

EXHIBIT 1

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

Kim Enterprises, LLC,)

Civil Action No. 2021-CP-40-05596

Plaintiff,)

vs.)

Youmi Cho, K&C Beauty, LLC, and Sang Cho,)

Defendants.)

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SC Court of Appeals

Youmi Cho and K&C Beauty, LLC,)

Counterclaim Plaintiffs,)

vs.)

Kim Enterprises, LLC and Tok Kim,)

Counterclaim Defendants.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came before me for a Bench Trial starting Monday, October 21, 2024, and ending Thursday, October 24, 2024. The Bench Trial was held in Columbia, South Carolina at the Master In Equity Department at 2500 Decker Blvd., Columbia, S.C.

H. Freeman Belser, Esq. and Creston W. Brown, Esq. of Belser Law Firm, P.A represented Plaintiff Kim Enterprises, LLC ("Kim Enterprises") and Counterclaim Defendants Kim Enterprises and Tok Kim. David Paavola, Esq. and Ashley Thibault, Esq. of Kenison, Dudley & Crawford, LLC represented Defendants Youmi Cho, K&C Beauty, LLC ("K&C"), and Sang Cho and Counterclaim Plaintiffs Youmi Cho and K&C. Prior to trial, the Court provided the Parties a list of approved interpreters to utilize at trial, and the Parties selected Caroline Kyung Ha Kim, who interpreted the testimony of Tok Kim and Youmi Cho.

Kim Enterprises, in its case-in-chief, called (1) Tok Kim, (2) Sang Cho, (3) Youmi Cho, (4) Vincent Fletcher, and (5) Patricia Kim. Kim Enterprises, in its case-in-chief, also published Woon (Andy) Kim, Esq.'s Deposition transcript into the record. Defendants, in their case-in-chief, called (1) Mark Bokesch, CPA, CVA, CFE, (2) Roy Fenoff, PH.D, and (3) Jariel Capers.

After hearing the testimony of the witnesses, assessing the credibility of the witnesses, carefully reviewing the exhibits admitted at trial, and reading the parties' pre-trial briefs and post-trial proposed findings of fact and conclusions of law, the Court now makes the following findings of fact and conclusions of law in accordance with South Carolina Rule of Civil Procedure 52(a). To the extent any findings of fact constitute conclusions of law, or vice-versa, they shall so be regarded.

INTRODUCTION

This case concerns the sale and purchase of the assets of a hair and beauty supply store at 3315 Broad River Road, Suite 90, Columbia, S.C. 29210 (the "Broad River Store"). The sale of the assets of Broad River Store was between single-member limited liability companies owned by family members Tok Kim, and his niece, Youmi Cho. The primary issue in this case is whether the sales price was (a) \$800,000 pursuant to a partially performed verbal agreement evidenced by one \$250,000 check tendered up front as a down payment and thirty-six (36) pre-signed, undated checks of \$15,000, four of which were exchanged and cashed over a four month period without incident, or (b) \$250,000 according to a document titled Business Asset Purchase Agreement ("APA") that was created as part of Youmi Cho's E-2 Visa application.

PROCEDURAL HISTORY

Kim Enterprises filed a breach of contract action against Youmi Cho and K&C on November 11, 2021. Youmi Cho and K&C, on January 14, 2022, filed an Answer, Counterclaim, and Third-Party Complaint alleging breach of contract against Kim Enterprises (Count 1), conversion against Kim Enterprises and Tok Kim (Count 2), and breach of contract accompanied by a fraudulent act against Kim Enterprises (Count 3).

Kim Enterprises subsequently amended its Complaint, adding Sang Cho as a party and alleging breach of contract against Youmi Cho and K&C (Count 1), breach of contract accompanied by a fraudulent act against Youmi Cho and K&C (Count 2), fraud against

Youmi Cho and K&C (Count 3), conversion against Youmi Cho and K&C (Count 4), unjust enrichment against Youmi Cho and K&C (Count 5), breach of fiduciary duty against Sang Cho (Count 6), aiding and abetting breach of fiduciary duties against Youmi Cho and K&C (Count 7), civil conspiracy against Youmi Cho and Sang Cho (Count 8), and tortious interference with contractual relations against Sang Cho (Count 9). Defendants Youmi Cho, Sang Cho, and K&C filed an Answer and Counterclaims alleging breach of contract against Kim Enterprises (Count 1), conversion against Kim Enterprises and Tok Kim (Count 2), breach of contract accompanied by a fraudulent act against Kim Enterprises (Count 3), and money had and received against Kim Enterprises and Tok Kim (Count 4).

The Court, after Kim Enterprises' case in chief, dismissed Kim Enterprises' Third, Fourth, Eighth, and Ninth causes of action.

I. EVIDENCE AT TRIAL / FINDINGS OF FACT

A. Background

1. Tok Kim owns Kim Enterprises. Trial Tr. 113:17-18 (Tok Kim¹).
2. Kim Enterprises sells hair products. Trial Tr. 113:19-114:3 (Tok Kim).
3. Tok Kim has worked in the hair product business for thirty-five (35) years. Trial Tr. 114:12-14 (Tok Kim).
4. Patricia Kim, who is the wife of Tok Kim, Trial Tr. 485:20-22 (Patricia Kim), handles human resources and payroll for Kim Enterprises' beauty supply stores, Trial Tr. 488:22-24 (Patricia Kim).
5. Nonchemical hair products, such as weaves and wigs, do not have expiration dates. Trial Tr. 148:2-4 (Tok Kim); 250:1-12 (Sang Cho).
6. Tok Kim previously owned four hair and beauty supply stores in the Columbia, S.C. area. Trial Tr. 114:15-18 (Tok Kim).
7. In mid-late 2020, Tok Kim agreed to sell one of his four stores, the Broad River Store at issue in this case, to his niece, Youmi Cho. Trial Tr. 112:17-18 (Tok Kim).
8. Tok Kim owned and operated the Broad River Store for thirty (30) years prior to selling it to Youmi Cho. Trial Tr. 115:3-5 (Tok Kim).

¹ The Court, when citing to trial testimony in this Order, will note the name of the testifying individual next to each citation to the trial record.

9. When Tok Kim sold the Broad River Store to Youmi Cho, it had two employees, one being Defendant Sang Cho, and the other being Shayla Woodard. Trial Tr. 115:9-116:3 (Tok Kim).
10. Sang Cho is the brother of Youmi Cho and the nephew of Tok Kim. Trial Tr. 224:3-6 (Sang Cho).
11. Sang Cho started working at the Broad River Store on January 1, 2013. Trial Tr. 224:20-225:5 (Sang Cho).
12. Sang Cho managed the Broad River Store prior to its sale to Youmi Cho. Trial Tr. 116:7-14 (Tok Kim); 466:19-21 (Vincent Fletcher).
13. Sang Cho, as the manager of the Broad River Store, hired employees, trained employees, and managed inventory. Trial Tr. 466:22-467:1 (Vincent Fletcher).
14. Prior to Tok Kim's sale of the Broad River Store to Youmi Cho, Sang Cho had more knowledge of the operations of the store than anybody. Trial Tr. 336:22-337:3 (Sang Cho).

B. The Sales Price of the Broad River Store

15. Tok Kim contends the sales price of the Broad River Store was \$800,000. Trial Tr. 122:4-8 (Tok Kim).
16. The payment terms for the Broad River Store were as follows: \$250,000 up front via a check in December, Trial Tr. 127:7-10 (Tok Kim); Defendants' Ex. 3, followed by thirty-six (36) monthly installment payments evidenced by thirty-six (36) pre-signed, undated checks of \$15,000, with the first installment to occur mid-May 2021, Trial Tr. 131:22-24 (Tok Kim); Plaintiff's Ex. 1, and a final payment of \$10,000 after the conclusion of the thirty-six (36) monthly installment payments.

i. The Discussions in Tok Kim's Kitchen About the Sales Price

17. In the leadup to the sale of the Broad River Store, Tok Kim, Sang Cho, and Youmi Cho all met in Tok Kim's kitchen to discuss the sales price. Trial Tr. 122:15-18 (Tok Kim); 226:1-8 (Sang Cho); 352:2-4 (Youmi Cho).
18. Youmi Cho facilitated this meeting in Tok Kim's kitchen, and she invited Sang Cho to accompany her. Trial Tr. 226:9-14 (Sang Cho).
19. Tok Kim, in his kitchen with Youmi Cho and Sang Cho, stated the sales price for the Broad River Store was \$800,000. Trial Tr. 226:15-18 (Sang Cho).

20. Sang Cho, while in Tok Kim's kitchen with Youmi Cho, stated Tok Kim should sell the Broad River Store to Youmi Cho for \$500,000. Trial Tr. 124:17-125:24 (Tok Kim); 226:19-227:1 (Sang Cho); 354:8-11 (Youmi Cho).
21. Tok Kim stated he would not sell the Broad River Store for \$500,000. Trial Tr. 124:17-125:24 (Tok Kim); 227:16-20 (Sang Cho).
22. Tok Kim became very angry at the suggestion he should sell the Broad River Store for \$500,000. Trial Tr. 230:4-6 (Sang Cho); 354:17-22 (Youmi Cho).
23. Tok Kim yelled "Hell No" to the suggestion he sell the Broad River Store for \$500,000. Trial Tr. 227:16-23 (Sang Cho).
24. Tok Kim stated he would not sell the Broad River Store for less than \$800,000. Trial Tr. 126:12-15 (Tok Kim).

ii. Sang Cho's Text Messages Corroborating Tok Kim's Position

25. Sang Cho, after receiving a copy of the lawsuit, texted his cousin, Suzie Mancine, and stated the agreement to sell the Broad River store was verbal. Trial Tr. 233:10-15 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the agreement to sell the store was verbal.
26. Sang Cho texted that the agreement to sell the Broad River store involved a \$250,000 down payment. Trial Tr. 235:22-236:6 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the agreement to sell the store involved a down payment, and that the down payment was \$250,000.
27. Sang Cho texted that the \$250,000 down payment was paid in December. Trial Tr. 237:8-11 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the \$250,000 down payment was made in December.
28. Sang Cho texted that the agreement to sell the Broad River store involved \$15,000 checks. Trial Tr. 242:17-243:21 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the agreement to sell the store involved \$15,000 checks.

C. The Handoff of the Store After Youmi Cho Informed Tok Kim That She Received a Business License for K&C

29. Youmi Cho informed Tok Kim that she received the business license for K&C on March 7, 2021. Trial Tr. 132:6-11 (Tok Kim).

30. Tok Kim handed over operations of the Broad River Store to Youmi Cho on March 8, 2021, the day after Youmi Cho informed Tok Kim that she received the business license for K&C. Trial Tr. 147:23-148:1 (Tok Kim).
31. Before Youmi Cho informed Tok Kim that she received her business license on March 7, 2021, Patricia Kim trained Youmi Cho and Sang Cho on various human resource and payroll functions as pertains to the Broad River Store. Trial Tr. 488:25-489:22 (Patricia Kim).
32. Youmi Cho was unable to obtain a credit card terminal when she took over the Broad River Store on March 8, 2021, because she did not yet have a social security number. Trial Tr. 132:6-11 (Tok Kim).
33. Although Youmi Cho was unable to process credit cards at the Broad River Store, Tok Kim allowed Youmi Cho to utilize his credit card processing terminal. Trial Tr. 132:20-25 (Tok Kim); 380:3-12 (Youmi Cho); Plaintiff's Ex. 12.
34. Tok Kim, after the end of each month starting in April, gave Youmi Cho the cash equivalent of what she charged on his credit card terminal, less sales tax and reimbursement for inventory Tok Kim purchased for Youmi Cho. Trial Tr. 133:20-135:23 (Tok Kim); Plaintiff's Ex. 12.
35. Because Youmi Cho did not have a social security number when she received her business license, she was unable to purchase all necessary inventory. Trial Tr. 135:16-23 (Tok Kim). Tok Kim purchased inventory for Youmi Cho. Trial Tr. 134:25-135:23 (Tok Kim).

D. The Exchange of the First Four \$15,000 Installment Checks for \$60,000

36. Tok Kim exchanged the first of the thirty-six (36) pre-signed \$15,000 installment checks with Youmi Cho in mid-May 2021. Trial Tr. 379:15-17 (Youmi Cho).
37. Tok Kim exchanged two more pre-signed \$15,000 installment checks with Youmi Cho for cash and deposited the fourth pre-signed \$15,000 installment check into his bank account. Trial Tr. 380:13-20 (Youmi Cho).
38. Youmi Cho stopped payment on the fifth pre-signed \$15,000 installment check in mid-September 2021. Trial Tr. 142:21-143:11 (Tok Kim); 380:21-381:7 (Youmi Cho).

E. Andy Kim's Deposition: The Creation of the Asset Purchase Agreement

39. Kim, pursuant to Rule 32, SCRCP, published Andy Kim's Deposition transcript into evidence, subject to certain objections that were ruled upon by the Court. Andy Kim testified that:

- a. Andy Kim served as Youmi Cho's lawyer in preparing her E-2 Visa, which Youmi Cho received in connection with her purchase of the Broad River Store. Trial Tr. 52:15-53:18 (Andy Kim).
- b. Andy Kim drafted an APA as part of the E-2 Visa paperwork for Youmi Cho's E-2 Visa. Trial Tr. 63:13-65:10 (Andy Kim).
- c. Concerning the APA, Andy Kim communicated exclusively with Youmi Cho. Trial Tr. 63:13-65:10 (Andy Kim).
- d. The purpose of the APA was to show the United States Citizenship and Immigration Services (USCIS) that Youmi Cho, the Visa applicant, had an ownership interest in a valid United States business. Trial Tr. 68:12-69:3 (Andy Kim).
- e. Youmi Cho provided Andy Kim the \$250,000 amount that he inserted into the APA concerning the stated purchase price. Trial Tr. 65:25-66:8 (Andy Kim); 69:23-25 (Andy Kim).
- f. Andy Kim did not discuss the \$250,000 figure with Tok Kim. Trial Tr. 70:6-10 (Andy Kim); 103:12-104:8 (Andy Kim).
- g. Andy Kim created the APA from other APA templates he used on other E-2 Visa applications. Trial Tr. 73:1-18 (Andy Kim).
- h. Andy Kim also created a Bill of Sale, as the USCIS also requires that an applicant submit a Bill of Sale in addition to an APA. Trial Tr. 73:19-74:2 (Andy Kim).
- i. An E-2 Visa applicant must invest, at a minimum, fifty percent of the business' purchase price in the United States. Trial Tr. 74:14-75:6 (Andy Kim). For example, if an E-2 Visa applicant purchased a business for \$800,000, she would have to put down at least \$400,000. Trial Tr. 76:6-77:1 (Andy Kim). If an E-2 Visa applicant agreed to purchase a business for \$800,000, and she only

had \$250,000 in cash with which to make a down payment, she would be unable to obtain an E-2 Visa. Trial Tr. 77:3-22 (Andy Kim).

- j. If an E-2 Visa applicant agreed to purchase a business for \$800,000, and she only had \$250,000 in cash with which to make a down payment, the only way to obtain an E-2 Visa would be for the buyer to mislead her lawyer about the true terms of the deal. Trial Tr. 80:5-20 (Andy Kim).

40. Tok Kim testified he did not sign the APA. Trial Tr. 139:22-24 (Tok Kim).

F. Neither Youmi Cho or Tok Kim has Ever Read the Asset Purchase Agreement

41. Youmi Cho is unable to read English. Trial Tr. 385:6-11 (Youmi Cho). Mr. Kim does not speak English very well, Trial Tr. 141:10-13 (Tok Kim), and he does not read English, Trial Tr. 152:16-18 (Tok Kim).

42. Youmi Cho testified that she and Tok Kim used Google Translator to translate the APA prior to signing it. Trial Tr. 385:15-17 (Youmi Cho). This testimony by Youmi Cho was contrary to her deposition testimony where she attested the only portion of the APA she read before signing was (1) the name of her business and (2) the dollar amount. Trial Tr. 385:24-386:9 (Youmi Cho); 389:5-8 (Youmi Cho).

43. Youmi Cho, upon further questioning at trial concerning her inconsistent testimony about whether she read the APA before signing, changed her testimony again, testifying that she and Tok Kim used Google Translator to translate only part of the APA. Trial Tr. 458:13-22 (Youmi Cho). Youmi Cho was unable to discern what pages of the APA that Google Translator allegedly translated for her and Tok Kim. Trial Tr. 459:23-460:11 (Youmi Cho).

44. There is no evidence in the record that Tok Kim or Youmi Cho read the entire APA.

G. The Inventory and Training at the Broad River Store

45. Tok Kim, prior to selling the Broad River store, ensured the Broad River Store was fully stocked with inventory. Trial Tr. 147:23-148:1 (Tok Kim); 465:9-12 (Vincent Fletcher).

46. Tok Kim, prior to turning over the Broad River Store to Youmi Cho, transferred inventory from his other stores to the Broad River Store. Trial Tr. 256:7-16 (Sang Cho).

47. Tok Kim, prior to turning over the Broad River Store, trained Youmi Cho how to operate a store cash register. Trial Tr. 148:15-149:6 (Tok Kim).

48. Patricia Kim, prior to Tok Kim turning over the Broad River Store to Youmi Cho, trained Youmi Cho and Sang Cho how to complete business-related paperwork and forms necessary to run the Broad River Store. Trial Tr. 149:17-21 (Tok Kim); 488:25-490:1 (Patricia Kim).

H. Tok Kim's Digitally Imposed Signature Onto the APA

49. Tok Kim did not sign the APA. For the reasons set forth below, the only reasonable conclusion by the fact finder is that Youmi Cho had Tok Kim's signature digitally imposed onto the APA.

50. Although Tok Kim has been asking Youmi Cho for a copy of the original APA for three years, Youmi Cho not only failed to provide the original, but she is unable to explain any diligent efforts she undertook to locate it. Trial Tr. 390:5-22 (Youmi Cho); 430:13-434:5 (Youmi Cho). The Court is unpersuaded that the APA was physically signed by Tok Kim. An original signed APA would be the best evidence of its existence.

51. Youmi Cho's handwriting expert, Dr. Fenoff, testified that there is a difference between determining whether a signature on a document is most likely made by a person and whether that person actually signed the document in question. Trial Tr. 668:20-24 (Roy Fenoff).

52. Dr. Fenoff testified that he is unable to testify, one way or the other, whether Tok Kim physically signed the APA. Trial Tr. 668:25-669:4 (Roy Fenoff); 670:21-24 (Roy Fenoff).

53. According to Dr. Fenoff, readily available inexpensive and easy-to-use technology allows for easy cut and pasting of signatures onto a document. Trial Tr. 669:19-670:20 (Roy Fenoff).

54. Dr. Fenoff first communicated with Youmi Cho in March 2022, at which time he asked Youmi Cho for an original of the APA for his analysis. Trial Tr. 670:25-671:19 (Roy Fenoff).

55. Youmi Cho only gave Dr. Fenoff a photocopy of the APA. Trial Tr. 673:1 (Roy Fenoff).

II. CONCLUSIONS OF LAW

56. Kim Enterprises' agreement to sell, and Youmi Cho's agreement to purchase, the assets of the Broad River Store was verbal and partially performed (the "Verbal Agreement").
57. Under the terms of the Verbal Agreement, Kim Enterprises agreed to convey the assets of the Broad River Store to Youmi Cho's newly organized limited liability company, K&C, for \$800,000, payable as follows: \$250,000 up front, followed by thirty-six (36) monthly installments of \$15,000 beginning mid-May 2021, and concluding with a final payment of \$10,000.
58. Pursuant to the Verbal Agreement between Kim Enterprises and K&C, K&C gave Kim Enterprises a \$250,000 check as a down payment, followed by thirty-six (36) pre-signed, undated checks made payable to Tok Kim in the amount of \$15,000 each. Consistent with this Verbal Agreement, Tok Kim, each month, starting in May 2021, began exchanging the \$15,000 installment checks for cash with Youmi Cho.
59. The Court is unpersuaded by Youmi Cho's assertion the APA, which was created as part of her E-2 Visa application, is evidence of an agreement between the parties to sell the Broad River Store for \$250,000. Notwithstanding Tok Kim's testimony that he did not sign the APA, Trial Tr. 139:22-24 (Tok Kim), the basic and essential elements of a contract could not, as a matter of law, have been met, because Youmi Cho testified that she did not read the APA. Trial Tr. 385:6-386:9 (Youmi Cho); 389:5-8 (Youmi Cho); 458:13-22 (Youmi Cho); 459:23-460:11 (Youmi Cho). Thus, there can be no intent, or meeting of the minds, between the purported parties as to the various terms of the APA. *See generally Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893-94 (1989) (citation omitted) (noting that "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement" and "[t]he 'meeting of the minds' required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known."). Stated differently, two parties cannot enter into a

contract when either one, or both, have never read, and are unable to understand, the contract and its terms.

60. The Court is unpersuaded by other aspects of Youmi Cho's testimony and her attempts to explain away uncontroverted and unfavorable facts. For example:

- a. Youmi Cho's testimony that the meeting in Tok Kim's kitchen began with Tok Kim becoming extremely angry at the suggestion he sell the Broad River Store for \$500,000, then immediately agreeing to sell the store for half that amount, Trial Tr. 355:16-20 (Youmi Cho), is illogical.
- b. Youmi Cho's testimony as to the reason she gave Tok Kim thirty-six (36) pre-signed, undated checks of \$15,000 lacks any factual support in the record. Youmi Cho testified that when she answered the initial Complaint she alleged the thirty-six (36) checks were given under duress and an undefined threat to her immigration status. Trial Tr. 358:1-15 (Youmi Cho). But, at trial, Youmi Cho testified the thirty-six (36) pre-signed, undated checks of \$15,000 were for the purchase of two other beauty supply stores owned by Tok Kim. Trial Tr. 357:6-8 (Youmi Cho). And, although Youmi Cho contends the purported agreement to purchase two other beauty supply stores was verbal, unlike the Verbal Agreement concerning the Broad River Store, there was no partial performance, of any kind whatsoever, concerning two of Tok Kim's other hair and beauty supply stores.

61. Tok Kim is the only party that entered into evidence an *original* document evidencing the agreement to sell the Broad River Store (the thirty-two (32) pre-signed \$15,000 installment checks). Plaintiff's Ex. 1. These original documents, and the part performance thereafter, are the best evidence of the parties' intent, which was Tok Kim's intent to sell the Broad River Store for \$800,000, and Youmi Cho's intent to purchase the Broad River Store for \$800,000. See, e.g., *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 282, 486 S.E.2d 742, 746 (S.C. 1997) (citing 29A Am.Jur.2d *Evidence* § 1049 (1994)) (discussing how the Best Evidence Rule "provides that when the contents of a writing are sought to be provided, the original document must be produced ***unless some reason can be shown for its unavailability.***") (emphasis added).

62. Throughout the trial, Tok Kim's testimony as to the intent of the parties remained consistent. Tok Kim testified the sales price was \$800,000, and he never testified differently. Trial Tr. 122:4-8 (Tok Kim). Tok Kim's testimony concerning the payment terms of the \$800,000 price, which consisted of thirty-seven (37) signed checks (a \$250,000 down payment check and thirty-six (36) pre-signed \$15,000 installment checks), has never changed.
63. Tok Kim's testimony concerning the terms of the Verbal Agreement were corroborated by Sang Cho's text messages with his cousin, Suzie Mancine. Plaintiff's Ex. 2. Specifically, Sang Cho's text messages corroborated that the agreement to sell the Broad River Store was: (a) verbal, (b) consisted of a down payment, (c) the down payment was \$250,000, (d) the down payment was made in December, and (e) the balance involved \$15,000 checks. Plaintiff's Ex. 2.
64. The consistency between all parties (Tok Kim, Youmi Cho, and Sang Cho) concerning the discussion at Tok Kim's kitchen about Tok Kim's rebuke at the suggestion he sell the store for \$500,000 further supports Tok Kim's testimony about the \$800,000 sales price. Trial Tr. 122:15-18 (Tok Kim); 124:17-125:24 (Tok Kim); 126:12-15 (Tok Kim); 226:1-227:20 (Sang Cho); 353:24-354:22 (Youmi Cho). If Youmi Cho and Sang Cho are to be believed, the negotiation at Tok Kim's kitchen proceeded as follows: (1) Tok Kim stated the sales price was \$800,000, (2) Sang Cho suggested the sales price should be \$500,000, (3) Tok Kim became extremely angry and yelled "Hell No", and then (4) Tok Kim suddenly agreed to sell the store for \$250,000, which is half the \$500,000 number he emphatically rejected moments before. Accepting this version of events defies logic and credulity.
65. The testimony of Youmi Cho's handwriting expert, Dr. Fenoff, further supports Tok Kim's position as opposed to Youmi Cho's. Specifically, Dr. Fenoff not only testified that he cannot opine, one way or the other, whether Tok Kim signed the APA, Trial Tr. 668:19-669:4 (Roy Fenoff); 676:22-677:9 (Roy Fenoff), but the act of cutting and pasting a signature on a document is extremely easy to accomplish, Trial Tr. 669:19-670:20 (Roy Fenoff). In fact, Dr. Fenoff testified about a study recently conducted by the federal government where federal agents were able to create fake passports and driver's licenses with publicly available software and use those fake passports and

driver's licenses to successfully reenter the United States ninety-nine percent (99%) of the time. Trial Tr. 674:12-675:10 (Roy Fenoff).

66. The testimony of Youmi Cho's business valuation expert, Mr. Bokesch, also supports an \$800,000 valuation. As an initial matter, the Court is generally unpersuaded by Mr. Bokesch's testimony, which only serves to reverse engineer a business valuation that equals the dollar value Youmi Cho provided to Andy Kim as part of her E-2 Visa application.

Tok Kim and Youmi Cho did not engage a business valuation expert prior to the sale of the Broad River Store. Tok Kim, a willing seller, and Youmi Cho, a willing buyer, agreed upon an \$800,000 purchase price for the assets of the Broad River Store.

Notwithstanding Mr. Bokesch's reverse-engineered business evaluation procured by Youmi Cho only after litigation commenced, Mr. Bokesch based his testimony and business valuation calculations on rules of thumb in a business valuation guide called "Business Reference Guide" ("BRG"). Trial Tr. 616:24-617:8 (Mark Bokesch). Mr. Bokesch used the 2020 version, which did not have a standalone "percent of sales" rule of thumb. Trial Tr. 617:9-15 (Mark Bokesch). Mr. Bokesch testified that business valuation analysts strongly prefer using a revenue method to value a business. Trial Tr. 588:22-25 (Mark Bokesch). Business valuation analysts like the revenue method, according to Mr. Bokesch, because that method is safe. Trial Tr. 588:22-25 (Mark Bokesch).

The 2023 BRG, unlike the 2020 BRG utilized by Mr. Bokesch, does have a revenue valuation method. Specifically, the 2023 BRG has a sixty percent (60%) of revenue valuation rule of thumb. Trial Tr. 618:1-8 (Mark Bokesch). Mr. Bokesch testified that applying the sixty percent (60%) valuation rule of thumb from the 2023 BRG, multiplied by the Broad River Store's \$1,240,092 in annual sales, equals a business valuation of approximately \$744,000, which is close to the \$800,000 price agreed upon in the Verbal Agreement. Trial Tr. 621:21-622:14 (Mark Bokesch).

Much of Mr. Bokesch's business valuation calculations relied on the assumption that the Broad River Store kept only one month of inventory on hand. Trial Tr. 624:22-625:1 (Mark Bokesch). This assumption, at a minimum, directly refutes and undercuts Youmi Cho's testimony that Tok Kim purportedly stopped ordering inventory in mid-December. Specifically, if the Broad River Store only kept one month of inventory on hand

as assumed by Mr. Bokesch, then there would be no sales after the one-month period of December 16, 2020, through January 16, 2021. But, according to Youmi Cho and Mr. Bokesch, there were significant sales over the nearly two months of time spanning mid-January 2021 to early March 2021, something that could not happen if the Broad River Store really did carry one month of inventory on hand and Tok Kim did not restock the store. Moreover, Sang Cho, at trial, testified that the Broad River Store kept three months of inventory on hand, Trial Tr. 255:16-256:6 (Sang Cho), which by itself undercuts Mr. Bokesch's business valuation.

Mr. Bokesch's testimony about Youmi Cho's alleged damages is further undermined by its admitted lack of support or evidence. Youmi Cho, through Mr. Bokesch, opined that she is entitled to \$148,860.34 in alleged lost profits from December 16 through March 6, but admitted that figure does not include a cost of goods sold percentage for the inventory or labor costs. Trial Tr. 631:2:632:16 (Mark Bokesch). Mr. Bokesch testified he knew the costs of goods sold, based on Kim Enterprises' tax returns, was eighty percent (80%). Trial Tr. 631:12-15 (Mark Bokesch). Mr. Bokesch specifically testified his damages calculation is a "rough calculation". Trial Tr. 614:21-615:21 (Mark Bokesch). The Court does not place any weight on a "rough" lost profit calculation that omits a cost of goods sold number, especially when the cost of goods sold is eighty percent (80%).

67. The inconsistent months-on-hand inventory position advanced by Mr. Bokesch in the preceding paragraphs raises doubts as to the credibility of his business valuation and testimony. On the one hand, Mr. Bokesch valued the business assuming it keeps one-month of inventory in stock. On the other hand, Mr. Bokesch calculated that Youmi Cho lost profits by assuming she missed out on three months of inventory sales when his own client testified Tok Kim did not restock inventory during that timeframe. Both assumptions cannot coexist. If Tok Kim stopped purchasing inventory mid-December 2020, as alleged by Youmi Cho, and Kim Enterprises maintained only one month of inventory on hand, as assumed by Mr. Bokesch, sales could not have occurred after mid-January, as the alleged one month of inventory would have been sold. But, sales did occur during the timeframe of mid-January to March 07, 2021, disproving Youmi Cho's testimony and Mr. Bokesch's business valuation assumptions.

68. Similar post-sale testimony by Youmi Cho and Sang Cho about alleged inventory quality issues are irrelevant to whether Tok Kim, a willing seller, agreed to sell Youmi Cho, a willing buyer, the Broad River Store's assets for \$800,000. There is no dispute that Youmi Cho and Sang Cho knew the full extent of the quantity and quality of inventory in the Broad River Store prior to the store's purchase. Trial Tr. 252:19-254:3 (Sang Cho).

69. Youmi Cho and Sang Cho's testimony of numerous pictures showing that Youmi Cho ordered different quality products, and rearranged the store show room, have no bearing on the issue in this case: what price did Tok Kim offer, and Youmi Cho accept, for the assets of the Broad River Store? Youmi Cho's post-acquisition business decisions and merchandising strategy have no bearing on the answer to that question.

A. Damages

70. The Court concludes that Youmi Cho and K&C breached their contract with Kim Enterprises. Specifically, Youmi Cho and K&C agreed to pay Kim Enterprises \$800,000 for the assets of the Broad River Store, and they have only paid Kim Enterprises \$310,000 of the \$800,000 agreed upon purchase price. Thus, Youmi Cho and K&C owe Kim Enterprises \$490,000 for the balance due under the contract.

71. The Court concludes that Youmi Cho and K&C's breach of contract was accompanied by a fraudulent act. Specifically, Youmi Cho and K&C's concoction of and pushing of a false narrative to explain away their breach of the contract constitute fraudulent acts. Even if Youmi Cho's various mistruth's concerning the purchase price were made solely to support her E-2 Visa application, which allows her and her family to remain in this country, love for her family, and a desire they remain in the United States, does not condone or excuse a breach of contract accompanied by fraudulent acts. These fraudulent acts by Youmi Cho and K&C justify punitive damages in an amount of \$245,000, which is one half of the amount still owed of \$490,000. Thus, the Court concludes Kim Enterprises is entitled to \$735,000 (\$490,000 + \$245,000) in damages for this cause of action. Under an election of remedies, Kim Enterprises may select recovery under this cause of action in lieu of recovery for the other causes of action.

72. The Court concludes that awarding Kim Enterprises damages for the breach of contract cause of action precludes an award of damages for the equitable claim of

unjust enrichment. It is well-established under South Carolina law that where a valid express contract exists, no implied contract can co-exist. *Suber v. Pullin*, 1 S.C. 273 (S.C. 1870); *Swanson v. Stratos*, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002) (“If the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit.”). Accordingly, “[r]elief under a theory of *quantum meruit* is not available if a party bases its action on the existence of a contract.” *25 Calhoun CMB, LLC v. Concord Park/Charleston, LLC*, C/A No. 2:19-cv-2537-RMG, 2021 WL 1060099, at *3 (D.S.C. Mar. 19, 2021) (citation omitted).

73. The Court concludes that Sang Cho breached his fiduciary duties to Kim Enterprises. Tok Kim reposed a special confidence in his nephew, Sang Cho. Tok Kim gave Sang Cho extensive responsibilities at the Broad River Store, with the power to hire and fire employees, as well as manage inventory. Trial Tr. 466:22-467:1 (Vincent Fletcher). Sang Cho breached that fiduciary duty by engaging in conduct described within this Order that perpetuated Youmi Cho and K&C’s breach of the contract and fraudulent actions. Sang Cho, a longtime employee of Kim Enterprises, is unable to leave employment and turn on his former employer in such a manner. The Court awards Kim Enterprises \$735,000 for Sang Cho’s breach of his fiduciary duties, which is the amount awarded for Kim Enterprises’ breach of contract accompanied by a fraudulent act cause of action against Youmi Cho and K&C. Under an election of remedies, Kim Enterprises may select recovery under this cause of action in lieu of recovery for the other causes of action.
74. The Court concludes Youmi Cho and K&C aided and abetted Sang Cho’s breach of his fiduciary duties. Sang Cho and Youmi Cho worked in tandem in perpetuating the breach of contract and the multi-year effort to undermine that contract. The Court awards Kim Enterprises \$735,000 for Youmi Cho and K&C’s aiding and abetting of Sang Cho’s breach of his fiduciary duties. Under an election of remedies, Kim Enterprises may select recovery under this cause of action in lieu of recovery for the other causes of action.

75. The Court rejects Youmi Cho and K&C's breach of contract action that alleges Tok Kim and Kim Enterprises allegedly failed to (a) provide training to Youmi Cho, (b) provided unusable/unsaleable inventory, and (c) kept store profits through March 7, 2021. As set forth in this Order, the fact finder found that (a) Tok Kim and Patricia Kim not only trained Youmi Cho and Sang Cho prior to the Broad River Store being turned over to Youmi Cho, Trial Tr. 148:15-149:6 (Tok Kim); 149:17-21 (Tok Kim), but Sang Cho worked at the Broad River Store for nearly a decade prior to the acquisition and knew the ins and outs of that store better than anyone, Trial Tr. 336:22-337:3 (Sang Cho); (b) not only did Sang Cho know the status of the inventory in the Broad River Store at the time of purchase by Youmi Cho and K&C, but he informed Youmi Cho of its status prior to the sale, Trial Tr. 252:19-254:3 (Sang Cho), and there is no evidence in the record that Youmi Cho did not purchase the Broad River Store with open eyes as to the quantity and quality of all assets, including but not limited to product inventory; and (c) Tok Kim turned over the store to Youmi Cho as soon as she informed him that she obtained her business license. Before Tok Kim turned over the store to Youmi Cho, he paid all store expenses, including the cost of goods sold and salaries, and also retained the revenue. For all these reasons, Youmi Cho and K&C's breach of contract claim is rejected.
76. Because the Court concludes that Youmi Cho and K&C's breach of contract claim fails, Youmi Cho and K&C's breach of contract accompanied by a fraudulent act claim fails as a matter of law.
77. Because the Court concludes the four \$15,000 payments were part of the installment payments on the \$800,000 agreed upon purchase price, Youmi Cho and K&C's money had and received cause of action is rejected.
78. The Court rejects Youmi Cho and K&C's conversion claim for the same reason the breach of contract claim is rejected. Specifically, Youmi Cho and K&C's claim that Tok Kim converted store receipts through March 7, 2021, fails to account for (a) Youmi Cho not having a business license until March 7, 2021, and (b) Tok Kim paying all expenses and costs of goods sold along with receiving corresponding revenue during that timeframe.

III. ORDER

79. The Court finds for Kim Enterprises on each of the remaining causes of action: Breach of Contract against Youmi Cho and K&C, Breach of Contract Accompanied by a Fraudulent Act against Youmi Cho and K&C, Breach of Fiduciary Duty against Sang Cho, and Aiding and Abetting Breach of Fiduciary Duty against Youmi Cho and K&C.
80. The Court awards Kim Enterprises actual damages on each of the causes of action in the amount of \$490,000, which is difference between the purchase price of \$800,000 and the amount paid of \$310,000.
81. The Court awards Kim Enterprises pre-judgment interest at 8.75% on the actual damages for the period of September 15, 2021, the day Youmi Cho stopped payment on the fifth installment check, to the date of this Order. That amount is \$139,549.32.²
82. The Court awards Kim Enterprises punitive damages in the amount of \$245,000.
83. Defendants Youmi Cho, K&C, and Sang Cho are jointly and severally liability for the actual damages, pre-judgment interest, and punitive damages stated above. Plaintiff Kim Enterprises may only recover these damages once. For the avoidance of doubt, this means that the Judgment shall be legally satisfied when Plaintiff Kim Enterprises recovers a total of \$874,549.32 from any combination of the Youmi Cho, Sang Cho, and K&C Beauty.

IT IS SO ORDERED.

Joseph M. Strickland, Master
In Equity For Richland County

Columbia, S.C.

Date

² The Court arrives at this calculation using www.free-online-calculator-use.com/late-payment-interest-calculator.html, and inserting \$490,000 as the "Past due amount", 8.75% as the "Penalty annual interest rate", Sept. 15, 2021, as the "Payment Due Date", and Dec. 16, 2024, as the "Settlement Date".



Richland Common Pleas

Case Caption: Kim Enterprises Llc vs Youmi Cho , defendant, et al

Case Number: 2021CP4005596

Type: Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055