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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Joseph M. Strickland

Case No. 2021-CP-40-05596
Appellate Case No. 2025-000448

Kim Enterprises, LLC,

Respondent,

v.

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

Appellants,

AND

Youmi Cho and K&C Beauty, LLC,

Appellants,

v.

Kim Enterprises LLC and Tok Kim,

Respondents.

INITIAL BRIEF OF APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES ON APPEAL	1
INTRODUCTION AND STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	5
STANDARD OF REVIEW	16, 27, 29, 34, 36, 38
ARGUMENT.....	15
I. The Facts Do Not Reasonably Support the Conclusion that Tom Kim Did Not Sign the Asset Purchase Agreement, His Signature was Digitally Imposed, and the Parties Only Entered an Oral Agreement	15
II. Respondent’s Alleged Oral Contract Does Not Satisfy the Statute of Frauds	26
III. Neither the Facts Nor the Law Support a Finding that Sang Cho is a Fiduciary of Kim Enterprises.....	29
IV. The Final Order Does Not Support an Award of Damages	34
V. The Judgment Should be Reduced by the Profits Kim Enterprises Retained After Selling the Beauty Store to K&C Beauty.....	36
VI. A New Trial Should Be Granted Because the Final Order Impermissibly Relies on Parol Evidence	38
CONCLUSION.....	41

TABLE OF AUTHORITIES

Cases

Allegro, Inc. v. Scully, 418 S.C. 24, 791 S.E.2d 140 (2016)17

Armstrong v. Copeland, 194 So. 2d 801 (La. Ct. App. 1967)18

Banco Popular N. Am. v. Victory Taxi Mgmt., 806 N.E.2d 488 (N.Y. App. Div. 2004)...18

Big Red Box LLC v. Square Inc., Civil Action No.: 3:18-cv-00758-SAL-SVH,
2020 U.S. Dist. LEXIS 16008 (D.S.C. Jan. 22, 2020).....31

Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals, 423 S.C. 169, 813
S.E.2d 874 (Ct. App. 2018).....36

Burke v. AnMed Health, 393 S.C. 48, 710 S.E.2d 84 (Ct. App. 2011).....36

Callawassie Island Mbrs. Club, Inc. v. Dennis, 425 S.C. 193, 821
S.E.2d 667 (2018)40

Citizens Bank of Darlington v. McDonald, 202 S.C. 244, 24 S.E.2d 369 (S.C. 1943).....18

Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n,
426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019).....27

Collins Music Co. v. Cook, 281 S.C. 580, 316 S.E.2d 418 (Ct. App. 1984)27

Crawford v. Crawford, 321 S.C. 511, 469 S.E.2d 622 (Ct. App. 1996).....20

Duke v. Life Ins. Co., 184 S.C. 500, 193 S.E. 36 (1937)26

Duncan v. Ford Motor Co., 385 S.C. 119, 682 S.E.2d 877 (Ct. App. 2009).....34

Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991)34, 35

Gordon Farms, Inc. v. Carolina Cinema Corp., 363 S.E.2d 235, 294 S.C. 158,
(Ct. App. 1987)40

Hardaway Concrete Co. v. Hall Contr. Corp., 374 S.C. 216, 647 S.E.2d 488 (Ct. App. 2007)
.....16, 17

Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (1986).....17

Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987)32, 33

<i>Jackson v. Allstate Ins. Co.</i> , 441 F. Supp. 2d 728 (E.D. Pa. 2006).....	18
<i>Jenkins v. Jenkins</i> , 83 S.C. 537, 65 S.E. 736 (S.C. 1909).....	18
<i>Koontz v. Thomas</i> , 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999).....	40
<i>Laser Supply & Servs., Inc. v. Orchard Park Assocs.</i> , 382 S.C. 326, 676 S.E.2d 139 (Ct. App. 2009).....	40
<i>Legree v. Hammett Clinic, LLC</i> , No. 3:19-cv-0871-MGL-TER, 2019 U.S. Dist. LEXIS 229273 (D.S.C. Aug. 29, 2019).....	30, 31, 32
<i>Lollis v. Dutton</i> , 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017).....	27, 29
<i>May v. May</i> , 428 S.C. 131, 833 S.E.2d 78 (Ct. App. 2019)	26
<i>O'Neal v. Pearson</i> , 2007 S.C. App. Unpub. LEXIS 393, 2007 WL 8327921 (Ct. App. 2007)	18
<i>Osborn v. Univ. Med. Assocs. Of the Med. Univ. of S.C.</i> , 278 F. Supp. 2d 720 (D.S.C. 2003)	17
<i>Player v. Chandler</i> , 299 S.C. 101, 382 S.E.2d 891 (1989).....	28
<i>Prince v. Beaufort Mem. Hosp.</i> , 392 S.C. 599, 709 S.E.2d 122 (Ct. App. 2011)	38
<i>Skinner v. Elrod</i> , 308 S.C. 239, 417 S.E. 2d 599 (Ct. App. 1992).....	39
<i>Springob v. Univ. of S.C.</i> , 407 S.C. 490, 757 S.E.2d 384 (2014)	28, 29
<i>St. Dominic Ambulatory Surgery Ctr., LLC v. Shaffer</i> , 329 So. 3d 509 (Miss. Ct. App. 2021)	18
<i>Thomas v. Smith</i> , 682 S.W.3d 213 (Tenn. Ct. App. 2023)	18
<i>Vortex Sports & Entm't, Inc. v. Ware</i> , 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008)	29, 30, 34
<i>Wellin v. Farace</i> , 2022 U.S. Dist. LEXIS 228613, 2022 WL 17811722 (D.S.C. Dec. 17, 2022).....	26
<i>White v. Southern Ry. Co.</i> , 208 S.C. 319, 38 S.E.2d 111 (1946).....	26
<i>Wired Fox Techs. Inc. v. Estep</i> , Civil Action No.: 6:15-331-BHH, 2017 U.S. Dist. LEXIS 43993, 2017 WL 1135288 (Mar. 27, 2017).....	30

Youmans v. S.C. Dep't of Transp., 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008)17

Statutes & Ordinances

S.C. Code Ann. § 32-3-10(5)27

S.C. Code Ann. § 15-32-51035

S.C. Code Ann. § 15-32-520(D)35

S.C. Code Ann. § 15-32-520(E)35

STATEMENT OF ISSUES ON APPEAL

- I. Tok Kim knew that Youmi Cho's attorney was drafting a contract for the Beauty Store sale. Tok Kim admits to signing the Bill of Sale that references the Asset Purchase Agreement four times but claims his signature on the Asset Purchase Agreement is fake. A handwriting expert testified Tok Kim's signature is consistent with other known samples. Did the lower court err in concluding that Kim Enterprises met its burden of proof to establish a fraudulent signature based on Tok Kim's testimony alone?
- II. The lower court found that the Beauty Store was sold based on an oral contract requiring a down payment and three years of monthly payments. The only signed writing relied on by Kim Enterprises to evidence the terms of the agreement were checks that did not indicate the contract's subject matter, the parties, the item being sold, the price, or the payment terms. Did the lower court's enforcement of the oral contract violate the Statute of Frauds?
- III. Sang Cho was Kim Enterprises' Beauty Store manager. Sang Cho did not purchase the Beauty Store and only participated in a limited portion of one meeting between the buyer and seller. Kim Enterprises did not prove that Sang Cho competed with it, or misappropriated profits, property, or business opportunities. Based on these facts, did the lower court err in concluding that Sang Cho breached a fiduciary duty owed to Kim Enterprises?
- IV. Did the lower court err in awarding punitive damages when it did not first evaluate the required statutory and common law factors for awarding punitive damages?
- V. Where Kim Enterprises sold the Beauty Store to K&C Beauty on December 14, 2020, did the lower court err in not reducing the judgment by Beauty Store net profits kept by Kim Enterprises between December 15, 2020, and March 7, 2021?
- VI. Where K&C Beauty possessed a signed contract for the sale of the Beauty Store, did the lower court err in admitting and relying on parol evidence to contradict the terms of the signed contract where the court did not first make a finding that the signed contract was ambiguous or fraudulent?

INTRODUCTION AND STATEMENT OF THE CASE

In December 2020, K&C Beauty, LLC purchased a retail beauty supply store located at 3315 Broad River Road in Columbia, South Carolina (the “Beauty Store”) from Kim Enterprises, LLC. Youmi Cho is the controlling member of K&C Beauty and her uncle Tok Kim is the controlling member of Kim Enterprises. Youmi Cho originally came to the United States in 2019 on a temporary visa, and, after discussions with her uncle Tok Kim about buying one or more of his beauty stores, she decided to sell her apartment in Korea to raise funds to purchase the Beauty Store and apply to stay in the United States on a more permanent basis.

Youmi Cho hired attorney Andy Kim to assist her with the visa process and Attorney Kim provided Youmi Cho with an Asset Purchase Agreement and Bill of Sale for the parties to execute reflecting a \$250,000 purchase price. The executed contract along with proof of the \$250,000 purchase were provided to the government as part of Youmi Cho’s visa application.

In the spring of 2021, several months after the December purchase, Tok Kim approached Youmi Cho and pressured her into giving him an additional series of thirty-six signed but undated \$15,000 checks for what he told her was a good faith business gesture to purchase two of his other stores. Tok Kim cashed four of these checks for \$60,000 before Youmi Cho stopped payment in September 2021, concerned that there was no written agreement for the purchase of the other two stores. (Trial Tr. 381:1-24, 382:4-383:2, 441:1-23, 442:10-444:5 (Youmi Cho)). Tok Kim then filed suit, maintaining that these additional checks were part of the original purchase price of the Beauty Store of \$800,000 not \$250,000, and that his signature on the Asset Purchase Agreement was a fake. Youmi Cho has always

contended that the purchase price of the Beauty Store was \$250,000, as reflected in the parties’ written contract and the \$250,000 cashier’s check paid to Tok Kim in December 2020.

Pleadings

In its original complaint filed in November 2021, Kim Enterprises asserted a single cause of action against K&C Beauty for breach of contract over the disputed sale price of the Beauty Store. (Compl. ¶¶ 12-17). Youmi Cho and K&C Beauty asserted counterclaims, contending that Kim Enterprises and Tok Kim wrongfully withheld Beauty Store profits after the sale and that Kim Enterprises transferred unsaleable inventory that had to be thrown away. (Ans. & Counterclaim ¶¶ 50, 52).

Almost two years later, in September 2023, Kim Enterprises amended its complaint and asserted eight new causes of action, now for the first time dragging Youmi Cho’s brother Sang Cho into the lawsuit.

#	Kim Enterprises - Cause of Action	Defendant(s)
1	Breach of Contract	Youmi Cho and K&C Beauty
2	Breach of Contract Accompanied by Fraudulent Act	Youmi Cho and K&C Beauty
3	Fraud	Youmi Cho and K&C Beauty
4	Conversion	Youmi Cho and K&C Beauty
5	Unjust Enrichment	Youmi Cho and K&C Beauty
6	Breach of Fiduciary Duty	Sang Cho
7	Aiding and Abetting Breach of Fiduciary Duty	Youmi Cho and K&C Beauty
8	Civil Conspiracy	Youmi Cho and Sang Cho
9	Tortious interference with Contractual Relations	Sang Cho

K&C Beauty and Youmi Cho asserted the following counterclaims:

#	K&C Beauty - Causes of Action	Counterclaim Defendant(s)
1	Breach of Contract	Kim Enterprises
2	Conversion	Kim Enterprises and Tok Kim
3	Breach of Contract Accompanied by Fraudulent Act	Kim Enterprises and Tok Kim
4	Money Had and Received	Kim Enterprises and Tok Kim

Trial

A bench trial took place in Columbia over four days on October 21-24, 2024. At the conclusion of Respondent's presentation of evidence, Appellants moved for directed verdict on all of Respondent's causes of action and the trial court granted a partial directed verdict on Respondent's claims as follows:

#	Kim Enterprises - Cause of Action	Directed Verdict
1	Breach of Contract	Denied
2	Breach of Contract Accompanied by Fraudulent Act	Denied
3	Fraud	Granted
4	Conversion	Granted
5	Unjust Enrichment	Denied
6	Breach of Fiduciary Duty	Denied
7	Aiding and Abetting Breach of Fiduciary Duty	Denied
8	Civil Conspiracy	Granted
9	Tortious interference with Contractual Relations	Granted

(Trial Tr. 528:1-546:14). Appellants renewed their motion for directed verdict on the remaining causes of action at the close of evidence. (Trial Tr. 705:19-706:9).

On February 6, 2025, the trial court entered an Order in favor of Respondent on all remaining causes action and denied relief on all of Appellants' causes of action, concluding that Tok Kim's signature on the \$250,000 Asset Purchase Agreement was a digitally imposed. (Order ¶¶ 49, 79). The Order issued judgment against Appellants in favor of Respondent in the amount of \$874,549.32, which included a punitive damages award of \$245,000. (Order ¶¶ 82-83).

On February 17, 2025, Appellants filed numerous post-trial motions. A hearing on Appellants' post-trial motions was held on February 25, 2025. At this hearing, during Appellants' argument recounting testimony from Youmi Cho that she witnessed Tok Kim sign the Asset Purchase Agreement, the trial court stopped counsel for Appellants and indicated

that its judgment in favor of Kim Enterprises was based on its understanding of testimony from Youmi Cho that she did not see Tok Kim sign the agreement. (Post-Trial Hearing Tr. 6:24-10:22). Appellants then read Youmi Cho's testimony on this point into the record and provided a supplemental brief to the trial court with additional transcript citations showing that Youmi Cho testified she did see Tok Kim sign the Asset Purchase Agreement. (Suppl. Mem. Supp. (February 25, 2025)). The court did not modify its original order or amend judgment and Appellants' post-trial motions were all denied on March 4, 2025. (Post-Trial Motion Order ¶ 3). Appellants filed their Notice of Appeal on March 6, 2025. (Notice of Appeal).

STATEMENT OF THE FACTS

Youmi Cho and Sang Cho are siblings, and both were born in the Republic of Korea but lived in different countries for years. (Trial Tr. 402:24-25 (Youmi Cho); 268:6-7, 269:22-270:2 (Sang Cho)). Sang Cho came to the United States in the 2000's when he was sixteen years old to live with his aunt and uncle and attend high school. (Trial Tr. 268:8-269:1 (Sang Cho)). Before coming to the United States, Sang Cho did not speak English, and he still occasionally has trouble fully understanding English. (Trial Tr. 268:22-269:19 (Sang Cho)). During high school and after graduation, Sang Cho worked in his family jewelry store and then began working for Tok Kim and Kim Enterprises at their beauty stores. (Trial Tr. 270:16-271:12 (Sang Cho)). Sang Cho continued working for Kim Enterprises as manager of the Beauty Store until it was sold to K&C Beauty in 2020 and he has continued to work at this same location for K&C Beauty. (Trial Tr. 281:7-13).

Youmi Cho's Initial Visit to the United States

In July 2019, Youmi Cho and her children came to the United States on a temporary student visa. (Trial Tr. 348:8-14; 402:24-403:18 (Youmi Cho)). Youmi Cho had earned a year sabbatical from her employer for fifteen years of service and also had an unused year of childcare benefits.

(Trial Tr. 405:13-20). Her plan was to stay in the United States for two years so that her children could learn English and be exposed to American schools and culture. (Trial Tr. 406:2-18 (Youmi Cho)).

When Youmi Cho first arrived in the United States, she stayed with her uncle Tok Kim and his wife Patricia Kim for a few weeks before finding her own place. (Trial Tr. 406:19-22 (Youmi Cho)). During the first few months of being in the United States, Tok Kim asked Youmi Cho to work for him in one of his beauty stores or alternatively to buy one of his beauty stores and permanently relocate to Columbia. (Trial Tr. 407:3-23). Tok Kim brought up the idea of selling Youmi Cho a beauty store on several occasions because he wanted to sell his stores to a Korean family member. (Trial Tr. 159:13-19 (Tok Kim), 407:12-25, 409:16-25 (Youmi Cho)). On many other occasions, Tok Kim brought up the idea of Youmi Cho buying more than one of his stores. (Trial Tr. 410:4-7 (Youmi Cho)).

Because Covid started shortly after their arrival in the United States, Youmi Cho's children were unable to fully experience formal American education as she had hoped. (Trial Tr. 408:8-17). After discussions with her husband, Youmi Cho decided to explore opportunities to stay more permanently in the United States. (Trial Tr. 408:8-17 (Youmi Cho)). This included exploring Tok Kim's offer that she purchase one of his beauty stores. (Trial Tr. 408:24-409:3 (Youmi Cho)).

Sale of Korean Apartment to Invest in Beauty Store

As part of their discussions about selling a beauty store, Tok Kim knew that Youmi Cho owned an apartment in Korea and he asked about its value and the possibility of selling the apartment to purchase his beauty store. (Trial Tr. 409:5-18 (Youmi Cho)). Tok Kim seemed generally familiar with the apartment's value and Youmi Cho also gave him her estimate of its value. (Trial Tr. 409:8-15 (Youmi Cho)). Tok Kim suggested that Youmi Cho sell her apartment

in Korea to buy one of his beauty stores. (Trial Tr. 409:16-18 (Youmi Cho)). After considering Tok Kim's suggestion, Youmi Cho decided to sell her apartment believing, based on their discussions of price, that it would raise enough money for her to purchase the Beauty Store (Trial Tr. 410:17-25 (Youmi Cho)). To this end, Youmi Cho and her children made an unplanned return trip to Korea in the summer of 2020 to sell her apartment. (Trial Tr. 410:8-411:17 (Youmi Cho)). Tok Kim knew that Youmi Cho returned to Korea to sell her apartment to buy the Beauty Store. (Trial Tr. 161:1-6 (Tok Kim)).

In July 2020, Youmi Cho entered into a contract to sell her apartment, which ultimately netted her roughly \$220,000 after paying expenses and debt. (Trial Tr. 412:4-414:4 (Youmi Cho) and Trial Exhibit 7). The sale finalized in October 2020, after which time Youmi Cho transferred the sale proceeds into the United States to purchase the Beauty Store. (Trial Tr. 414:12-22).

Youmi Cho Returns to the United States & Prepares to Purchase the Beauty Store

While waiting for the apartment sale to finalize, Youmi Cho and her children returned to the United States in August 2020 for the start of the school year. (Trial Tr. 414:23-415:1 (Youmi Cho)). At this point, Youmi Cho's plan was to use the funds from her apartment sale to buy Tok Kim's Beauty Store once the money became available. (Trial Tr. 415:6-9 (Youmi Cho)). Now back in the United States, Youmi Cho began the process of working with her prior immigration attorney on the E-2 (investor) visa process. (Trial Tr. 415:10-17 (Youmi Cho)). However, Tok Kim refused to work with Youmi Cho's immigration attorney because she is a female, believing she would bring bad luck, and he refused to provide the attorney with accurate information on the business so that she could complete her work. (Trial Tr. 415:18-416:4 (Youmi Cho)). To satisfy her uncle, Youmi Cho switched attorneys to the attorney recommended by Tok Kim, a Mr. Andy Kim. (Trial Tr. 416:5-14 (Youmi Cho)). Attorney Kim testified that he believed Tok Kim first

contacted him about working with Youmi Cho and later Youmi Cho hired him. (Trial Tr. 52:22-53:18 (Andy Kim)). Attorney Kim spoke with Tok Kim several times during his representation of Youmi Cho to ask specific questions about the business Youmi Cho was purchasing. (Trial Tr. 54:16-55:22 (Andy Kim)). In working with Attorney Kim, Youmi Cho learned that she needed a written contract for the purchase of the Beauty Store, and Tok Kim knew about this requirement and agreed to let Attorney Kim provide the contract. (Trial Tr. 421:12-422:6 (Youmi Cho) and 166:10-13 (Tok Kim)).

Prior to finalizing the purchase, Youmi Cho, Sang Cho, and Tok Kim met at Tok Kim's home to discuss the sale, generally referred to by the parties as the "kitchen table conversation." (Trial Tr. 122:4-14 (Tok Kim)). Tok Kim and Youmi Cho both testified that at the beginning of this meeting Tok Kim now told Youmi Cho that the price for the Beauty Store was \$800,000. Sang Cho spoke up, believing this price was too high, and said maybe \$500,000 was doable, to which Tok Kim got upset and Sang Cho then left the conversation and did not return. (Trial Tr. 124:17-22, 125:21-24 (Tok Kim); Trial Tr. 226:1-227:1, 281:18-283:4 (Sang Cho); Trial Tr. 353:6-355:20, 418:18-23 (Youmi Cho)). The parties differ in their recollection of the final price discussed at this meeting. Tok Kim contends that the price remained at \$800,000 and required a \$250,000 down payment and three years of monthly payments. (Trial Tr. 128:18-129:3 (Tok Kim)). Youmi Cho contends that after Sang Cho left the meeting, Tok Kim said he was joking about the \$800,000 purchase price as he had been drinking, and he again agreed to sell her the store for \$250,000, approximately the price of her apartment that he had originally agreed to. (Trial Tr. 353:18-355:20, 418:7-419:13 (Youmi Cho)). Youmi Cho testified that nothing changed about the purchase price of the Beauty Store when she left her uncle's home that evening. (Trial Tr. 421:2-11 (Youmi Cho)).

Sang Cho's Role in the Beauty Store Sale

The kitchen table conversation was the only discussion about the purchase of the Beauty Store that Sang Cho was ever involved in. (Trial Tr. 419:21-420:4 (Youmi Cho)). He was not part of Youmi Cho's decision to purchase the Beauty Store, and he had no role in the purchase other than ministerial because of the English language barrier, for example helping Youmi get the \$250,000 bank check. (Trial Tr. 281:14-24, 283:5-22 (Sang Cho)). Sang Cho was Kim Enterprises' manager of the Beauty Store, but he never owned an interest in Beauty Store, he was not compensated based on sales and profitability, and he was not responsible for paying store expenses. (Trial Tr. 193:22-194:13 (Tok Kim)). Tok Kim did not consult with Sang Cho on the sale of the Beauty Store.

Beauty Store Sale Finalized

On December 9, 2020, Attorney Kim emailed the unsigned Asset Purchase Agreement and Bill of Sale to Youmi Cho for execution. (Trial Tr. 422:7-423:4 (Youmi Cho), Defense Ex. 9). In an email, Attorney Kim asked Youmi Cho to have Tok Kim sign both documents and return them with a copy of the cleared \$250,000 purchase check. (Defense Ex. 9 at 3-4 (Bates No. Defendant 000266-267)). Tok Kim was aware that Attorney Kim was drafting a contract for the purchase. (Trial Tr. 166:1-16 (Tok Kim)). The unsigned Asset Purchase Agreement reflected the \$250,000 purchase price agreed to by Tok Kim and Youmi Cho. (Trial Tr. 422:3-6 (Youmi Cho), Defense Ex. 9 at 6).

The Beauty Store sale was finalized on December 14, 2020, when Youmi Cho gave Tok Kim a check for \$250,000 and both parties signed the Asset Purchase Agreement and Bill of Sale in front of each other. (Trial Tr. 424:18-426:22 (Youmi Cho), Defense Exhibits 1-3). Tok Kim cashed the \$250,000 purchase check on December 14, 2020. (Trial Tr. 427:1-428:15 (Youmi

Cho), Defense Exhibits 3, 8). Youmi Cho then provided the signed Asset Purchase Agreement, Bill of Sale, and copy of the check to Attorney Kim to process her visa application and Attorney Kim testified that he received the signed copies back on December 14, 2020, and there were no changes made to the documents other than the signatures of both parties. (Trial Tr. 61:1-24, 63:4-12, 82:3-83:12 (Andy Kim)).

In conjunction with Kim Enterprises' sale of the Beauty Store, Tok Kim also executed an assignment of lease, landlord's consent to lease assignment, and transfer of service with Spectrum, all reflecting the similar signature of Tok Kim as on the Asset Purchase Agreement. (Trial Tr. 205:24-206:16, 207:1-208:7 (Tok Kim), Trial Tr. 435:10-20 (Youmi Cho), Defense Exhibits 4, 5, 6). Tok Kim testified that he signed the landlord's consent to assignment without reading it. (Trial Tr. 207:11-208:8 (Tok Kim)).

Youmi Cho does not have the original signed Asset Purchase Agreement or Bill of Sale in her possession. When asked about the whereabouts of the original signed Asset Purchase Agreement, Youmi Cho testified that she believes she provided it to the landlord at its request for the original as part of the lease transfer and that she only kept a copy. (Trial Tr. 450:18-451:3 (Youmi Cho)). Sang Cho likewise testified that he believes he provided the original signed Asset Purchase Agreement and Bill of sale to the landlord on Youmi Cho's behalf. (Trial Tr. 287:8-292:1 (Sang Cho)).

Second Agreement - Thirty-Six Checks

After the December 2020 Beauty Store sale, around March of 2021 Tok Kim approached Youmi Cho, (Trial Tr. 131:10-14), again with the idea of purchasing two of his remaining three beauty stores, (Trial Tr. 436:8-439:23 (Youmi Cho)). To this end, Tok Kim pestered Youmi Cho about when she would be receiving her new checkbook and once he found out she had it, he asked

her to come to his house to write checks for the other two stores. (Trial Tr. 437:8-25 (Youmi Cho)). Youmi Cho went to Tok Kim's house, and at first during their discussions she did not want to purchase Tok Kim's other two stores. It was only after Tok Kim told her that he had no one in the United States he could trust, even his wife and children, and after he put extreme pressure on her that she relented and signed over thirty-six undated \$15,000 checks payable to Tok Kim. (Trial Tr. 357:20-25, 377:2-10, 438:1-440:11 (Youmi Cho)). When he was given the checks, Tok Kim laughed. (Trial Tr. 440:12-15 (Youmi Cho)). Youmi Cho only surmised after the fact that Tok Kim laughed because she had done what he wanted. (Trial Tr. 440:17-25 (Youmi Cho)). After this point, Tok Kim refused to put this second agreement in writing, and he became much harsher in his interactions with her and eventually he told her that he would not sell his two other stores to her but just add these checks onto the purchase price of the Beauty Store. (Trial Tr. 441:1-443:3 (Youmi Cho)).

Before Tok Kim changed his position on the other two stores, Tok Kim exchanged three checks for cash and cashed a fourth check. (Trial Tr. 137:21-138:13 (Tok Kim)). All totaled, Tok Kim received \$60,000 from four checks written by Youmi Cho. (Trial Tr. 157:11-158:1 (Tok Kim)). Neither Tok Kim nor Kim Enterprises gave anything of value to Youmi Cho or K&C Beauty in exchange for these checks. (Trial Tr. 452:21-24 (Youmi Cho)). After realizing that she was being taken advantage of and that Tok Kim was not keeping his word to pay rent as he had promised and that he would not transfer the other two stores, Youmi Cho stopped payment on the remaining checks around September 2021. (Trial Tr. 381:1-24, 382:4-383:2, 442:10-444:5 (Youmi Cho)).

Sang Cho had no role in the exchange of these thirty-six checks and only became aware of the checks from assisting Youmi Cho to stop payment due to her inability to communicate in English. (Trial Tr. 283:23-286:4 (Sang Cho)).

Operation of the Beauty Store After the Sale

The Asset Purchase Agreement indicates that all revenues after execution of the agreement belong to K&C Beauty. (Defense Exhibit 1 ¶ 11). However, it wasn't until March 8, 2021, that Youmi Cho began receiving net store revenues after expenses were taken out by Tok Kim. (Trial Tr. 444:7-23 (Youi Cho)). During these first months, Tok Kim and Kim Enterprises retained all operational control over the Beauty Store and kept all store revenues and did not restock inventory. (Trial Tr. 197:18-199:17 (Tok Kim)). Sang Cho testified that he was told by Tok Kim not to restock the shelves after Youmi Cho purchased the Beauty Store in December 2020. (Trial Tr. 295:17-296:1 (Sang Cho)). When Youmi took over Beauty Store operations in March of 2021, she found a substantial amount of expired inventory and the shelves of the Beauty Store were so sparse that customers asked if the store was closing. (Trial Tr. 247:5-10, 295:17-21 (Sang Cho), 447:20-448:10 (Youmi Cho), Defense Exhibit 28). Youmi Cho also discovered that nearly two-thirds of the inventory was unsaleable and needed to be thrown away. (Trial Tr. 447:20-24 and 448:12-21 (Youmi Cho)). In June 2021, Youmi Cho obtained full operational control of the Beauty Store when her credit card processing account was finally established. (Trial Tr. 445:17-21 (Youmi Cho)).

Tok Kim testified that Kim Enterprises kept all net revenues from the Beauty Store from December 15, 2020 to March 7, 2021, (Trial Tr. 209:5-25), not because this was part of the parties' agreement, but simply because Tok Kim decided "Youmi Cho did not acquire the complete ownership," at this time. (Trial Tr. 209:5-25 (Tok Kim)). Tok Kim did not begin turning over net

revenues until he after he had pressured Youmi Cho to turn over the thirty-six pre-signed checks. (Trial Tr. 208:19-209:3 (Tok Kim)). Tok Kim agreed that net revenues (sales less expenses identified as paid by Kim Enterprises) kept by Kim Enterprises during this period was over \$140,000. (Trial Tr. 210:17-211:6 (Tok Kim)). Mark Bokesch, a valuation expert and CPA, calculated the total net revenues withheld from K&C Beauty at \$148,860 before pre-judgment interest. (Trial Tr. 596:18-599:5 (Bokesch)). K&C Beauty sought return of these funds, but the court refused to award K&C Beauty any recovery. (Order ¶¶ 76-78).

Beauty Store Valuation

Mr. Bokesch, CPA, Certified Valuation Analyst, was qualified by the court as a business valuation expert and expert in tax preparation and reporting and calculating economic damages. (Trial Tr. 556:2-559:11 (Bokesch)). Mr. Bokesch prepared a historical valuation of the Beauty Store to objectively review the reasonableness of a \$250,000 purchase price. To prepare his analysis, Mr. Bokesch analyzed income, expenses, and net profits generated by Kim Enterprises and reported to the federal government on its federal tax returns between 2017 and 2020. (Trial Tr. 573:20-575:23, Demonstrative 4 (Mark Bokesch)). In his review of Kim Enterprises' federal tax returns, Mr. Bokesch calculated that Kim Enterprises' net income from the Beauty Store reported to the federal government was roughly \$18,463 in 2019 and \$24,013 in 2020.¹ (Trial Tr. 575:9-15 (Mark Bokesch – Demonstrative 4)). Mr. Bokesch testified that to a reasonable degree of certainty for a certified valuation expert the Beauty Store was valued between \$207,968 and \$250,528 at the time of the sale of the Beauty Store. (Trial Tr. 592:8-14 (Bokesch)).

Dispute over the Beauty Store Sale Price

¹ Kim Enterprises combined revenue and expenses for all four stores in 2019 and 2020, and was unable to break out revenue and expenses on a store-by-store basis, such that Mr. Bokesch had to estimate the Beauty Store's single store profitability.

Almost a year after the parties signed the Asset Purchase Agreement, Tok Kim sued Youmi Cho alleging that the purchase price was \$800,000 not \$250,000. (Compl. ¶ 12 (Nov. 11, 2021)).

At trial, Tok Kim admitted that he signed the Bill of Sale and that the Bill of Sale referenced the Asset Purchase Agreement four times, but nonetheless, he maintained that he did not sign the Asset Purchase Agreement and that his signature on that document was a fake. (Trial Tr. 187:18-190:12 (Tok Kim)). Tok Kim was not a stranger to signing legal documents, and he admitted that he had hired legal counsel for many past legal transactions and signed numerous legal documents. (Trial Tr. 152:8-21, Defense Exhibit K1-26, Court's Exhibit 1 (listing admitted signed documents by Tok Kim)).

Youmi Cho testified that she did not place Tok Kim's signature on the Asset Purchase Agreement but watched him sign it. (Trial Tr. 401:4-6). Tok Kim, Tok Kim's wife Patricia Kim, long-time employee Vincent Fletcher, and Sang Cho, are all familiar with Tok Kim's signature and testified that the signature on the Asset Purchase Agreement looks like Tok Kim's signature. (Trial Tr. 187:18-188:4 (Tok Kim); 330:6-331:23 (Sang Cho); 477:7-478:4 (Vincent Fletcher); 523:4-527:1 (Patricia Kim)).

Youmi Cho called handwriting expert Roy Fenoff, Ph.D. The trial court qualified Dr. Fenoff as a handwriting expert. (Trial Tr. 649:22-650:2 (Dr. Fenoff)). Dr. Fenoff testified that it would be extremely difficult to simulate Tok Kim's signature because it would require simulating Tok Kim's rapid speed, accuracy, spacing, line quality, and placement on the line. (Trial Tr. 663:6-16 (Dr. Fenoff)). Dr. Fenoff opined that based upon his review of the two dozen known samples of Tok Kim's signature, that the same person who signed the twenty-four known sample documents also signed the Asset Purchase Agreement and Bill of Sale. (Trial Tr. 667:13-668:3 (Dr. Fenoff)). Tok Kim admitted he signed the Bill of Sale and the twenty-four of the known samples that Dr.

Fenoff reviewed. (Court Exhibit 1). The questioned signature on the Asset Purchase Agreement is Q1 and the admitted signature on the Bill of Sale is Q2 as shown below.

Q1


Kim Enterprises LLC, Seller

Q2


Kim Enterprises LLC, Seller

The trial court disregarded the testimony of Dr. Fenoff, Youmi Cho, and the numerous witnesses that testified the signature on the Asset Purchase Agreement looked like Tok Kim's signature and instead ruled that Tok Kim did not sign the Asset Purchase Agreement and his signature was digitally imposed and entered judgment on Kim Enterprises' claims and denied all of K&C Beauty's claims. (Order ¶ 49). This appeal followed.

ARGUMENT

I. The Facts Do Not Reasonably Support the Conclusion that Tok Kim Did Not Sign the Asset Purchase Agreement, His Signature Was Digitally Imposed, and the Parties Only Entered an Oral Agreement.

The lower court erred in concluding that Tok Kim did not sign the \$250,000 Asset Purchase Agreement and that Tok Kim's signature on the document was digitally imposed, and that instead the parties only had an oral agreement to sell the Beauty Store for \$800,000. The facts show that Youmi Cho, at Tok Kim's suggestion, sold her Korean apartment for just under \$250,000 and used these proceeds to fund the \$250,000 bank check given to Tok Kim in December 2020. (Trial Tr. 408:16-18, 414:12-22, 424:18-428:5 (Youmi Cho)). The facts also show that Tok Kim recommended Attorney Andy Kim to Youmi Cho, Tok Kim spoke with Attorney Kim, and Tok Kim was fully aware that Attorney Kim was drafting a contract for the Beauty Store purchase. (Trial Tr. 416:5-14 (Youmi Cho), 52:22-53:18 and 54:16-55:22 (Andy Kim), 166:10-13 (Tok Kim)). Attorney Kim provided the blank Asset Purchase Agreement and Bill of Sale to Youmi

Cho on December 9, 2020, and received signed copies back by email on December 14, 2020, the same day Tok Kim cashed the \$250,000 check (Trial Tr. 61:1-24, 63:4-12 (Andy Kim), 153:9-21 (Tok Kim) and Defendants' Exhibit 3).

Tok Kim admits to signing the Bill of Sale, which references the Asset Purchase Agreement four times, but inexplicably denies signing the Asset Purchase Agreement. (Trial Tr. 187:18-190:12 (Tok Kim)). Handwriting expert Dr. Fenoff testified that Tok Kim's signature would be extremely difficult to simulate, and Dr. Fenoff opined that the person who signed the admitted two dozen known samples of Tok Kim's signature is the same person who signed the Asset Purchase Agreement (Trial Tr. 663:6-16, 667:13-668:3 (Dr. Fenoff)). Tok Kim did not present any evidence that his signature was digitally imposed.

Finally, the lower court misunderstood Youmi Cho's trial testimony, believing incorrectly that Youmi Cho did not testify to having seen Tok Kim sign the Asset Purchase Agreement. (Post-Trial Hearing Tr. 6:24-10:22). This error was corrected by Appellants during post-trial motions, but the court did not amend its final order.

For these reasons, the lower court erred in concluding that the Asset Purchase Agreement was fake and the parties only had an oral agreement.

a. Standard of Review

“On appeal of an action at law tried without a jury, the findings of fact of the trial court will not be disturbed unless found to be without evidence which reasonably supports the trial court's findings.” *Hardaway Concrete Co. v. Hall Contr. Corp.*, 374 S.C. 216, 223, 647 S.E.2d 488, 491 (Ct. App. 2007) (citing *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)). This scope of review also applies to factual determinates of a master when he

enters final judgment. *Id.* In a breach of contract action, this same standard applies. *Id.* at 221-228, 647 S.E.2d at 490-493.

b. Argument

The evidence does not reasonably support the lower court's conclusion that Tok Kim did not sign the Asset Purchase Agreement and his signature was digitally imposed, and that the parties only entered into an oral agreement. (Order ¶ 49).

Kim Enterprises' Burden of Proof

In this breach of contract action, Kim Enterprises had the burden of proof to show that the parties only entered into an oral agreement and that the signed Asset Purchase Agreement was fraudulent. *Allegro, Inc. v. Scully*, 418 S.C. 24, 34, 791 S.E.2d 140, 145 (2016) ("In an action for breach of contract, the burden is on the plaintiff to prove the contract, its breach, and the damages caused by such breach." (citation omitted)); *Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct. App. 2008) (defendant asserting an affirmative defense bears the burden of its proof). Additionally, on its cause of action for breach of contract accompanied by fraudulent act, Kim Enterprises also had the burden of proving a fraudulent intent relating to the breach and a fraudulent act accompanying the breach by clear and convincing evidence. *Osborn v. Univ. Med. Assocs. Of the Med. Univ. of S.C.*, 278 F. Supp. 2d 720, 740 (D.S.C. 2003) ("With regard to the third element of this claim, the standard of proof of clear and convincing evidence is applicable.")². This necessarily required Kim Enterprises to prove by clear and convincing evidence that Tok

² *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374, 378 (1986) (elements of breach of contract accompanied by fraudulent act are: 1) breach of contract, 2) fraudulent intent relating to its breach, and 3) fraudulent act accompanying the breach).

Kim's signature on the Asset Purchase Agreement was a forgery perpetrated by Youmi Cho.³ Bald assertions of forgery are insufficient to carry this burden of proof.⁴

Kim Enterprises failed to carry its burden of proof to establish an oral contract, and to show that Tok Kim's signature on the Asset Purchase Agreement was forged.

Evidence on the Authenticity of the Asset Purchase Agreement

The only evidence that Respondent presented at trial that Tok Kim did not sign the Asset Purchase Agreement was Tok Kim's own testimony. (Trial Tr. 139:22-24 (Tok Kim)). However, the record is replete with evidence that Tok Kim did sign the Asset Purchase Agreement. Youmi Cho testified that she brought the Asset Purchase Agreement to Tok Kim and Tok Kim signed the

³ While Kim Enterprises' burden of proof to establish a fraudulent act is clear and convincing evidence, its burden of proof to establish an affirmative defense that the Asset Purchase Agreement is fraudulent and a forgery is somewhat unclear in South Carolina law. Historic case law suggests the burden of proof is by preponderance of the evidence. *Jenkins v. Jenkins*, 83 S.C. 537, 540, 65 S.E. 736, 737 (S.C. 1909) (stating the burden of proof for forgery is by the preponderance of the evidence); *Citizens Bank of Darlington v. McDonald*, 202 S.C. 244, 255, 24 S.E.2d 369, 373 (S.C. 1943) (same). However, in the deed context, and in case law from other jurisdictions, courts apply a heightened burden of clear and convincing evidence. *O'Neal v. Pearson*, 2007 S.C. App. Unpub. LEXIS 393, 2007 WL 8327921, at 13 (Ct. App. 2007) (party seeking to invalidate a deed for an alleged forgery bears the burden of proving, by clear and convincing evidence); e.g., *St. Dominic Ambulatory Surgery Ctr., LLC v. Shaffer*, 329 So. 3d 509, 514-517 (Miss. Ct. App. 2021) (forgery is a form of fraud and must be proven by clear and convincing evidence); *Thomas v. Smith*, 682 S.W.3d 213, 223 (Tenn. Ct. App. 2023) (burden of proof to establish forgery in order to set aside a written document is that of clear, cogent and convincing evidence); *Jackson v. Allstate Ins. Co.*, 441 F. Supp. 2d 728, 734-736 (E.D. Pa. 2006) (to prevail at trial, a party asserting a forgery must present clear, direct, precise and convincing evidence); *Armstrong v. Copeland*, 194 So. 2d 801, 802 (La. Ct. App. 1967) (stating that the charge of forgery of the signature to an authentic act requires strong, clear and positively convincing proof).

⁴ *Banco Popular N. Am. v. Victory Taxi Mgmt.*, 806 N.E.2d 488, 489-490 (N.Y. App. Div. 2004) ("Something more than a bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature."); *Jackson v. Allstate Ins. Co.*, 441 F. Supp. 2d 728, 734-736 (E.D. Pa. 2006) (granting summary judgment where only evidence of forgery was party's own "uncorroborated testimony" that she did not sign the document).

Asset Purchase Agreement in front of her. (Trial Tr. 424:12-425:2 (Youmi Cho)).⁵ Tok Kim, Sang Cho, Patricia Kim, and Vincent Fletcher all testified that the signature on the Asset Purchase Agreement looks like Tok Kim's signature. (Trial Tr. 187:18-188:4 (Tok Kim), 330:6-23 (Sang Cho), 477:7-478:4 (Vincent Fletcher), and 523:4-527:1 (Patricia Kim)).

Moreover, Tok Kim testified that he signed the Bill of Sale which is a one-page document with three paragraphs of text that makes no less than four references to a separately executed "Asset Purchase Agreement." (Trial Tr. 189:12-190:12 (Tok Kim); Defendants' Exhibit 2 Bill of Sale). The Bill of Sale, admitted by Tok Kim as authentic, states that:

The exact detailed terms of the agreement are outlined in the Business Asset Purchase Agreement executed by both the Seller and the Buyer and to the extent those terms are more detailed or different from those in this Bill of Sale, the terms in the Business Asset Purchase Agreement are the master terms of this transaction.

(Bill of Sale ¶ 2 (emphasis added)). By admitting the authenticity of the Bill of Sale, Tok Kim is bound to its provisions, which clearly state that Kim Enterprises executed a separate Business Asset Purchase Agreement. It would be an error to allow Tok Kim to admit the authenticity of this document and then at the same time deny its plain admission that both parties signed a separate more detailed contract, and then to find that the agreement to sell the Beauty Store was entirely oral. (Order ¶¶ 56-57).

Additionally, Tok Kim testified that he knew Youmi Cho needed to have a written contract to satisfy immigration requirements. (Trial Tr. 166:1-19 (Tok Kim)). Youmi Cho's immigration attorney, Andy Kim, sent her the agreement on December 9, 2020 and received a signed copy back on December 14, 2020. (Trial Tr. 63:4-5, 85:19-86:7, 87:24-88:3 (Andy Kim)). Andy Kim testified

⁵ See Appellants' Supplemental Memorandum in Support of its Post-Trial Motions indicating that the court was unaware that Youmi Cho testified that she saw Tok Kim sign the Asset Purchase Agreement prior to the hearing on the Appellants' Post-Trial Motions. (Suppl. Mem. Post Trial Motion).

that Tok Kim was aware that Youmi Cho needed to have a purchase contract. (Trial Tr. 58:9-59:6, 89:24-90:15, 98:3-6 (Andy Kim)). Tok Kim received and deposited the \$250,000 purchase check on December 14, 2020. (Trial Tr. 153:9-154:6 (Tok Kim) and Defense Trial Ex. 3). This evidence corroborates the timing that the agreement was made and signed in December 2020. Additionally, Kim Enterprises did not report an installment contract for the sale of the Beauty Store on its tax returns, which it was required to report if the sale was in fact an installment sale as Tok Kim claimed. (Trial Tr. 594:6-596:4 (Mark Bokesch)). This further corroborates that the Asset Purchase Agreement, and not the oral contract alleged by Kim Enterprises, governed the sale of the Beauty Store.

Respondent's only explanation for what is clearly Tok Kim's signature on the Asset Purchase Agreement, is to claim, without evidence, that Tok Kim's signature was digitally imposed. However, the evidence does not reasonably support the factual conclusion that Youmi Cho digitally imposed Tok Kim's signature onto the Asset Purchase Agreement.⁶ Rather, the evidence reasonably supports the opposite finding—that Tok Kim's signature on the Asset Purchase agreement was authentic.

Dr. Roy Fenoff was qualified by the trial court as a handwriting expert. Dr. Fenoff has been qualified as a handwriting expert by numerous courts. (Trial Tr. 648:18-649:23 (Dr. Fenoff)).

Dr. Fenoff testified that it is very hard to copy another person's signature because a signature is a

⁶ The Order cites the best evidence rule concluding that Ms. Cho's failure to produce the original agreement and her explanation for the same were unsatisfactory. (Order ¶ 50). The best evidence rule is an exclusionary evidentiary rule where the authentication of a document is at issue. However, Respondent waived any objection to the introduction of the Asset Purchase Agreement into evidence when it published the deposition transcript of Andy Kim and all exhibits into evidence, which included the signed Asset Purchase Agreement. (Trial Tr. 44:20-45:18, 166:17-167:12). Failure to object when evidence is offered constitutes a waiver of the right to object, and the issue may not then be raised for the first time on appeal. *Crawford v. Crawford*, 321 S.C. 511, 514, 469 S.E.2d 622, 625 (Ct. App. 1996).

mixture of rhythm, spacing, line quality and placement all at the same time with relatively rapid speed. (Trial Tr. 663:6-16 (Dr. Fenoff)). Dr. Fenoff reviewed twenty-six prior known signatures of Tok Kim dating back twenty years, twenty-four of which Tok Kim stipulated prior to trial to having signed. (Trial Tr. 654:8-20 (Dr. Fenoff); Court's Exhibit 1). Dr. Fenoff was then presented with two questioned documents, Q1 – the Asset Purchase Agreement, and Q2 - the Bill of Sale. (Trial Tr. 653:17-654:7 (Dr. Fenoff)). Tok Kim later stipulated to having signed Q2- the Bill of Sale after the sample documents were provided to Dr. Fenoff for examination. (See Court's Exhibit 1).

Upon completing his review of the questioned and known documents, Dr. Fenoff testified that in his expert opinion to a reasonably degree of scientific certainty the author of the known sample documents, K1 through K26, also authored the questioned documents Q1 - Asset Purchase Agreement, and Q2 - the Bill of Sale. (Trial Tr. 667:13-668:3 (Dr. Fenoff)). Dr. Fenoff testified that there are no signs that the signature on the Asset Purchase Agreement is a cut-and-paste signature. (Trial Tr. 675:24-676:12 (Dr. Fenoff)). Youmi Cho testified that she did not digitally impose Tok Kim's signature on the Asset Purchase Agreement. (Trial Tr. 401:4-6 (Youmi Cho)).

Finally, Respondent did not offer any witness testimony or other evidence to contradict Dr. Fenoff's testimony or to support a finding that the signature on the Asset Purchase Agreement was digitally imposed. In reaching the conclusion that Tok Kim's signature was digitally imposed, the Order simply relies on the fact that *it is possible* to digitally impose a signature. (Order ¶ 53). This is not sufficient evidence to support a finding that Tok Kim's signature was in fact digitally imposed. If Tok Kim's signature was digitally cut & paste, then there must be a source document from which the signature was copied. Dr. Fenoff reviewed more than two dozen Tok Kim signatures and none of them match exactly to Tok Kim's signature on the Asset Purchase

Agreement. (Trial Tr. 665:6-10 (Dr. Fenoff)). Tok Kim presumably has access to many more documents that he has signed over the years based on his numerous business dealings, (Trial Tr. 150:16-152:15 (Tok Kim)), but he failed to produce any possible source document.

Dr. Fenoff testified that each person has natural variation in their signature every time they sign a document. (Trial Tr. 665:6-10 (Dr. Fenoff)). The most reasonable and plausible explanation is that Tok Kim signed the Asset Purchase Agreement and that any variation in his signature was the natural variation that each person exhibits when signing new documents.

The following table illustrates the significant imbalance of evidence on this factual issue, challenging the lower court’s finding and weighing in favor of a finding that the Asset Purchase Agreement is authentic.

<p style="text-align: center;">Evidence Purchase Agreement Authentic</p>	<p style="text-align: center;">Evidence Purchase Agreement Fake</p>
<ol style="list-style-type: none"> 1. Copy signed Contract (Defense Ex. 1); 2. Bill of Sale admitted as authentic (Def. Ex. 2); 3. Bill of Sale four references to Contract; 4. Purchase check, admitted as authentic, cashed December 14, 2020 (Def. Ex. 3); 5. Copy of signed Contract in Attorney Kim’s file as of December 14, 2020; 6. Youmi Cho testified she watched Tok Kim sign the Contract & Bill of Sale; 7. Tok Kim testified he knew Attorney Kim was drafting a contract; 8. Patricia Kim (wife), Vincent Fletcher (longtime employee), Sang Cho (nephew & longtime employee), testified “Tok Kim” signature on Contract looks like his signature; 9. No source document in evidence from which to cut & paste; 10. Dr. Fenoff testified no signs of cut-and-paste signature; 11. Dr. Fenoff testified person who signed 24 admitted Tok Kim signatures also signed the Contract and Bill of Sale. 	<ol style="list-style-type: none"> 1. Tok Kim’s testimony (Trial Tr.139:22-23);

Trial Court Critically Misapprehended Youmi Cho's Testimony

Additionally, the trial court critically misapprehended Youmi Cho's testimony. On February 25, 2025, Judge Strickland held a hearing on Appellants' post-trial motions. During the hearing, upon the undersigned's statement recounting evidence showing that Youmi Cho saw Tok Kim sign the Asset Purchase Agreement, the court stopped counsel to indicate that it believed that Youmi Cho testified at trial that she did not see Tok Kim sign the Asset Purchase Agreement, and this was a key fact in the court's decision. This was an incorrect recounting of Youmi Cho's testimony, and the colloquy on this issue was as follows:

THE COURT: Let me interrupt you there. You said that Youmi Cho testified she brought -- she brought it to Tok Kim and watched him sign. She said she --you -- was it her testimony that she watched him sign the agreement?

MR. PAAVOLA: Yes, sir.

THE COURT: **I thought her testimony was that, "We signed it together," because I asked several times when she was on the stand --**

MR. PAAVOLA: Okay.

THE COURT: -- did she see him sign it. **And she never said she saw him sign it. She said several times that, "We signed it together."**

MR. PAAVOLA: I'm sure we've got -- I'm sure we've got a reference on that. I don't have it right on my slide. I'm not trying to draw a distinction between whether they signed it at the same time or she saw him sign it. Either way, the -- I don't think it's inconsistent to say -- either way, she said -- she testified she saw him sign it. So I don't think it's -- I'm not drawing a distinction

THE COURT: Well, if there's -- **it had a lot to do with my ruling because --**

MR. PAAVOLA: I'm happy to -- we're happy to pull up the -- give the Court the cite with more information. I'm not -- I'm not following the Court's distinction there. I think she testified she brought it to him. What I'm saying here is that she saw him sign it. I'm not saying she also signed it at the same time or if that's the --

THE COURT: No, no. She -- I specifically asked more than once while she was on the stand, "Did you see him sign it?" And the answer every time I asked that was,

"We signed it together." She -- unless I missed it -- unless she said -- she testified under oath. I don't think she ever said that she saw him sign it.

MR. PAAVOLA: Yes. We -- we'll --

MS. THIBAUT: I'll find the cite.

MR. PAAVOLA: We'll find the cite --

THE COURT: Okay.

MR. PAAVOLA: -- and pull up the transcript. But I don't think even if she said, "Yes, we signed together," that would be any -- I don't think that would be -- I'm not sure that would be a different answer than, "I saw him sign it." You know, if she says, "Yeah, we signed it together," I think she testified the same thing: "We signed it. I brought it to him, he signed it."

....

MR. PAAVOLA: Okay. On Page 424, we're starting at Line 6 -- and this is --

MS. THIBAUT: -- Youmi Cho.

MR. PAAVOLA: This is Youmi Cho's testimony. I'm sorry, I'm trying to figure out who's -- oh. It looks like I'm asking questions here. Line 6, I ask, "All right. You understood that the purchase agreement and the bill of sale needed to be signed by both you and your uncle, right?"

"Yes."

"Did you eventually sign both documents?"

"Yes."

"Did your uncle eventually sign both documents?"

"Yes."

And then I asked, "Tell me how it came about your uncle signed the documents."

Ms. Cho says, "I brought the documents to my uncle's store. I brought the document to Mr. Kim's store, and I signed it, and my uncle signed it."

"Okay. Did you see your uncle sign it?"

"He signed it -- he signed in front of me, and I signed it in front of my uncle."

"Okay. Both documents?"

"Yes."

THE COURT: Okay.

(Post Trial Motions Tr. 6:24-8:23, 9:22-10:22 (emphasis added)).

After the post-trial motions hearing, Appellants filed a supplemental memo recounting the court's original question to Youmi Cho on this issue. At the conclusion of Youmi Cho's testimony, the trial court asked Ms. Cho one time whether she watched Tok Kim sign the Asset Purchase Agreement and Ms. Cho indicated that she had:

THE COURT: All right. Thank you.
The Business Asset Purchase Agreement, did
you see your uncle sign that document?
THE WITNESS: Yes. We both signed it
together at his store.

(Trial Tr. 462:8-12 (Court's Examination)).

Ms. Cho consistently testified that she saw Tok Kim sign the Asset Purchase Agreement. Had there been any remaining ambiguity on this issue, Appellants urged the court to take additional testimony. (Suppl. Post Trial Mem. 3). The lower court did not take any additional testimony on this issue. This was a critical fact that lower court misapprehended and a fact that the court said played a significant role in its decision in ruling against Appellants.

South Carolina Law Presumes Parties Read Contracts They Sign

Paragraph 59 of the Order states that the Asset Purchase Agreement fails as a matter of law because the basic elements of a contract could not be met since Youmi Cho testified that she did not read the agreement. In fact, Youmi Cho testified that she ran the contract through Google Translate. (Trial Tr. 459:23-460:9 (Youmi Cho)). However, even if she did not read the agreement, it is of no moment because South Carolina law is clear that a person that signs a document is bound

to the document even if they did not read the contract.⁷ While it is unclear how significant this erroneous legal conclusion was to the lower court, this was an abuse of discretion and a new trial is warranted.

Conclusion

The abundant facts in the record do not reasonably support the lower court's conclusion that Tok Kim did not sign the Asset Purchase Agreement and that it was a fake, and that the parties only entered into an oral agreement. Kim Enterprises had the burden of proving the fraudulent act (the forgery) by clear and convincing evidence to support its breach of contract causes of action and defenses and it failed to do so. Accordingly, this Court should reverse the lower court's finding that Tok Kim did not sign the Asset Purchase Agreement and order a new trial.

II. Respondent's Alleged Oral Contract Does Not Satisfy the Statute of Frauds.

⁷ "South Carolina case law is replete with cases finding a party's failure to read a contract does not vitiate the contract or that party's obligations under it." *May v. May*, 428 S.C. 131, 141, 833 S.E.2d 78, 82 (Ct. App. 2019). "A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." *Id.* (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003)). "Under South Carolina law, 'a party who signed a contract is deemed to have read and understood 'the effect' of the contract.'" *Wellin v. Farace*, 2022 U.S. Dist. LEXIS 228613 at *19, 2022 WL 17811722 (D.S.C. Dec. 17, 2022) (quoting *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139, 146 (Ct. App. 2013)).

"It is elementary that, if the contracting party is in position to learn the contents of a written contract and thereby protect himself by reading it or having it read, one who is unable to read is bound to have the instrument read to him before signing it, just as one who can read is bound to read it before signing." *White v. Southern Ry. Co.*, 208 S.C. 319, 333-334, 38 S.E.2d 111, 123 (1946). "The rule is a person who is unable to read is bound to have the paper read to him before signing, just as a person who can read is bound to read it before signing; and failure by such illiterate person to take this precaution will ordinarily be regarded such gross negligence as will estop him from avoiding the contract." *Duke v. Life Ins. Co.*, 184 S.C. 500, 505, 193 S.E. 36, 38 (1937). The record clearly shows that Tok Kim had signed dozens of legal contracts in his past personal and business dealings. (Defense Exhibit K1-26, Q2; Court's Exhibit 1). Mr. Kim is well versed in reviewing legal documents and his not reading the Asset Purchase Agreement is no defense to enforcing its terms.

Even if the Asset Purchase Agreement is a fake as Respondent contends, Kim Enterprises' alleged oral agreement fails because it does not satisfy the statute of frauds. Any oral contract to be performed over more than a year must have a signed writing evidencing the essential terms of the agreement. There is no signed writing here, and for this reason Respondent's alleged oral contract fails as a matter of law.

a. Standard of Review

On appeal, the court "reviews all questions of law de novo." *Lollis v. Dutton*, 421 S.C. 467, 477, 807 S.E.2d 723, 728 (Ct. App. 2017). Issues of statutory interpretation, which would include the statute of frauds, are questions of law subject to de novo review. *Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n*, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019).

b. Argument

The lower court, after finding that the Asset Purchase Agreement was fake, concluded that Kim Enterprises and K&C Beauty entered into an oral agreement to convey the Beauty Store for \$800,000, with \$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. (Order ¶¶ 56-57). As a matter of law, Kim Enterprises' oral contract to be performed over more than one year is barred by the statute of frauds because there is no writing evidencing the essential terms of the agreement.

The statute of frauds applies to "any agreement that is not to be performed within the space of one year from the making thereof[.]" S.C. Code Ann. § 32-3-10(5). "[N]o action shall be brought to charge a person upon an agreement that is not to be performed within one year from its making unless the agreement is in writing and signed by the person sought to be charged." *Collins Music Co. v. Cook*, 281 S.C. 580, 583, 316 S.E.2d 418, 420 (Ct. App. 1984).

“In order to satisfy the statute of frauds, there must be a writing signed by the party against whom enforcement is sought, and the writings must establish the essential terms of the contract without resort to parol evidence.” *Springob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014) (citations and internal quotation marks omitted). The writing must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 894 (1989).

Respondent testified that the alleged agreement for the sale of the Beauty Store was an oral agreement for \$800,000. (Trial Tr. 157:5-10 (Tok Kim)). The only writings in the record that could possibly reflect these terms are the \$250,000 check (Defendants’ Exhibit 3), and the thirty-two remaining checks in Plaintiff’s Exhibit 1 (four checks were previously cashed by Tok Kim). However, these checks lack sufficient detail to satisfy the statute of frauds. The \$250,000 check is made out from Youmi Cho to Tok Kim, but it does not have any notation in the memo line or anywhere else on the check indicating the purpose of the check. (Defendants’ Exhibit 3). The thirty-two checks are made out from K&C Beauty, LLC to Tok Kim not Kim Enterprises, LLC, they are undated, and there is no information in the memo lines or anywhere else indicating their purpose. (Trial Tr. 154:21-155:1 (Tok Kim); Plaintiff’s Exhibit 1).

Taking all of these checks together does not satisfy the statute of frauds. No disinterested third party reviewing these checks could discern any of the essential terms of a contract such as:

- Who are the parties to the contract?
- What is the subject matter of the contract?
- Who owns what is being sold?
- Who is the buyer?
- What is being sold, by whom?
- What is the price?
- What are the payment terms?

Because these checks lack the required specificity to form an intelligible contract, at trial Respondent had no choice but to present and rely on parol evidence to supply the missing essential terms of the alleged oral agreement for the alleged oral agreement to make any sense. This violates the statute of frauds, which requires the signed writing to reasonably identify the subject matter of the contract and its essential terms without resort to parol evidence. *Springob*, 407 S.C. at 496, 757 S.E.2d at 387.

For these reasons, Respondent's oral agreement does not satisfy the statute of frauds, and it cannot be enforced. Therefore, the lower court's order awarding judgment to Respondent on its alleged oral contract should be vacated, the Respondent's breach of contract claims should be dismissed, and the case should be remanded for a new trial on Appellants' causes of action.

III. Neither the Facts Nor the Law Support a Finding that Sang Cho is a Fiduciary of Kim Enterprises.

The lower court erred in determining that Sang Cho was a fiduciary of Kim Enterprises. The law provides very limited circumstances in which an employee can be elevated to a fiduciary of an employer. Here, the facts concerning Sang Cho's employment with Kim Enterprises do not establish those very limited circumstances as a matter of law.

a. Standard of Review

The existence of a fiduciary duty is a question of law for the court. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008). On appeal, the Court "reviews all questions of law de novo." *Lollis* at 477.

b. Argument

Neither the facts nor the law support the lower court's finding that Sang Cho, by virtue of his role as Kim Enterprises' manager of the Beauty Store, became a fiduciary of Kim Enterprises in its negotiations to sell the Beauty Store to Youmi Cho and K&C Beauty. Accordingly, the lower

court's judgment should be reversed to deny Respondent's relief on its breach of fiduciary duty causes of action.

To succeed on a claim for breach of fiduciary duty, a party must prove by a preponderance of the evidence: (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. *Legree v. Hammett Clinic, LLC*, No. 3:19-cv-0871-MGL-TER, 2019 U.S. Dist. LEXIS 229273, at *6 (D.S.C. Aug. 29, 2019) (citation omitted). "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Id.* (quoting *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992)). The existence of a fiduciary duty is a question of law for the court. *Vortex Sports*, 378 S.C. at 207, 662 S.E.2d at 450.

"A fiduciary duty generally cannot be unilaterally imposed by one party; rather, 'The evidence must show the entrusted party actually accepted or induced the confidence placed in him.'" *Wired Fox Techs. Inc. v. Estep*, Civil Action No.: 6:15-331-BHH, 2017 U.S. Dist. LEXIS 43993 at *32; 2017 WL 1135288 (Mar. 27, 2017) (quoting *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817, 822 (Ct. App. 2004)). "As the South Carolina Supreme Court has explained: 'The term fiduciary implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him.'" *Id.* This in no way characterizes Sang Cho's relationship with Tok Kim, where Mr. Cho testified that Mr. Kim was in charge of hiring, firing, and inventory. (Trial Tr. 274:9-17, 278:3-17 (Sang Cho)).

Additionally, in the employment context, "there are no fiduciary duties of loyalty owed by a non-contractual, non-fiduciary employee subject only to the rules for common law at will employment." *Legree*, 2019 U.S. Dist. LEXIS 229273 at *7 (quoting *Coves Darden, LLC v.*

Ibanez, No. 2014-000339, 2016 S.C. App. Unpub. LEXIS 475, at *5 (S.C. Ct. App. Aug. 17, 2016)). “An employer-employee relationship is not a fiduciary relationship. . . .” because “[a] fiduciary relationship cannot be established by the unilateral action of one party.” *Big Red Box LLC v. Square Inc.*, Civil Action No.: 3:18-cv-00758-SAL-SVH, 2020 U.S. Dist. LEXIS 16008, at *16 (D.S.C. Jan. 22, 2020) (quoting *Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 607 (D.S.C. 1998) (internal quotation marks omitted)). There is no South Carolina authority that “would elevate the normal employer-employee relationship into a fiduciary relationship,” or “providing that all employees are agents of their employers and owe their employers fiduciary duties.” *Legree*, 2019 U.S. Dist. LEXIS 229273, at *7 (quoting *Coves Darden*, 2016 S.C. App. Unpub. LEXIS 475, at *5).

The lower court’s factual findings describe Sang Cho as: (1) Tok Kim’s nephew (Order ¶ 10); (2) Employed at the Beauty Store since 2013 (Order ¶ 11); and (3) Manager of the Beauty Store prior to its sale to K&C Beauty, with authority to hire, fire, and train new employees, and manage inventory (Order ¶¶ 13, 73). Even if these facts were uncontroverted, which they are not,⁸ they do not turn Sang Cho into a fiduciary of Kim Enterprises. Even if these facts could transform Sang Cho into a fiduciary, his role as a fiduciary would necessarily be limited to the scope of his employment. However, in this lawsuit Sang Cho’s employment is not at issue because all of Kim Enterprises’ claims relate to K&C Beauty’s and Youmi Cho’s alleged breach of contract to purchase the Beauty Store and Sang Cho’s role in those events. (Am. Compl.). The only facts identified in the Order that connect Sang Cho to the sale of the Beauty Store is one meeting he

⁸ Sang Cho testified that any role he had in hiring and firing of employees was limited, as was his ability to manage inventory. (Trial Tr. 274:9-17 (Sang Cho)). For example, Sang Cho testified that he was never given the authority from his uncle Tok Kim to dispose of old unsaleable inventory. (Trial Tr. 278:3-17 (Sang Cho)).

attended where Tok Kim and Youmi Cho discussed price and Mr. Sang Cho participated in initial discussions but ultimately left before negotiations were over. (Order ¶¶ 17-24; Trial Tr. 281:16-24 (Sang Cho), 122:7-14 (Tok Kim), and 418:18-23 (Youmi Cho)).

The overwhelming evidence shows that the idea to sell the Beauty Store arose in conversations between Tok Kim and Youmi Cho. (Trial Tr. 117:6-118:20 (Tok Kim) and 409:16-25 (Youmi Cho)). After Tok Kim offered to sell the Beauty Store to Youmi Cho, she returned to Korea to sell her apartment to raise funds to purchase the store. (Trial Tr. 160:1-7 (Tok Kim) and 409:5-410:25 (Youmi Cho)). Sang Cho only became aware of Youmi Cho's intentions to purchase the Beauty Store after she returned from Korea. (Trial Tr. 418:18-420:4 (Youmi Cho) and 161:13-19 (Tok Kim)). Sang Cho was not part of Tok Kim's decision to sell the Beauty Store or Youmi Cho's decision to purchase the Beauty Store. Sang Cho only became involved because he was invited to attend a single meeting between Tok Kim and Youmi Cho. (Trial Tr. 418:18-420:4 (Youmi Cho) and 161:13-19 (Tok Kim)). These are insufficient facts to hold Sang Cho as a fiduciary to Kim Enterprises in its business dealings with K&C Beauty.

South Carolina courts have only recognized a breach of fiduciary duty in the employer-employee context in three limited circumstances: "when an employee directly competes with his employer, when the employee misappropriates the employer's profits, property, or business opportunities, or when the employee breaches the employer's confidences." *Legree*, 2019 U.S. Dist. LEXIS 229273, at *8 (citing *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 515-16 (4th Cir. 1999)).

In one of the only reported cases where a manager was found to be a fiduciary, *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987), the car wash manager was married to the daughter of the spouse-owners, the owners put "special faith and confidence in

Norris in the starting up of the car wash business,” he was responsible for purchasing equipment and doing whatever was necessary to open the car wash business, he handled business negotiations, and he was accused of conspiring with the equipment provider to overinflate equipment invoices to convert excess funds from the owners. *Id.* at 600, 358 S.E.2d at 152. There are no similar allegations here. Again, there was no evidence that Sang Cho stole from Tok Kim or took away business opportunities. (Trial Tr. 332:2-13 (Sang Cho)).

The evidence at trial shows that Sang Cho was an employee of the Beauty Store prior to its sale to K&C Beauty. Sang Cho was not an owner, was not responsible for paying expenses of the Beauty Store while Tok Kim owned it, and did not share in the Beauty Store profits. (Trial Tr. 193:22-194:8 (Tok Kim)). Respondent did not prove by preponderance of the evidence that any of the three limited circumstances where an employee can be elevated to a fiduciary were met. Respondent admitted that Sang Cho never opened his own beauty store to compete with Tok Kim’s beauty store. (Trial Tr. 194:9-13 (Tok Kim)). Sang Cho never stole from Respondent or took business opportunities away from Tok Kim or Kim Enterprises. (Trial Tr. 332:2-10 (Sang Cho)). Sang Cho has not breached Tok Kim’s confidence in any manner related to his role as manager of the Beauty Store. (Trial Tr. 332:11-12 (Sang Cho)).

Additionally, Kim Enterprises unilaterally promoted Sang Cho to manager without his knowledge. Sang Cho testified that he was not informed of the promotion and that his job duties did not change after becoming a manager. (Trial Tr. 274:1-19 (Sang Cho)).

Therefore, as a matter of law, Sang Cho did not owe a fiduciary duty to Tok Kim or Kim Enterprises. Accordingly, judgment should be reversed to deny Respondent relief on this cause of action and rule that Sang Cho did not owe a fiduciary duty to Kim Enterprises.

For these same reasons, as a matter of law, Youmi Cho did not aid and abet a breach of fiduciary duty and Respondent's cause of action for aiding and abetting a breach of fiduciary duty should be reversed. "The elements for the cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages." *Vortex Sports*, 378 S.C. at 204, 662 S.E.2d at 448. Respondent alleged that Youmi Cho and K&C Beauty aided and abetted Sang Cho in breaching his fiduciary duties owed to Tok Kim and Kim Enterprises, LLC. (Order ¶ 74). However, because Sang Cho did not owe Kim Enterprises a fiduciary duty, Youmi Cho and K&C Beauty, as a matter of law, did not aid and abet Sang Cho in breaching a fiduciary duty and judgment should be reversed accordingly.

IV. The Final Order Does Not Support an Award of Punitive Damages.

In the alternative to a new trial, the lower court's award of punitive damages should be reversed because the court did not evaluate the required statutory and common law factors.

a. Standard of Review

A de novo standard of review applies to a lower court determinations of the constitutionality of punitive damages. *Duncan v. Ford Motor Co.*, 385 S.C. 119, 131, 682 S.E.2d 877, 883 (Ct. App. 2009).

b. Argument

The lower court erred in awarding punitive damages because its Order failed to analyze the required common law and statutory factors for an award of punitive damages. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) ("[T]o ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review . . .").

Punitive damages are governed under the Fairness in Civil Justice Act in S.C. Code Ann. § 15-32-510. Under the Act, Kim Enterprises was required to prove by clear and convincing evidence that any harm it suffered “was the result of defendant’s willful, wanton, or reckless conduct.” S.C. Code Ann. § 15-32-520(D). The factors to be considered to determine if punitive damages should be awarded include, but are not limited to, (1) the defendant's degree of culpability; (2) the severity of the harm caused by the defendant; (3) the extent to which the plaintiff's own conduct contributed to the harm; (4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant; (5) the existence of similar past conduct; (6) the profitability of the conduct to the defendant; (7) the defendant's ability to pay; and (8) the likelihood the award will deter the defendant or others from like conduct. S.C. Code Ann. § 15-32-520(E); *Gamble*, 305 S.C. 104, 406 S.E.2d 350 (1991).

Here, the lower court’s Order does not analyze the appropriateness of punitive damages under the required statutory or common law factors and does not identify any willful, wanton, or reckless conduct justifying an award of punitive damages. The only factor mentioned in the Order is potentially factor four, which is the court’s conclusion that Youmi Cho and K&C Beauty concealed the true agreement. (Order ¶ 71). The court did not analyze the existence of similar past conduct, the defendant’s ability to pay, or the likelihood that the award will deter the defendant or others from like conduct in the future. There is no evidence in the record of Youmi Cho’s or K&C Beauty’s ability to pay such a significant sum as \$245,000 in punitive damages, which amounts to a 30% penalty of Respondent’s alleged purchase price of \$800,000, or a penalty of 20% of the total gross revenues for the Beauty Store in 2020. It is also hard to imagine how assigning punitive damages in a case involving a disputed family business transaction will deter anyone in the broader community from similar conduct in the future.

As previously shown, Kim Enterprises failed to carry its burden of proof to establish a breach of contract accompanied by fraudulent act to justify an award of punitive damages. (Section I, supra).

Accordingly, the award of punitive damages should be reversed.

V. The Judgment Should be Reduced by the Profits Kim Enterprises Retained After Selling the Beauty Store to K&C Beauty.

In the alternative to a new trial, Appellants moved for a new trial nisi remittitur based on the excessiveness of the judgment in light of the undisputed facts at trial showing that Kim Enterprises kept profits of the Beauty Store after it was sold to K&C Beauty on December 14, 2020. The lower court erred in not reducing the Judgment by the profits retained by Kim Enterprises between December 15, 2020 and March 6, 2021.

a. Standard of Review

“A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive.” *Burke v. AnMed Health*, 393 S.C. 48, 56-57, 710 S.E.2d 84, 88-89 (Ct. App. 2011) (quoting *James v. Horace Mann Inc. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006) (internal quotation marks omitted)). “Even as to a new trial nisi remittitur, the trial judge's discretion is broad.” *Id.* “The denial of a motion for a new trial nisi is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion.” *Id.* at 57, 710 S.E.2d at 89 (quoting *Horace Mann Inc.*, 371 S.C. at 193, 638 S.E.2d at 670).

“An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018) (citation omitted).

b. Argument

The evidence does not reasonably support that finding that Kim Enterprises was entitled to retain profits of the Beauty Store after selling it to K&C Beauty. The Order should be amended to reduce the judgment by the amount of net profits for the Beauty Store that Kim Enterprises kept between December 15, 2020 and March 6, 2021.

Tok Kim admitted that Kim Enterprises did not turn over profits of the Beauty Store to Youmi Cho and K&C Beauty until March 7, 2021. (Trial Tr. 132:3-5 (Tok Kim)). Mr. Bokesch, qualified as an expert in business valuation and a CPA, testified that based on Kim Enterprises' sales tax records and expense documentation provided by Kim Enterprises in discovery, between December 15, 2020, and March 6, 2021, the Beauty Store earned revenue of \$179,062.26 and Kim Enterprises incurred expenses of \$30,201.02. (Trial Tr. 596:9-600:6 and Defense Demonstrative D8(a)). This means that Kim Enterprises retained net revenues of \$148,860.34 between December 15, 2020, and March 6, 2021. (Trial Tr. 599:4-5(Bokesch)). Mr. Bokesch further testified that the pre-judgment interest on this amount is \$56,988.20. (Trial Tr. 597:6-600:16 (Bokesch)). All totaled, Kim Enterprises has retained \$205,848.50 in net revenues and interest that belong to K&C Beauty.

Respondent did not dispute that it retained these net revenues after the sale of Beauty Store and after depositing the \$250,000 check. (Trial Tr. 209:5-25 (Tok Kim)). There is no factual or legal reason that these profits do not rightfully belong to K&C Beauty after it purchased the Beauty Store on December 14, 2020. Tok Kim did not testify that these net revenues were part of their agreement.

Respondent contends that it held such revenues back from K&C Beauty and only started providing store revenue once K&C Beauty obtained its business license on March 7, 2021. (Order ¶ 75). However, the evidence shows that K&C Beauty did not obtain its business license until

April 7, 2021. (Email Richland County Business Center (April 7, 2021), Defense Exhibit 37). This timing does not support Respondent's argument for withholding revenues. The more reasonable explanation is that Tok Kim decided to turn the store over to Youmi Cho when she gave him the series of thirty-six checks and after the shelves were so bare that he would have to purchase more inventory at his own expense. Sang Cho's testimony corroborates this scenario as he testified that Tok Kim would not restock the Beauty Store before Youmi Cho took over and that the shelves looked so bare that customers thought they were going out of business. (Trial Tr. 295:22-24,327:11-23 (Sang Cho)).

Accordingly, the facts do not support a finding that Kim Enterprises was entitled to keep the profits of the Beauty Store after it deposited the \$250,000 check for the purchase of the Beauty Store in December 14, 2020. (Defense Exhibit 3). As such, the judgment is excessive in light of the evidence and should be reduced by amounts due and payable to K&C Beauty of \$148,860.34 in net profits along with \$56,988.20 in pre-judgment interest.

VI. A New Trial Should Be Granted Because the Final Order Impermissibly Relies on Parol Evidence.

The lower court abused its discretion by impermissibly relying on parol evidence in reaching its determination that the parties had an oral agreement.

a. Standard of Review

The decision whether to grant or deny a new trial rests within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Prince v. Beaufort Mem. Hosp.*, 392 S.C. 599, 604, 709 S.E.2d 122, 125 (Ct. App. 2011). A trial court abuses its discretion by issuing a decision that is either controlled by an error of law or unsupported by the evidence. *Id.*

b. Argument

It was an error of law for the trial court to rely on parol evidence to determine that the Asset Purchase Agreement was not authentic and that the parties had an oral agreement. At the outset of trial, Appellants informed the court of the risk that the trial could be infected by parol evidence and moved in limine requesting that the court first hear witness testimony on the authenticity of the Asset Purchase Agreement and rule on whether Tok Kim signed the contract before proceeding to hear any testimony that controverted the substance of the written agreement Appellants requested as follows:

Accordingly, Defendants respectfully request that the Court set the order of trial to exclude or limit parol evidence from being entered into evidence until a determination has been made on whether Tok Kim signed the Purchase Agreement and whether there is an ambiguity in the contract. Defendants propose the following order for trial:

1. Hear witness testimony on whether Tok Kim signed the Purchase Agreement, including Defendants' handwriting expert Roy Fenoff.
2. If the Court finds that Tok Kim signed the Purchase Agreement, all extrinsic evidence of the contract's formation should be excluded unless there is shown to be any relevant ambiguity in the four corners of the Purchase Agreement.
 - a. Determination on ambiguity
 - b. Only if Purchase Agreement is determined ambiguous can parol evidence be admitted as to the alleged ambiguity
3. If the Court finds that Tok Kim did not sign the Purchase Agreement, or reserves judgment on this factual issue, then the parties can proceed to present parol evidence.

(Defendants' Motion in Limine on Parol Evidence and Trial Order at 4).

Under the parol evidence rule, absent fraud, accident or mistake, when the terms of a written instrument are unambiguous, extrinsic evidence of contemporaneous statements, allegedly made by the parties to the agreement, are inadmissible if they contradict or vary the terms of the written agreement. *Skinner v. Elrod*, 308 S.C. 239, 417 S.E. 2d 599 (Ct. App. 1992). The parol

evidence rule prevents the introduction of extrinsic evidence of oral or written agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument. *Callawassie Island Mbrs. Club, Inc. v. Dennis*, 425 S.C. 193, 203-204, 821 S.E.2d 667, 672 (2018).

If a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties.” *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999). “A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.” *Gordon Farms, Inc. v. Carolina Cinema Corp.*, 363 S.E.2d 235, 236, 294 S.C. 158, 160 (Ct. App. 1987) (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975)). An ambiguous contract is one that “is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.” *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). It is a question of law for the court whether the language of a contract is ambiguous. *Callawassie*, 425 S.C. at 198, 821 S.E.2d at 670.

As Appellants feared, the Court’s analysis of whether the Asset Purchase Agreement is authentic, and its conclusion that Tok Kim’s signature was digitally imposed, is based largely on parol evidence and not on evidence as to execution of the contract itself. The lower court concluded that the Asset Purchase Agreement is a fake based primarily on its acceptance of Tok Kim’s version of the kitchen table conversation. The Order recounts the discussion in Tok Kim’s kitchen where Tok Kim demanded \$800,000, Sang Cho suggested \$500,000, and to which Tok Kim said “Hell No.” (Order ¶¶ 17-24). The Order concludes based on these discussions that it would be illogical for Tok Kim to say no to \$500,000 and then say yes to \$250,000. (Order ¶ 60).

The Court again reasons that the kitchen table conversation supports the \$800,000 purchase price and anything less would be illogical and strain credulity. (Order ¶ 64). Further, the Court uses the thirty-six checks as additional evidence supporting the kitchen table conversation and as additional reasons to discard the authenticity of the written agreement. (Order ¶¶ 58, 60(b), 61, 62).

The only evidence that Respondent offered to dispute that Tok Kim signed the Asset Purchase Agreement was Tok Kim's statement that he did not sign it and Dr. Fenoff's acknowledgement that because he does not have the original contract he cannot rule out a digital copy & paste, though there are no signs that it was cut and paste. (Trial Tr. 139:22-24 (Tok Kim); 676:7-9, 669:11-18 and 677:10-14 (Dr. Fenoff)). There is nothing more. This standing alone is insufficient for Respondent to carry its burden of proof to show that Tok Kim did not sign the Asset Purchase Agreement, that the Asset Purchase Agreement is fake, or to create any ambiguity on these issues such that parol evidence should have been admitted to substitute for the parties written agreement.

Because parol evidence so infected the trial and judgment, a new trial should be granted.

CONCLUSION

Appellants request that the Court reverse the Order and (1) find that the only reasonable conclusion supported by the evidence is that Tok Kim signed the Asset Purchase Agreement and the Asset Purchase Agreement is the controlling agreement for the sale of the Beauty Store; (2) rule that Respondent's alleged oral agreement is barred by the statute of frauds; (3) rule that the purchase price of the Beauty Store is \$250,000; and (4) Sang Cho was not a fiduciary of Tok Kim or Kim Enterprises. In the alternative, Appellants request that the Court vacate the Order and remand the case for a new trial. If the above requests are denied, Appellants request that the Court reduce the judgment by the amount of net revenues that Kim Enterprises did not turn over to K&C

Beauty after it sold the Beauty Store to K&C Beauty on December 15, 2020, and eliminate punitive damages from the judgment.

Respectfully submitted,

s/ David L. Paavola

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