STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Eswin Aguilar, Plaintiff, v. AGCO Corp. Defendant.	C/A No. 2021-CP-46-01792 **ORDER ON DEFENDANT AGCO CORP.'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on March 13, 2025, for a hearing on Defendant AGCO Corporation's ("AGCO") Motion for Summary Judgment, filed on February 24, 2025. Plaintiff was represented by Ryan G. Studemeyer, Esq., and AGCO was represented by James Burns, Esq., and Jake Carroll, Esq.

After careful consideration of the briefs, supporting materials the parties submitted, oral argument presented by counsel, and applicable law, the Court finds as follows:

1. AGCO's Motion for Summary Judgment is **GRANTED** as to the following claims:
   a. Conversion (Count II);
   b. Civil Conspiracy (Count IV);
   c. Violations of the South Carolina Unfair Trade Practices Act ("SCUTPA") (Count V); and
   d. Violations of the South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act ("S.C. Fair Practices Act") (Count VI).

As to these claims, the Court finds that no genuine issues of material fact exist, and that AGCO is entitled to judgment as a matter of law. Accordingly, Counts II, IV, V, and VI of Plaintiff's Fourth Amended Complaint are hereby **DISMISSED WITH PREJUDICE**.

2. Conversely, AGCO's Motion for Summary Judgment is **DENIED** as to the following claims:

a. Breach of Express Warranty (Count I); and

b. Negligent Bailment (Count III).

As to these two claims, the Court finds that genuine issues of material fact exist, thus precluding summary judgment. Therefore, these claims shall proceed to trial.

FINDINGS OF FACT

The relevant facts of this case are as follows:

In April 2019, Plaintiff purchased a new 2019 Massey Ferguson MF4707 tractor (the "Tractor") from Nance Tractor and Implement, Inc. ("Nance"). Nance extended credit to Plaintiff, per the terms and conditions of a Retail Instalment Contract and Security Agreement (the "Instalment Contract"), which was signed by Plaintiff and Nance, and later assigned to AGCO Finance, LLC ("AFC"). AGCO is not a party to, or third-party beneficiary of, the Instalment Contract.

AGCO provided a two-year Limited Warranty on the Tractor, which covered defects in material and workmanship for 24 months or 2,000 hours, whichever came first. This warranty excluded transportation costs or rental of replacement equipment, and it did not provide for incidental, special, or consequential damages. Additionally, AGCO had the option to repair or replace the Tractor for an additional 12 months.

Plaintiff experienced several issues with the Tractor, including tire damage, error codes, and four-wheel-drive function issues, all of which were repaired by AGCO at no cost to Plaintiff, as detailed in the Fourth Amended Complaint and the evidence provided:

- **April 2019**: The Tractor was delivered to Plaintiff's property in South Carolina. After one of its tires was damaged shortly after delivery, AGCO replaced it at no cost, though Plaintiff was responsible for towing the Tractor to Nance for repairs.
- **October 2019**: The Tractor displayed an error code, which was repaired at no cost to Plaintiff by November 2019.

- **July 2020**: The Tractor displayed another error code, which was repaired at no cost to Plaintiff by September 2020.

- **October 2020**: The Tractor's four-wheel-drive function had issues and made noises, but it was repaired at no cost to Plaintiff.

- **Late October 2020**: AGCO dispatched a representative to diagnose the Tractor, update its software, and calibrate it. The Tractor was repaired by January 2021 at no cost to Plaintiff, with a loaner provided during the repairs.

- **April 2021**: The Tractor displayed an error code. AGCO picked it up for repairs and offered a loaner tractor, which Plaintiff declined. When asked if AGCO had permission to pick up the Tractor, Plaintiff said, "Maybe so. But I don't remember. [T]hey didn't tell me when they were coming to pick it up." Aguilar Dep. 69:19–25. Plaintiff or his spouse must have provided a gate code or manually opened the gate for AGCO to retrieve the Tractor. Though Plaintiff did not inquire about the Tractor's destination, he likely knew it was taken to Nance, as he later requested that no more work be done there and agreed for it to be sent to Powell Tractor, Inc. for repairs.

- **July 2021**: The Tractor was transferred to Powell Tractor for repairs.

- **October 2021**: AGCO informed Plaintiff that the warranty repairs were complete, and the Tractor was ready for delivery. Plaintiff, however, did not want the Tractor and did not ask about its location, condition, or whether he could pick it up or have it delivered.

Despite these repairs, Plaintiff filed suit to revoke acceptance of the Tractor on June 8, 2021, after AGCO had fully performed its warranty obligations. The Tractor has been at Powell Tractor since July 2021.

CONCLUSIONS OF LAW

I. Summary Judgment Standard

Under South Carolina Rule of Civil Procedure 56, summary judgment must be entered in favor of a party that demonstrates there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. *Bishop v. South Carolina Dept. of Mental Health*, 331 S.C. 79, 85–86, 502 S.E.2d 78, 81 (1998). The court must view the evidence in the light most favorable to the non-moving party. *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007).

The moving party has the burden of "establishing the absence of a genuine issue of material fact." *Shirley's Iron Works, Inc. v. City of Union*, 387 S.C. 389, 397, 693 S.E.2d 1, 5 (Ct. App. 2010).

Once the burden is met, the nonmovant must "'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue[.]'" *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The Supreme Court recently disavowed the "mere scintilla" standard and made clear "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman*, No. 2020-001669, 2023 WL 5420401, at *3 (S.C. Aug. 23, 2023). The "evidence must amount to more than speculation and conjecture" to be submitted. *McKnight v. S. Carolina Dep't of Corr.*, 385 S.C. 380, 389, 684 S.E.2d 566, 570 (Ct. App. 2009).

II. Plaintiff's Conversion Claim (Count II) Fails as a Matter of Law

Under South Carolina law, "[c]onversion is 'the *unauthorized* assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights.'" *Bank of New York v. Sumter Cnty.*, 387 S.C. 147, 158, 691 S.E.2d 473, 479 (2010) (emphasis added) (citing *Moore v. Weinberg*, 383 S.C. 583, 589, 681 S.E.2d 875, 879 (2009)).

Upon review of the record, the Court finds no genuine issue of material fact regarding the authorization element of Plaintiff's conversion claim. Plaintiff acknowledges in his Fourth Amended Complaint that he expressly authorized Defendant to pick up the Tractor for repairs. *See* Fourth Am. Compl. ¶ 96. Plaintiff's deposition testimony confirms this authorization, as Plaintiff agreed—albeit equivocally—that Defendant had permission to collect the Tractor from his property. *See* Aguilar Dep. 69:19–25. The undisputed evidence also shows Plaintiff or his spouse necessarily provided Defendant access to the gated property. *See id.* at 200:12–201:25.

It is also undisputed that after completing warranty repairs, Defendant informed Plaintiff the Tractor was ready to be returned, and Plaintiff thereafter refused to accept delivery. *See* Oct. 11, 2023 Aff. of Jacob Willis ¶ 3; Oct. 17, 2024 Aff. of Jacob Willis ¶ 7; Fourth Am. Compl., ¶ 79; Answer to Fourth Am. Compl., ¶ 79; Aguilar Dep. 82:2–83:12, 93:24–94:5, 94:19–95:2, 117:25–118:8, 181:16–17, 138:22–138:3, 211:17–212:3; AGCO's Resp. to Pl.'s Third Set of Interrogatories, ¶ 3. Thus, there is no evidence that Defendant's initial possession was unauthorized or that Defendant refused to return the Tractor upon Plaintiff's request.

Accordingly, the Court finds there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law. Plaintiff's conversion claim (Count II) is hereby **DISMISSED WITH PREJUDICE**.

III. Plaintiff's Civil Conspiracy Claim (Count IV) Fails as a Matter of Law

Under South Carolina law, "a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), *reh'g denied* (Aug. 18, 2021).

The Court finds that Plaintiff cannot satisfy these elements. First, the record does not demonstrate any agreement involving Defendant to commit an unlawful act; Plaintiff merely alleges that Defendant "conspired to distribute adhesion contracts," Fourth Am. Compl. ¶ 119, but Defendant is neither party to, nor beneficiary of, the Instalment Contract. Second, Plaintiff fails to show any intent on Defendant's part to harm him. The evidence reflects no malice directed toward Plaintiff but merely reflects Defendant's role as a manufacturer, separate from the entities that charged any fees or signed the Instalment Contract.

Accordingly, because Plaintiff has not raised a genuine issue of material fact as to these essential elements, Defendant is entitled to judgment as a matter of law on the civil conspiracy claim. Plaintiff's civil conspiracy claim (Count IV) is **DISMISSED WITH PREJUDICE.**

IV. Plaintiff's SCUTPA Claim (Count V) Fails as a Matter of Law

Under South Carolina law, to prevail on a SCUTPA claim, a plaintiff must establish that: "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010) (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)); *see generally* S.C. Code Ann. § 39-5-140.

After reviewing the record, the Court finds no genuine issue of material fact supporting Plaintiff's SCUTPA claim. First, Plaintiff's allegation that Defendant violated 16 C.F.R. § 702.3 by failing to provide a copy of the Limited Warranty before purchase is unsupported, because that regulation applies only to consumer products. It is undisputed that Plaintiff purchased the Tractor for commercial, not consumer, use. *See* Fourth Am. Compl., ¶ 14, Ex. A; Answer to Fourth Am. Compl., ¶ 14; Aguilar Dep. 13:6–12; 18: 21–19:15 (Instalment Contract was for "Agricultural and Commercial Use"), 20:18–20.

Second, Plaintiff alleges it was deceptive to require him to pay towing costs under the Limited Warranty. Even so, the undisputed evidence shows that the Limited Warranty explicitly assigns towing responsibility to the Tractor owner, and Plaintiff identifies no contrary obligation under South Carolina law. *See* Aguilar Dep., Ex. 3 at p. 2.

Third, Plaintiff alleges that Defendant disseminated an adhesion Instalment Contract containing an administrative fee. The evidence establishes that Defendant is neither a party to, nor

a beneficiary of, the Instalment Contract between Plaintiff, Nance, and AFC. *See* Fourth Am. Compl., Ex. A; Fourth Am. Compl., ¶ 24, Ex. B; Answer to Fourth Am. Compl., ¶ 24; Aguilar Dep. 23:1–24:18, 26:19-27:2; AGCO's Resp. to Pl.'s Second Reqs. to Admit, ¶¶ 12, 13; AGCO's Resp. to Pl.'s Third Set of Interrogatories, ¶¶ 1, 4. Plaintiff provides no evidence demonstrating Defendant's involvement in charging administrative fees or any act likely to mislead consumers related to this fee.

Fourth, Plaintiff alleges Defendant failed to disclose the Tractor's country of manufacture. Yet Plaintiff conceded he never asked Defendant about the Tractor's origin, and Defendant never affirmatively misrepresented it. *See* Aguilar Dep. 80:24–81:5, 100:4–101:3, 153:14–154:7, Ex. 11 at AGCO 00048 (Decl. of Amy Ganter); AGCO's Resp. to Pl.'s Second Set of Interrogatories, ¶ 1; AGCO's Resp. to Pl.'s First Req. for Admis., ¶ 1. Plaintiff's incorrect impression is not a deceptive act under SCUTPA.

Fifth, Plaintiff claims Defendant threatened legal action rather than honoring warranty obligations. Even so, the record shows only that Defendant ceased direct communication when Plaintiff himself engaged counsel, which is not an unfair trade practice. *See* Oct. 17, 2024 Aff. of Jacob Willis ¶ 10. This conduct also occurred outside the scope of trade or commerce as contemplated by SCUTPA. *See Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638–39, 743 S.E.2d 808, 816 (2013).

Sixth, Plaintiff's allegation of fabricated discovery is unsupported. Issues concerning discovery production do not constitute unfair or deceptive acts within the meaning of SCUTPA, and Plaintiff provides no evidence of any fraudulent action or bad faith by Defendant. *See* AGCO's Resp. to Pl.'s Second Reqs. to Admit, ¶¶ 7–9.

Thus, there is no genuine dispute of material fact regarding Plaintiff's inability to satisfy the required elements of a SCUTPA claim. Accordingly, summary judgment for Defendant is proper, and Plaintiff's SCUTPA claim (Count V) is hereby **DISMISSED WITH PREJUDICE.**

V. Plaintiff's S.C. Fair Practices Act Claim (Count VI) Fails as a Matter of Law

Under the S.C. Fair Practices Act, S.C. Code Ann. § 39-6-120 explicitly limits its applicability to agreements between "*a manufacturer*, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division and *an equipment dealer.*" (Emphasis added.) The Court finds no genuine dispute of material fact that Plaintiff is not an "equipment dealer" but instead operates a tree farm in Ridgeway, South Carolina. *See* Aguilar Dep. 13:6–12. The Instalment Contract at issue was executed between Plaintiff, Nance, and AFC—entities not within the scope of agreements covered by the Act. *See* Fourth Am. Compl., ¶ 16, Ex. A; Answer to Fourth Am. Compl., ¶ 16; Aguilar Dep. 23:1–24:18; AGCO's Resp. to Pl.'s Second Reqs. to Admit, ¶ 12; AGCO's Resp. to Pl.'s Third Set of Interrogatories, ¶ 1.

Accordingly, because the S.C. Fair Practices Act does not apply to the Instalment Contract at issue, Defendant is entitled to judgment as a matter of law. Plaintiff's sixth cause of action (Count VI) is therefore **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.

William A. McKinnon
Circuit Court Judge
Sixteenth Judicial Circuit

York Common Pleas

Case Caption:	Eswin Aguilar VS Nance Tractor And Implement Inc , defendant, et al
Case Number:	2021CP4601792
Type:	Order/Summary Judgment

So Ordered

/s William A. McKinnon, #2761, Circuit Judge