: Amy

Michelle Coffield, Nolan Zielinski, Robert Labin, and Laurie Winston. (Id.) Respondents specifically direct the Court's attention to the cross-examination of Appellant's Director of Account Management, Laurie Winston, which was extremely damaging to Appellant's case that afternoon. (R. 407-441). Then, the evening after that day's testimony, and knowing how bad the testimony went for Appellant that afternoon, it decided to it would move to recuse the trial judge the next day. (See R. 466 for the start of Appellant's recusal motion). Parties do not get to see if the testimony goes their way after the event in question occurred and then, when it does not, revert to complaining about something that happened the morning of the prior day. Make no mistake, Appellant was fully aware of the Judge's interaction with Mr. Ward when it occurred that morning. Appellant did not learn of any additional facts after this interaction to support its recusal motion, because nothing else occurred (other than Appellant deciding to release Mr. Ward from the subpoena).

Second, the recusal standard is much higher than a judge getting permission from the parties to greet someone he knew in college and had not seen for over 17 years, and then having a private conversation about how their families have been over the past 17 years. This is no different than a trial judge running into witness outside the courthouse and having the exact same conversation. It does not show any bias or prejudice to simply ask about someone's family and comment on college

days long ago. Furthermore, this was a witness that was subpoenaed by Appellant but never called. This is an extremely important fact in this analysis. This witness was only in the courtroom because Appellant subpoenaed him, then Appellant consented to the judge speaking to him that morning, and then Appellant determined the witness was not relevant enough of a witness to call to testify. (See R. 403 to 404 where Appellant released the remaining witnesses from their subpoena.) This is simply not grounds for recusal or reversing a denied motion for recusal. This Court does not need to agree with the trial court's action and is free to not condone it, but it only needs to rule that Appellant's motion was waived and/or that the action and limited relationship with a witness who was never called to testify was not sufficient to "require" recusal.

6. Mr. Bannon's Request Related To The Attorney's Fees Issue.

Finally, Mr. Bannon would like to make a specific request to this Court regarding the attorneys' fees issue. Mr. Bannon would like start by noting that this case has had a tremendous negative impact on him and his family, just as any eight years of litigation would have on an individual party defendant. Mr. Bannon has been out of the insurance brokerage business for many years. He has never had the financial resources to fight a multi-million-dollar company like Forum Benefits. He is relying on the generosity of his former employer to assist him with this fight. Mr. Bannon was sued personally and for more than eight years he has been fighting with

Appellant about a contract he never signed, something the Statute of Frauds is specifically designed to prevent. He cannot afford to continue this fight financially or emotionally. If he is required to, he will respect the Court's decision and do so. However, he respectfully asks the Court for clarity on the issue of his potential to be awarded attorney's fees for this extensive and costly defense over the last eight plus years and ongoing.

The trial court ruled that Mr. Bannon was entitled to prevailing party attorney's fees under the alleged contract that Appellant has been improperly and aggressively pursuing against him. Appellant has admitted that it is pursuing its attorneys' fees under this alleged contract against Mr. Bannon. This must cut both ways. It is not reasonable or fair for a big corporation like Appellant to be able to pursue its extensive attorneys' fees under an alleged contract it cannot produce if it prevails at trial (something that would bankrupt Mr. Bannon), and then, also argue that Mr. Bannon cannot be awarded his attorneys' fees if he prevails again at trial. South Carolina law fully supports Mr. Bannon being able to recover his attorneys' fees if he is the prevailing party on the contract claim. See Fici v. Koon, 372 S.C. 341, 642 S.E.2d 602, 606 (2007) ("The Statute of Frauds does not affect the validity of the attorneys' fee provision but is simply a defense to conveyance. The Statute of Frauds is an affirmative defense. As with any affirmative defense, the party successfully asserting it is a prevailing party and therefore entitled to attorneys' fees

where provided by contract.”). Mr. Bannon respectfully requests that this Court give Appellant a warning and the second trial court some direction that if Mr. Bannon is successful the second time around regarding Appellant’s contract claim, that the second trial court will have the authority to award him attorneys’ fees and costs as the prevailing party.

CONCLUSION

Respondents primarily rely on the arguments above to support their Petition for Rehearing because these are the strongest issues warranting a rehearing and warranting affirming the trial court. However, Appellant also requests a rehearing on the other issues argued in their Final Brief and related to issues that have been previously argued that may become more relevant if the Court affirms the trial court on some or all these issues (such as the attorney’s fees issues). Respondents specifically incorporate their prior arguments in their Final Brief herein to preserve those issues for rehearing and for any further appellate review.

For the foregoing reasons, Respondents respectfully request that this Court grant Respondents’ Petition for Rehearing, substitute the Opinion with an opinion addressing these specific issues, and affirm the trial court’s directed verdict ruling.

Respectfully submitted this 9th day of January, 2025.

s/ Jeffrey A. Lehrer

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THE STATE OF SOUTH CAROLINA
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Forum Benefits, LLC, Appellant,

v.

Brian Bannon and Assured Partners, NL, Respondents.

PROOF OF SERVICE

I, Jeffrey A. Lehrer, of FordHarrison, LLP, counsel for Brian Bannon and Assured Partners, NL, hereby certify that the foregoing **RESPONDENTS' PETITION FOR REHEARING** by Brian Bannon and Assured Partners, NL has been served upon opposing counsel, pursuant to the Supreme Court's Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, (as amended May 6, 2022), by e-mailing a copy to counsel at their AIS e-mail address, as reflected below:

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Dated: January 9, 2025

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January 9, 2025

VIA E-FILE AND FIRST CLASS MAIL
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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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Jan 09 2025

SC Court of Appeals

**Re: Forum Benefits, LLC v. Brian Bannon and AssuredPartners, NL
Appellate Case No. 2022-000231**

Dear Ms. Kitchings:

Please find attached Respondents' Petition for Rehearing along with the Proof of Service. Also enclosed is Check No. 1239 in the amount of \$50.00 for the filing fee of this Petition.

The Trial Transcript pages 603 – 609 are missing from the Record on Appeal. Respondents cited these transcript pages in their Initial Brief (footnote 6) and Final Brief (footnote 5) and noted these pages were not included in the official Record on Appeal in their Final Brief (footnote 5). By citing these pages in their Initial Brief, Respondents clearly intended these pages to be included in the Record on Appeal. Respondents assumed this was a copying error (something Appellant has now disputed) or a unintentional oversight in the original designations. Respondents have submitted a letter to the Court notifying it of this issue and providing these pages as a supplement to the Record on Appeal. These pages are bates marked 2259 to 2265 and cited herein as "Supp. R." followed by the relevant page number(s). Respondents request that the Court consider these seven pages and include them in the Record on Appeal.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

Sincerely,

FORD & HARRISON LLP



JEFFREY A. LEHRER

JAL/aat
Enclosures

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