

**RECEIVED**

**Jul 17 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000780  
Case No. 2018-CP-40-04841

Bierer and Associates, Inc., Appellant,

v.

Jan F. Kennerly, Jr., Danielle Kennerly,  
EUSA, LLC, J&D Farms, LLC, Trystar LLC;  
Travis Pattern & Foundry, Inc.; Illinois Tool  
Works, Inc.; and David Deinek, Defendants,

Of which, Trystar LLC and Travis Pattern &  
Foundry Inc. are Respondents.

AND

Jan F. Kennerly, Jr., Defendant/Third Party Plaintiff,

v.

Walter Bierer, Brent Jeffries, and Joseph Bierer, Third Party Defendants.

---

**APPELLANT'S MOTION TO RECONSIDER**

---

James. M. Griffin, SC Bar No. 9995  
Margaret N. Fox, SC Bar No. 76228  
GRIFFIN HUMPHRIES LLC  
8906 Two Notch Road, Suite 200  
Columbia, South Carolina 29223  
T: (803) 744-0800

*Attorneys for Appellant Bierer*

Bierer and Associates, Inc. ("Bierer"), by and through undersigned counsel, hereby respectfully moves this Court for an order reconsidering its July 2, 2025, Order (the "Order") affirming the trial court's grant of summary judgment to Respondents Travis Pattern & Foundry, Inc. ("Travis") and Trystar, LLC ("Trystar") based on expiration of the statute of limitations. The Order should be reconsidered because the Court has misapplied the discovery rule by imposing a subjective standard contrary to South Carolina law, ignored material facts that create genuine issues of material fact, and arrived at conclusions that are contrary to established precedent requiring jury determination of discovery issues.

### **ARGUMENT**

#### **I. THE COURT MISAPPLIED THE DISCOVERY RULE BY IMPOSING A SUBJECTIVE STANDARD CONTRARY TO SOUTH CAROLINA LAW.**

In *Walbeck v. I'On Co.*, 439 S.C. 568, 581, 889 S.E.2d 537, 543-44 (2023), *reh'g denied* (July 26, 2023), the South Carolina Supreme Court clearly established that "the question of when a plaintiff discovered, or should have discovered, the alleged harm is for the jury to decide because it is an objective question." The Court further held that "the presence of conflicting testimony regarding the time discovery should have occurred necessarily requires the jury's resolution." *Id.* (citing *Brown v. Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) ("The burden of establishing the bar of the statute of limitations rests upon the one interposing it... and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide.")).

While the Order acknowledges this objective standard, it arrives at conclusions that necessarily result from the application of a subjective standard. Specifically, although there is evidence from which a jury could determine Bierer's actions were reasonable, the Order reflects a subjective determination by the Court that Bierer did not act reasonably in its efforts to discover the Respondents' conduct. In reaching this conclusion, this Court also discounts the objective facts

from which a jury could find Bierer acted reasonably in accepting Kennerly's explanation that the 2014 newsletter contained a "misprint" and thus Bierer did not have notice of a potential claim against the Respondents.

## **II. THE COURT IGNORED MATERIAL FACTS THAT CREATE GENUINE ISSUES OF MATERIAL FACT**

### **A. The 2014 IEEE Brochure Issue**

The Court erred in finding that Bierer's investigation of the 2014 IEEE brochure was insufficient as a matter of law. The evidence in the record shows that:

1. **Kennerly was in a position of trust:** Kennerly was a long-time employee of Bierer whom Walter Bierer considered to be like a son, and Kennerly's job at Bierer involved working closely with Travis legitimately on behalf of Bierer.

2. **Bierer acted promptly:** When Bierer discovered the brochure stating that Kennerly "worked for Travis," Bierer immediately confronted Kennerly about it at a management meeting.

3. **Kennerly's fraudulent explanation:** Kennerly laughed off the statement and explained that the biography was erroneous - that Travis employee Dick Pelletier had written the brochure and incorrectly assumed Kennerly was an employee of Travis because Kennerly had spent so much time assisting Travis with developing clamps for use in Bierer's personal protective grounding equipment.

4. **Reasonable reliance:** This explanation seemed reasonable to Walter and Joseph Bierer because of Bierer's extensive legitimate working relationship with Travis, and because Kennerly was working with Travis on behalf of Bierer to develop clamps for Bierer's grounding assembly product line.

Given these facts, whether it was reasonable for Bierer to accept Kennerly's explanation rather than calling Travis to independently verify the information should be a jury question, not a matter of law.

**B. The 2015 Email from Walter Bierer**

The Court erred in its analysis of the October 2015 email from Walter Bierer to Kennerly. The evidence in the record clearly establishes that:

1. **Different focus:** The "outside activities" referred to in the October 14, 2015, email did not concern Kennerly's performance in his sales capacity and that Bierer sales of Travis and Trystar products were at an all-time high.

2. **Specific context:** Walter Bierer's affidavit makes clear he suspected Kennerly was working for Jerry Eddins, not Travis or Trystar. The email was prompted by a suspicion that Kennerly's local South Carolina activities were with Eddins Electric Company, not any suspected relationship with Travis or Trystar.

3. **No connection to Respondents:** Even if Walter had ignored Kennerly's explanation and investigated further, he would have had no reason to call Travis or Tryster. At most, he would have called Eddins, who would have known nothing about Travis, Trystar, or other improper or disloyal conduct.

This Court ignores this record evidence completely and erroneously applies its own interpretation of the context for the 2015 email. At a minimum, there exists a genuine issue of material fact, properly presented to a jury, regarding whether this email put Bierer on notice of claims against Travis or Trystar.

### **C. The 2013 Trystar Emails**

The Court's analysis of the 2013 emails between Bierer and Trystar likewise ignores crucial evidence:

1. **No response from Trystar:** When Mr. Moerke received the April 2013 email from Joe Bierer, he chose not to reply to Bierer and instead left it up to Kennerly to address with Bierer. These facts directly contradict this Court's conclusion that all Bierer had to do was pick up the phone and call Trystar, then Trystar would have readily admitted its relationship with Kennerly. The fact that Trystar ultimately acknowledged this relationship years later, after Kennerly's misdeeds had been discovered does not change the fact that Trystar had an opportunity to do so much earlier but refused.

2. **Evidence of concealment:** This evidence alone supports an inference that Trystar expected Kennerly, as its agent, to respond to Bierer on its behalf, and that Trystar was avoiding responding to Bierer and intentionally asked its agent (a Bierer employee with incentive to cover up his agency with Trystar) to respond to Bierer.

### **III. THE COURT ERRED IN ITS FRAUDULENT CONCEALMENT ANALYSIS**

The Court erred in finding that Kennerly's fraudulent concealment could not be imputed to Travis and Trystar. The record contains substantial evidence that:

#### **A. Agency Relationship Existed**

1. **Travis concedes agency:** Travis concedes in its brief that Kennerly was its sales representative, and the evidence in the record fully supports this.

2. **Compensation arrangement:** Kennerly received approximately \$850,000 from Trystar and \$1.4 million from Travis from 2013-2018 for his services.

**3. IEEE Presentation:** The record clearly establishes that Kennerly spoke at the IEEE conference in his capacity as an agent of Travis, as stated in the IEEE brochure. Whether Kennerly's response to Bierer's timely inquiry into Kennerly's relationship with Travis during the IEEE conference was an extension of this presentation, and within the scope of his agency relationship, is a jury question.

**4. Jury question:** Whether Kennerly was an agent of Travis and Trystar is a question of fact for the jury. *See Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct. App. 1984).

**B. Fraudulent Concealment Within Scope of Agency**

There is evidence from which a jury could determine that Kennerly's continued lies and concealment of his relationship with Travis and Trystar were within the scope of his agency relationship:

**1. Benefited the principals:** Kennerly's fraudulent concealment benefited Travis and Trystar - their grounding business grew tremendously using Kennerly as an agent to steal Bierer's contacts, customers, and sales force.

**2. Incentive structure:** Absent compensation by Travis and Trystar, Kennerly would have had no reason to divert millions of dollars in sales away from Bierer.

**3. Continued payment:** That the Defendants continued to pay Kennerly while he engaged in conduct that benefited them is evidence from which a jury could determine that Kennerly's deceit was within the scope of his relationship with the Defendants.

Under *West v. Service Life & Health Ins. Co.*, 220 S.C. 198, 202, 66 S.E.2d 816, 817 (1951), an employer "is held liable to third persons in a civil suit for the frauds, deceits, concealments, misrepresentations, negligences, and other malfeasances and omissions of duty of his agent in the

course of his employment, although the [employer] did not authorize or justify or participate in, or indeed, know of such misconduct, or even if he forbade the acts or disapproved of them."

#### **IV. THE COURT'S APPLICATION OF THE DISCOVERY RULE WILL HAVE DETRIMENTAL CONSEQUENCES IN EMPLOYMENT RELATIONSHIPS**

The Court's holding effectively punishes parties for trusting their employees and creates an impossible standard. Under the Court's reasoning, every time an employer receives any information that could theoretically lead to the discovery of employee misconduct, the employer must immediately conduct an investigation that assumes the employee is lying, regardless of the employee's position of trust or the reasonableness of the employee's explanations. This interpretation of the discovery rule is contrary to South Carolina law, which requires consideration of what "a person of common knowledge and experience" would reasonably do under the circumstances. A reasonable person in Walter Bierer's position, dealing with a trusted employee of 15 years whom he considered like a son, would not immediately assume the employee was lying when confronted with potentially ambiguous information.

#### **CONCLUSION**

For the foregoing reasons, the evidence in the record creates material issues of fact as to whether Bierer should have been on notice of its claims against Travis and Trystar prior to 2018. The grant of summary judgment was inappropriate, the Order should be reconsidered and reversed, and the matter should be remanded for determination by a jury.

Respectfully submitted,

By: s/ James M. Griffin  
James. M. Griffin, SC Bar No. 9995  
Margaret N. Fox, SC Bar No. 76228  
GRIFFIN HUMPHRIES LLC  
8906 Two Notch Road, Suite 200  
Columbia, South Carolina 29223  
T: (803) 744-0800  
[jgriffin@griffinhumphries.com](mailto:jgriffin@griffinhumphries.com)  
[mfox@griffinhumphries.com](mailto:mfox@griffinhumphries.com)

*Attorneys for Appellant Bierer*

July 17, 2025  
Columbia, South Carolina

RECEIVED

Jul 17 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000780  
Case No. 2018-CP-40-04841

Bierer and Associates, Inc., Appellant,

v.

Jan F. Kennerly, Jr., Danielle Kennerly,  
EUSA, LLC, J&D Farms, LLC, Trystar LLC;  
Travis Pattern & Foundry, Inc.; Illinois Tool  
Works, Inc.; and David Deinek, Defendants,

Of which, Trystar LLC and Travis Pattern &  
Foundry Inc. are Respondents.

AND

Jan F. Kennerly, Jr., Defendant/Third Party Plaintiff,

v.

Walter Bierer, Brent Jeffries, and Joseph Bierer, Third Party Defendants.

---

**PROOF OF SERVICE**

---

I, Jaime Harmon, legal assistant to the attorney for the Appellant, Griffin Humphries LLC, located at 8906 Two Notch Road, Suite 200, Columbia, South Carolina 29223, hereby certify that on July 17, 2025, I have served all counsel in this action a copy of the **Appellant's Motion to Reconsider** by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Served:

Lyndey R. Z. Bryant  
Adams and Reese LLP  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, SC 29201

John F. Beach  
John Beach Mediation  
1201 Hampton Street, Suite 2A3  
Columbia, SC 29201

Brian Duffy  
Blake A. McKie  
DUFFY & YOUNG LLC  
96 Broad Street  
Charleston, SC 29401

John W. Ursu  
Faegre Drinker LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

John B. Kelchner  
Turner Padget Graham & Laney, P.A.  
P.O. Box 1473 (29202)  
1901 Main Street, Suite 1700  
Columbia, SC 29201

William R. Padget  
Carl D. Hiller  
HHP Law Group, LLC  
924 Gervais Street  
Columbia, SC 29202

Kurt M. Rozelsky  
Spencer Fane LLP  
P.O. Box 294  
Greenville, SC 29602-0294

s/ Jaime Harmon  
Jaime Harmon  
Legal Assistant of Griffin Humphries LLC