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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Appellate Case No. 2025-000792
Circuit Court Case No. 2025-CP-07-00051

Bear Island Distributors, LLC,.....Appellant,

v.

Lincoln & South Brewing, Co., LLC,.....Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This is an appeal from an order denying a motion for temporary injunction. Bear Island Distributors, LLC ("**Bear Island**"), a beer wholesaler[1], sought an injunction against Lincoln & South Brewing Co., LLC ("**Lincoln**"), a registered producer[2], for unlawfully terminating its distribution agreement (the "**Distribution Agreement**") with Bear Island. Unlike other traditional breach of contract cases, this is a case of first impression arising out of and governed by the Alcohol and Alcoholic Beverages Act, S.C. Code Ann. § 61-4-10, *et seq*. (the "**Act**"). The Act is a powerful piece of legislation that South Carolina's General Assembly enacted to protect and stabilize the three-tiered statutory system of alcohol distribution within the State. *Id.* Notably, in enacting this Act, the General Assembly declared that:

> The State has a **substantial interest in regulating** alcoholic liquors and other beverages containing alcohol; **the activities of manufacturers, importers, wholesales, and retailers**; and the influences that affect the consumption levels of alcoholic liquors and other beverages containing alcohol by the people of the State."

S.C. Code Ann. § 61-4-720 (emphasis added). The General Assembly added, in pertinent part, that:

> It is the intent of the General Assembly that this act do all of the following:
>
> . . .
>
> (3) promote and assure the public's interest **in fair and efficient distribution** and quality control of alcoholic beverages in this State;
>
> . . .
>
> (11) promote and maintain a **sound, stable, and viable three-tier system of distribution of beverages** containing alcohol to the public.

[1] The Act identifies alcohol distributors as "beer wholesalers." *See* S.C. Code Ann. § 61-4-1100(1)(a).

[2] The Act identifies brewers as "registered producers." *See* S.C. Code Ann. § 61-4-1100(1).

Id. (emphasis added). In promoting and maintaining a sound, stable, and viable three-tier system of distribution of beverages, the General Assembly enacted S.C. Code Ann. § 61-4-1120, which provides:

> The court of common pleas has jurisdiction and power to **enjoin the cancellation or termination of a franchise or agreement between a beer wholesaler and a registered producer** upon the application of a beer wholesaler or producer **who is or might be adversely affected by the cancellation or termination**; and in granting an injunction, the court must make provisions necessary to protect the beer wholesaler or registered producer while the injunction is in effect including, but not limited to, a provision that the registered producer must not supply the customers of the beer wholesaler by servicing the customers through other distributors or means or a provision that the beer wholesaler must continue to supply to his customers the products of the registered producer. Application may be made by the beer wholesaler or producer to the appropriate court in the county in which the business of the wholesaler is located. The court may require a bond to be posted by the party seeking the injunction, securing the party enjoined for damages in an amount to the court's discretion.

(emphasis added). As addressed in more detail below, Bear Island presented evidence to the Circuit Court in its Motion for Temporary Injunction establishing a *prima facie* showing that it is or, at the low threshold requirement, "might be" adversely affected by Lincoln's unlawful termination of the Agreement.

On March 3, 2025, the Circuit Court denied the temporary injunction in a brief order with the following six (6) numbered findings (the "**First Order**"):

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to the Alcohol and Alcoholic Beverages Act, S.C. Code Ann. § 61-4-10 *et seq.* (the "Act").
2. Under the Act and the exclusive Distribution Agreement at issue, [Lincoln] as a registered producer is not able to market, sell, or distribute its product to retail customers except through [Bear Island] as its exclusive "beer wholesaler".
3. [Bear Island] has not placed a purchase order with [Lincoln] under the Distribution Agreement since October, 2024.
4. [Bear Island] has statutory and contract claims with discernible and calculable amounts in dispute which provide adequate remedies at law.
5. Bear Island Distributors did not present convincing evidence that it has been or might be adversely affected by the cancellation of the Distributorship

Agreement sufficient to support its motion for an injunction under S.C. Code Ann. § 61-4-1120.

6. [Bear Island's] Motion for Temporary Injunction is denied.

(*Id.*, p. 2). On March 13, 2025, Bear Island timely moved to alter or amend the First Order (the "**Motion to Alter or Amend**") on the following grounds: (a) the Circuit Court erroneously applied a heightened evidentiary standard to the "adversely affected" analysis under the Act; (b) to the extent applicable, the Circuit Court did not sufficiently address the common law elements for temporary injunction; and (c) the Circuit Court did not include sufficient findings of fact as required under Rule 52, SCRCP. (**Motion to Alter or Amend**).

On March 26, 2025, the Circuit Court denied Bear Island's Motion to Alter or Amend the First Order (the "**Second Order**") (**Second Order**). In its Second Order, the Circuit Court maintained that it did not apply a heightened standard but rather that Bear Island "**did not convince the Court** that [Bear Island] made a showing that it will or might be adversely affected." (*Id.*, p. 3) (emphasis added). The Circuit Court further stated that its First Order did not consider the common law elements for temporary injunction but instead used the statutory "adversely affected" standard provided by the Act. (*Id.*, p. 4). The Circuit Court also found that its First Order included sufficient findings of fact as it was "based on the pleadings, filings of record, submissions of the parties, presentation of counsel, and inquiry of the Court at the hearing." (*Id.*, p. 5). The Circuit Court then identified nine (9) additional bullet-points in its Second Order:

1. [Bear Island] and [Lincoln] had an exclusive distribution agreement whereby [Lincoln] cannot distribute its product through anyone other than [Bear Island] so long as the exclusive distribution agreement is in place;
2. [Lincoln] alleged [Plaintiff] had not complied with the Distribution Agreement and issued a Notice of Termination on November 15, 2024;
3. [Lincoln] is only one of the 28 beer suppliers that have exclusive distribution agreements with [Bear Island];

4. [Bear Island] can and has continued to do business with its 27 other beer suppliers;
5. [Bear Island] has not placed a purchase order with [Lincoln] since October 2024;
6. [Lincoln] could not sell its product through another distributor while [Bear Island's] motion for injunction relief was pending;
7. In December 2024, [Bear Island's] sales agent told a retail customer when asked about getting [Lincoln's] product that [Lincoln] had no product but did not place a purchase order to service that customer and instead suggested a substitute product;
8. [Bear Island] tried to market another of its supplier's products to an existing customer of [Lincoln] (HHI Seafood festival) without placing a purchase order to service that customer; and
9. [Bear Island] removed three of [Lincoln's] taps from one of its retail customers on Hilton Head Island without placing a purchase order to service that customer.

(*Id.*, p. 5).

As addressed in more detail below, the Second Order continued to apply a heightened standard to the "adversely affected" analysis under the Act and also considered facts not within evidence in denying Bear Island's Motion for Temporary Injunction. Accordingly, this Court should reverse the Circuit Court's First and Second Order, grant Bear Island's Motion for Temporary Injunction, and enjoin Lincoln from continuing to violate the terms of the Distribution Agreement and the Act.

STATEMENT OF FACTS

A. Distribution Agreement between Bear Island and Lincoln.

In 2021, Lincoln opened its brewery, Lincoln & South Brewing Company, in Hilton Head Island, South Carolina. On June 16, 2021, Bear Island and Lincoln entered into the Distribution Agreement, as required by the three-tier alcohol distribution system, whereby Lincoln agreed to sell a variety of its beers (collectively, the "**Brands**") to Bear Island. (**Verified Compl., ¶ 6; Distribution Agreement**). In turn, Bear Island agreed to distribute Lincoln's Brands to retailers

throughout South Carolina. (*Id.*). Between June 2021 and October 2024, the parties developed a successful distribution arrangement where Bear Island regularly made weekly purchases of Lincoln's Brands and, subsequently, sold Lincoln's Brands to hundreds of retailers in South Carolina. (*Id.*, ¶ 11; **Affidavit of William Cram**). Notably, throughout the more than three (3) year distribution arrangement between the parties, Bear Island purchased over $750,000 of Lincoln's Brands. (*Id.*).

B. Bear Island's Development, Promotion, and Marketing of Lincoln's Brands.

During the Distribution Agreement, Bear Island developed, marketed, and grew its distribution of Lincoln's Brands throughout the State of South Carolina to approximately four hundred and fifty (450) retail stores, bars, and restaurants (collectively, the "**Retailers**") (**Affidavit of William Cram, ¶ 3**). Because Lincoln was a newly established brewery on Hilton Head Island, Bear Island's development and marketability of Lincoln's Brands was not without significant costs, time, or effort. (*Id.*). In particular, Bear Island assigned ten (10) sales representatives to introduce, sell, and promote Lincoln's Brands among its Retailers. (*Id.*). In order to successfully distribute Lincoln's Brands, Bear Island built an extensive rapport with a wide variety of Retailers. (*Id.*). In building this rapport, Bear Island established trust with its Retailers on the underlying basis that it would provide a consistent supply of Lincoln's Brands. (*Id.*, ¶ 6). Importantly, however, Bear Island's ability to sell Lincoln's Brands to Retailers was limited. (*Id.*). For example, when Bear Island solicited Retailers to purchase Lincoln's Brands, the Retailer was limited to selecting, on average, just two or three Brands over the course of a season or entire year. (*Id.*).

"Once Bear Island secure[d] a placement for Lincoln's Brands, the placement [was] intended to be long-term and provide a recurring revenue stream." (*Id.*, ¶ 4). This "placement [was] specifically pronounced because retail accounts have limited shelf and tap space." (*Id.*, ¶ 5). Therefore, it was,

> [C]ritical for Bear Island to carefully select which Brands to promote. For example, many restaurants create menus that specifically identify what Brands it intends to sell over the course of a season and, in some cases, an entire year. Once the menus are created, these menus are fixed and Brands are not rotated on or off.

(*Id.*). In short, "due to the demands of the retail market and limited shelf and tap space, Bear Island's distribution and supply of Lincoln's Brands to it retail accounts [was] existential to Bear Island's success and business operations." (*Id.*, ¶ 6).

C. Lincoln's Production Issues and Lack of Communication with Bear Island.

Beginning in early 2024, Lincoln struggled to maintain a consistent production and supply of its Brands to Bear Island. (*Id.*, ¶ 12). Despite Lincoln's inability to provide a sufficient production and supply of its Brands, Bear Island continued to abide by its contractual obligations under the Distribution Agreement and grow Lincoln's Brands throughout South Carolina. (*Id.*, ¶ 13). For example, on February 21, 2024, Bear Island emailed Lincoln to inquire as to when Lincoln expected to supply Bear Island with more Brands. (*Id.*, ¶ 14; **February 21, 2024 Email**). In response, Lincoln informed Bear Island that there were changes being made with the production schedule and that it intended to make more beer available. (*Id.*). Bear Island replied, in relevant part, that it was "trying to get an idea of when [the Brands] will be back in stock for distribution so that we can communicate that to our accounts." (*Id.*). Similarly, on March 19, 2024, Bear Island issued a purchase order to Lincoln via email and inquired into whether Lincoln could expedite the available date for a particular Brand in order to meet the immediate demands of its local accounts. (*Id.*, ¶ 15; **March 19, 2024 Email**). Lincoln responded that it could not accommodate Bear Island's production request. (*Id.*). Again, on May 16, 2024, Bear Island submitted a request to Lincoln to pick up a certain Brand. Lincoln responded that its glycol chiller was broken and no pickups could occur. (*Id.*, ¶ 16; **May 16, 2024 Email**).

On June 26, 2024, Lincoln, for the first time, demanded that Bear Island immediately pick up and distribute sixty (60) barrels of its Brands. (*Id.*, ¶ 18; **June 26, 2024 Email**). Bear Island responded that, while it had the capacity to distribute up to sixty (60) barrels per week, due to Lincoln's average supply of just fifteen (15) barrels per week in May, a four hundred percent (400%) increase in one week was not feasible. (*Id.*). Bear Island offered to schedule a strategy and planning session to accommodate Lincoln's request at soon as possible and to assist Lincoln with the storage of the Brands. (*Id.*). Lincoln did not respond to Bear Island's request to meet and confer. (*Id.*, ¶ 19).

On July 8, 2024, Bear Island sent another email to Lincoln to schedule a meeting to discuss growing Lincoln's Brand sales and marketing to include a strategy plan moving forward. (*Id.*, ¶ 20; **July 8, 2024 Email**). Again, Lincoln did not respond to Bear Island's request to meet and confer. (*Id.*, ¶ 21). On August 19, 2024, Bear Island informed Lincoln that it implemented a new distribution software that would streamline purchase orders, sales, logistics, data, and reporting, to continue to promote and assist Lincoln's production. (*Id.*, ¶ 22; **August 19, 2024 Email**). Additionally, Bear Island informed Lincoln of eight (8) new customers that Bear Island had obtained in the previous two (2) weeks and requested marketing materials and sales sheets from Lincoln. (*Id.*).

On August 20, 2024, Bear Island emailed Lincoln regarding its sales plans and facilitating correspondence between Lincoln and Bear Island's individual sales representatives. (*Id.*, ¶ 23, **August 20, 2024 Email**). Bear Island provided Lincoln a list of Bear Island's sales representatives, their contact information, and their respective territories. (*Id.*). In that correspondence, Bear Island additionally requested that Lincoln participate in one of Bear Island's virtual sales team meeting. (*Id.*). Again, Lincoln did not respond to Bear Island's request for marketing materials and sales

sheets nor did Lincoln attend Bear Island's virtual sales team meeting or participate in Bear Island's virtual sales team meetings. (*Id.*, ¶ 24).

On September 24, 2024, Bear Island, through its sales representative, informed Lincoln that it had been requested to provide its Brands for a high dollar event at a private oceanfront home on November 8th, 2024. (*Id.*, ¶ 25; **September 24, 2024 Email**). Bear Island informed Lincoln that the customer requested a representative from Lincoln attend the event to pour its Brands. (*Id.*). Yet again, Lincoln did not respond to the September 24, 2024 email correspondence from Bear Island, nor did Lincoln provide a representative to attend the November 8, 2024 event. (*Id.*, ¶ 26). On October 10, 2024, Bear Island emailed Lincoln to schedule a meeting to discuss sales and marketing. (*Id.*, ¶ 27; **October 10, 2024 Email**). Bear Island provided a sales plan, which Bear Island already began executing, and requested Lincoln's support in clarifying points of communication and streamlining information flow on production. (*Id.*). Again, Lincoln did not respond to Bear Island's October 10, 2024 email correspondence. (*Id.*).

D. Lincoln's Unlawful Termination of the Distribution Agreement and Refusal to Sell its Brands to Bear Island.

On October 14, 2024, per its normal operating procedure, Bear Island sent an email to Lincoln to pick up a variety of its Brands. (*Id.*, ¶ 29; **Exhibit 1 to MTI, October 14, 2024 Email**). Lincoln did not respond to Bear Island's purchase order request. (*Id.*). Instead, Lincoln demanded Bear Island release it from the Distribution Agreement without any reason. (**Verified Complaint, ¶ 30**). Bear Island questioned why Lincoln sought a release from the Distribution Agreement and also sought to fulfill the October 14, 2024 purchase order. (*Id.*).

On October 16, 2024, Bear Island's managing member, Willie Cram, sent a text message to Lincoln's head brewer, John Rybicki, inquiring whether Lincoln would allow Bear Island to pick up the October 14, 2024 purchase order. (**Text Message with John Rybicki**). Rather than

continue selling its Brands to Bear Island, Lincoln outright refused to sell anything to Bear Island in violation of the Distribution Agreement. (*Id.*). On October 21, 2024, Bear Island sent a follow-up email to Lincoln requesting to pick up the purchase order on Wednesday. (*Id.*, ¶ 29; **Exhibit 1 to MTI, October 14, 2024 Email**). In particular, Bear Island wrote "[w]e are now completely out of Beach City draft so if we want to keep our draft accounts stocked we'll need to pick this up Wed." (*Id.*). Lincoln did not respond to this email. On Wednesday, October 23, 2024, Mr. Cram sent another text message to Mr. Rybicki asking if Bear Island could retrieve the Brands it sought in the purchase order. (**Exhibit 12 to Verified Complaint**). Specifically, the October 23, 2024 text message stated:

> Hey man, I got Will on the Island, are we good to get the PO and drop shells? Need to fullfil [sic] some Beach City orders for sure [sic] I can just send him by as well to check but will need to know bc [sic] otherwise he'll start heading back towards Bluffton / Beaufort.

(*Id.*). Mr. Rybicki responded, "[h]ave your attorney respond to [Lincoln's attorney] please." (*Id.*).

Four (4) weeks later, on November 14, 2024, Lincoln sent a Notice of Termination of the Distribution Agreement to Bear Island (the "**Notice of Termination**"). (**Verified Complaint, ¶** 38; **Notice of Termination**). In the Notice of Termination, Lincoln contended that the Distribution Agreement would terminate within sixty (60) days (i.e., January 13, 2025) pursuant to S.C. Code Ann. § 61-4-1100(a). (*Id.*). Yet, rather than comply with its obligations under the Distribution Agreement, the Act, and its Notice of Termination between November 14, 2024 and January 13, 2025, Lincoln refused to sell its Brands to Bear Island altogether. (*Id.*). Importantly, Bear Island vehemently denies it violated the Distribution Agreement. (*Id.*).

Notably, on January 30, 2025, Keith McCool, Lincoln's Taproom Manager, responded to a request relating to one of Lincoln's Brands in a Facebook Group, Lowcountry Beer Enthusiasts

(the "**Facebook Group**").[3] Mr. McCool wrote in his Facebook post that Lincoln is "currently in the **process of switching distributors**" and that Lincoln has not "**put anything into distribution for months**." (**Keith McCool's Facebook Post**). Since October 14, 2024, Lincoln has not sold one Brand to Bear Island. (**Verified Complaint**, ¶ 34).

E. The "Adverse Effects" on Bear Island Due to Lincoln's Termination of the Distribution Agreement.

"Once a retail account is lost, Bear Island is unable to supply the accounts with any beer from any other supplier, creating a cascading and trickling down effect that adversely affects the entirety of Bear Island's business." (**Affidavit of William Cram, ¶ 6**). More specifically, the loss of a retail account is not only a loss to distribute Lincoln's Brands to the Retailer but also a loss to distribute any other brands to the Retailer, which subsequently tarnishes Bear Island's name and reputation. (*Id.*, ¶ 8). "This loss [is] particularly damaging in the Hilton Head area, **where Lincoln represents one-third of Bear Island's total revenue in Beaufort County**, which Bear Island achieved through substantial investment and focused marketing efforts." (*Id.*, ¶ 9) (emphasis added). Further,

> Bear Island will immediately lose the tap and shelf space, goodwill, and brand loyalty that Bear Island built through more than three and a half years of significant time, effort, and financial investment. These resources, which could have been used to pursue and promote other local suppliers, will instead be handed over to a competing distributor that played no role in creating these opportunities. **This competitor will unfairly benefit from the brand value and equity that Bear Island worked hard to establish without providing any compensation to those who built it**.

(*Id.*, ¶ 8) (emphasis added). In fact, Tom Gadhue, Lincoln's owner, confirmed that Bear Island had been "adversely affected" by attesting that, prior to terminating the Distribution Agreement,

[3] Mr. McCool's post on the Facebook Group has since been removed and/or deleted.

Lincoln had already secured a relationship with a competitor distributor, who would unfairly benefit from the brand value and equity that Bear Island built:

> [Bear Island] knew we have [sic] already **secured a relationship with another distributor who is standing by to assume our business** but cannot do so until our relationship with [Bear Island] is terminated by consent or court order due to regulatory issues.

(**Affidavit of Tom Gadhue, ¶ 33**) (emphasis added). Accordingly, as a result of Lincoln's termination of the Distribution Agreement, Bear Island is suffering and will continue to suffer a loss of its reputation, loss of goodwill, loss of customers, and loss of competitive advantages. (**Verified Complaint, ¶ 44**).

PROCEDURAL HISTORY

On January 9, 2025, Bear Island filed its Verified Complaint and Motion for Temporary Restraining Order seeking the Court to enter an Order prohibiting Lincoln from terminating the Distribution Agreement. (**Verified Complaint and Motion for Temporary Restraining Order**). On January 10, 2025, in an attempt to resolve their differences and continue the distribution of Lincoln's Brands, the parties entered into an Agreement to stay the Termination of the Distribution Agreement (the "**Stay Agreement**"). (**Stay Agreement**). Pursuant to the Stay Agreement, Lincoln agreed that the Distribution Agreement would not terminate until after an Order on Bear Island's Motion for Temporary Injunction was entered. (*Id.*).

Following execution of the Stay Agreement, Bear Island requested that Lincoln continue selling its Brands to Bear Island so that it may, in turn, distribute the Brands to its Retailers. In particular, on January 29, 2025, after Lincoln refused to sell Bear Island any more Brands, Bear Island specifically demanded that Lincoln abide by its obligations under the Distribution Agreement and sell Bear Island its Brands. (**January 29, 2025 Letter**). Lincoln refused to sell its Brands to Bear Island in violation of the Distribution Agreement, the Stay Agreement, and the Act.

On February 10, 2025, Bear Island filed its Motion for Temporary Injunction seeking the Circuit Court to enjoin Lincoln (a) from terminating the Distribution Agreement, (b) to continue complying with its obligations under the Distribution Agreement and sell its brands to Bear Island, and (c) from supplying Bear Island's customers through other distributors or other means. (**Motion for Temporary Injunction**). On March 3, 2025, the Circuit Court denied Bear Island's Motion for Temporary Injunction. (**First Order**). On March 13, 2025, Bear Island filed its Motion to Alter or Amend the First Order. (**Motion to Alter or Amend**). On March 26, 2025, the Circuit Court denied Bear Island's Motion to Alter or Amend. (**Second Order**). Thereafter, Bear Island filed a Notice of Appeal with the Circuit Court and this Court on April 24, 2025. (**Notice of Appeal**).

STANDARD OF REVIEW

Injunctions are matters in equity. *Denman v. City of Columbia*, 691 S.E.2d 465, 470 (S.C. 2010). "In appeals from *all equity actions* . . ., the appellate court has authority to find facts in accordance with its own view of the preponderance of the evidence." *Dearbury v. Dearbury*, 569 S.E.2d 367, 369 (2002) (emphasis added). This is true even if the appealed matter is within the trial court's discretion. *Lewis v. Lewis*, 709 S.E.2d 650, 651–655 (S.C. 2011) (family court factual findings reviewed *de novo* for matters within the court's discretion); *Belle Hall Plantation Homeowner's Ass'n v. Murray*, 799 S.E.2d 310, 15 (S.C. App. 2017) (applying *Lewis*, *supra*, to hold that, despite master's discretion in setting a foreclosure sale, appellate courts take their own view of the evidence on factual matters). Thus, the appellate court may take its own view of the evidence on factual issues in appeals from injunction orders, and, as in all appeals, questions of law are reviewed *de novo*. *See e.g.*, *Denman*, 691 S.E.2d at 470*; Grosshuesch v. Cramer*, 623 S.E.2d 833, 834 (S.C. 2005); *Brown v. County of Berkeley*, 622 S.E.2d 533, 536 (S.C. 2005);

Scratch Golf Co. v. Dunes West Residential Golf Props., 603 S.E.2d 905, 907 (S.C. 2004); *Stecker v. TALX Corp*., 681 S.E.2d 890, 891, 893 (S.C. App. 2009).[4]

ARGUMENT

The issues before this Court are of first impression and concern the statutory interpretation of the Alcohol and Alcoholic Beverages Act, South Carolina Code Ann. § 61-4-10, *et seq.* (the "**Act**"). In particular, the Circuit Court was required to determine whether Bear Island was entitled to a temporary injunction based on the provisions of S.C. Code Ann. § 61-4-1120, which provide:

> The court of common pleas has jurisdiction and power to **enjoin the cancellation or termination of a franchise or agreement between a beer wholesaler and a registered producer** upon the application of a beer wholesaler or producer who **is or might be adversely affected by the cancellation or termination**; and in granting an injunction, the court must make provisions necessary to protect the beer wholesaler or registered producer while the injunction is in effect including, but not limited to, a provision that the registered producer must not supply the customers of the beer wholesaler by servicing the customers through other distributors or means or a provision that the beer wholesaler must continue to supply to his customers the products of the registered producer. Application may be made by the beer wholesaler or producer to the appropriate court in the county in which the business of the wholesaler is located. The court may require a bond to be posted by the party seeking the injunction, securing the party enjoined for damages in an amount to the court's discretion.

(emphasis added). As addressed in more detail below, the Circuit Court abused its discretion when it denied Bear Island's Motion for Temporary Injunction by (I) applying an incorrect standard to Bear Island's Motion for Temporary Injunction and (II) failing to make sufficient findings of fact supported by evidence in the record. For each and all of these reasons more fully explained below,

[4] Some cases hold that the standard of review is "abuse of discretion," which arises when the appealed decision is controlled by an error of law (reviewed *de novo* on appeal) or when the court's factual findings are "without evidentiary support" or "unsupported by the evidence." *See e.g.*, *Greenville Bistro, LLC v. Greenville County*, 866 S.E.2d 562, 569 (S.C. 2021); *Strategic Res. Co. v. BCS Life Ins. Co.*, 627 S.E.2d 687, 689 (S.C. 2006). These cases, however, do not explain how the appellate courts determine whether the appealed order is "supported" by the evidence. Based on the cases cited in the appended text, particularly *Lewis* and *Belle Hall*, the appellate courts review factual issues by taking their own view of the evidence.

Bear Island respectfully requests this Court to reverse the Orders denying Bear Island's Motion for Temporary Injunction and enter an injunction against Lincoln during the pendency of this case.

I. The Circuit Court Erred in Applying an Incorrect Standard to Bear Island's Motion for Temporary Injunction.

The Circuit Court erred when it applied a heightened evidentiary standard to Bear Island's Motion for Temporary Injunction. Specifically, the Circuit Court erred by requiring that Bear Island submit "convincing" evidence that it was entitled to a temporary injunction. Further, the Circuit Court erred by improperly applying one of the three common law elements for temporary injunction when it denied Bear Island's Motion for Temporary Injunction.

a. The Circuit Court Erred in Applying a Heightened Evidentiary Standard to the "Adversely Affected" Analysis under the Alcohol and Beverages Act, S.C. Code Ann. § 61-4-10, et seq.

The First Order states "Bear Island did not present ***convincing*** evidence that it has been or might be adversely affected by the cancellation of the Distribution Agreement sufficient to support its motion for an injunction." (**First Order, ¶ 5**) (emphasis added). Bear Island argued in its Motion to Alter or Amend that the Circuit Court improperly required Bear Island to submit "convincing evidence" in support of its Motion for Temporary Injunction, rather than requiring Bear Island to make a *prima facie* showing. (**Motion to Alter or Amend, pp. 3–7**). In the Circuit Court's Second Order, the Circuit Court states "[t]he [First] Order issued by the Court does not apply a heightened standard to the Adversely Affected Analysis" but maintained that "the facts and circumstances presented by [Bear Island] **did not convince** the Court that [Bear Island] made a showing that it will or might be adversely affected." (**Second Order, p. 3**) (emphasis added). Whether Bear Island presented "convincing evidence" or whether the Circuit Court was "convinced" of Bear Island's evidence is immaterial and not the proper standard. Instead, Bear Island need only present a *prima facie* showing that "it is or might be adversely affected" by

Lincoln's termination of the Distribution Agreement. *See Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

The Act confers jurisdiction and power on the Circuit Court to issue an injunction if a wholesaler (i.e., Bear Island) "is or might be adversely affected" by a producer's (i.e., Lincoln) termination of a distribution agreement. (Act, § 61-4-1120). Thus, "is or might be adversely affected" is the requisite showing to support an injunction under the Act. However, the statute does not prescribe the evidentiary standard of proof for establishing that a party is or might be adversely affected. Absent legislative direction, South Carolina case-law provides instruction on the burden of proof for a temporary injunction.

In South Carolina, a party seeking an injunction must merely make a *prima facie* showing. *Compton*, 392 S.C. at 366, 709 S.E.2d at 642. "*Prima facie* evidence is evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted." *LaCount v. Gen. Asbestos & Rubber Co.*, 184 S.C. 232, 192 S.E. 262, 266 (1937) (emphasis added). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, **a temporary injunction will be granted without regard to the ultimate [determination] of the case on the merits**." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1991) (emphasis added). In contrast, the "clear and convincing" standard of proof requires a party to establish a "firm belief [by the fact-finder] as to the allegations sought to be established." *Satcher v. Satcher*, 351 S.C. 477, 483, 570 S.E.2d 535, 538 (Ct. App. 2002). Applying the "clear and convincing" standard imposes a heightened burden on the party with the burden of proof.

Neither the First Order nor the Second Order explain the justification for requiring that Bear Island must submit "convincing" evidence or that the Court must be "convinced" of the evidence to support its Motion for Temporary Injunction. Absent legislative direction to do

otherwise, the Circuit Court should have applied the *prima facie* evidentiary standard that South Carolina applies to other temporary injunctions. Viewed under the proper evidentiary standard, pursuant to S.C. Code Ann. § 61-4-1120, Bear Island's Motion for Temporary Injunction needed only to present evidence sufficient to raise a presumption that Bear Island "is or might be adversely affected" by Lincoln's termination of the Distribution Agreement.

In its Motion for Temporary Injunction, Bear Island submitted evidence of how it would be adversely affected by Lincoln's termination of the Distribution Agreement in the Verified Complaint (*see* ¶¶ 43–44, 59–62) and via the Affidavit of William Cram, Bear Island's Managing Member (**Affidavit of William Cram**). As addressed in the Statement of Facts, subsection "E", *supra*, Mr. Cram testified that "once a retail account is lost, Bear Island is unable to supply the accounts with any beer from any other supplier, creating a cascading and trickling down effect that adversely affects the entirety of Bear Island's business." (**Affidavit of William Cram, ¶ 6**). Thus, the loss of a retail account is not only a loss to distribute Lincoln's Brands to the Retailer but also a loss to distribute any other brands to the Retailer. (*Id.*, ¶ 8). More specifically, Bear Island will immediately lose the tap and shelf space, goodwill, and brand loyalty that Bear Island built through more than three and a half years of significant time, effort, and financial investment. (*Id.*). These resources, which could have been used to pursue and promote other local suppliers, will instead be handed over to a competing distributor that played no role in creating these opportunities. (*Id.*). **Consequently, Bear Island's competitor will also unfairly benefit from the brand value and equity that Bear Island worked hard to establish without providing any compensation to those who built it**. (*Id.*) Mr. Cram added that "this loss would be particularly damaging in the Hilton Head area, where Lincoln represents one-third of Bear Island's total revenue in Beaufort

County, which Bear Island achieved through substantial investment and focused marketing efforts." (*Id*., ¶ 9).

In contrast, Lincoln does not submit any evidence rebutting Bear Island's *prima facie* showing that it will be adversely affected if Lincoln is permitted to terminate the Distribution Agreement. Rather, the Circuit Court relies on **one fact** posited by Lincoln to support denying Bear Island's Motion for Temporary Injunction: that Bear Island has not submitted a purchase order since October 2024. This evidence does not rebut Bear Island's evidence that **it is or might be adversely affected** by Lincoln's termination; rather, it is an attempt to shift blame for the adverse effect to Bear Island. In doing so, Lincoln conveniently glosses over the fact that it **never fulfilled** the last purchase order Bear Island submitted in October 2024 (even though it requested five separate times to pick it up), instead directing Bear Island to communicate henceforth through the parties' attorneys and then sending a notice of termination letter in November 2024. (**Verified Complaint**, ¶¶ 29–38). In fact, Mr. Gadhue admitted in his affidavit that, even though Bear Island placed purchase orders with Lincoln, it had no intent of fulfilling these purchase orders as it intended to terminate the Distribution Agreement:

> [Bear Island] began a mad scramble in October [2024] of purchase orders and demands for us to make appearance at marketing events **despite knowing full well of our intent to terminate the Distribution Agreement**.

(Affidavit of Tom Gadhue, ¶ 30) (emphasis added). It defies logic why Bear Island would continue submitting purchase orders when Lincoln never fulfilled the last one and instead sent notice of its intent to terminate through legal counsel.[5] This evidence does nothing to rebut the adverse effects of Lincoln's termination.

[5] Notably, Bear Island reached out to Lincoln since October 2024 through counsel to affirm that Bear Island wants to purchase product from Lincoln. *See*, *e.g.*, Exh. 4 to Motion for Temporary Injunction, Letter from John Connell, Bear Island counsel, to R. Nicholas Felix, Lincoln counsel,

Finally, the Circuit Court confirmed in its Second Order that Bear Island "offered evidence they were not able to order product from [Lincoln]." (**Second Order, p. 3**). This statement alone satisfies that Bear Island established a *prima facie* showing that it would be adversely affected by the termination of the Distribution Agreement. If Bear Island could not order product from Lincoln, Bear Island could not fulfill its obligations to Retailers, causing the adverse effects described in the Verified Complaint and Affidavit of William Cram.

Under the *prima facie* standard, Bear Island presented unrebutted evidence establishing that Bear Island will be or, at the bare minimum, might be adversely affected by Lincoln's termination of the Distribution Agreement, as required under the Act. Because Bear Island presented unrebutted evidence that it will be or might be adversely affected by Lincoln's termination of the Distribution Agreement, as required under the Act, Bear Island respectfully requests the Court to reverse the Order denying Bear Island's Motion for Temporary Injunction and enter an injunction against Lincoln during the pendency of this case.

b. The Circuit Court Erred By Applying One of the Common Law Elements for Temporary Injunction That Imposes a Heightened Standard on Bear Island

In the First Order, the Circuit Court appears to apply both the "adversely affected" requirement under the Act (albeit with a heightened evidentiary standard, *see supra*, Section I(a)) and one of the standard elements for a temporary injunction (adequate remedy at law). (**First Order**, ¶¶ 4–5). Specifically, the Circuit Court ruled that "[Bear Island] has statutory and contract claims with discernible and calculable amounts in dispute which provides adequate remedies at law." (**First Order, p. 2**). Demonstrating that the party requesting an injunction has no adequate remedy at law is one of the three elements for obtaining a common law injunction in South

"Re: Bear Island Distributors, LLC v. Lincoln & South Brewing Co., LLC; Case No.: 2025-CP-14-0051, page 2 (Jan. 29, 2025) ("Bear Island requests, for the fifth time, that [Lincoln] sell its product to Bear Island so that it can continue to distribute it as required by the Agreements.").

Carolina. *See Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). In their memoranda in support of and opposition to Bear Island's Motion to Alter or Amend, both parties agreed that the common law elements for injunction do not apply in this case. (*See* **Bear Island's Reply to Lincoln's Return, pp. 1–2; Lincolns Return to Motion to Alter or Amend, p. 6; Motion to Alter or Amend, pp. 1, 7**). In its Second Order, the Circuit Court stated that it "did not consider the common law elements for Temporary Injunction when it ruled." (**Second Order, p. 4**).[6] Instead, the Circuit Court noted that it "used the Statutory [sic] standard provided by Alcohol and Alcoholic Beverages Act, S.C. Code Ann. §61-4-10 *et seq.*" but then re-affirmed its finding in the First Order that Bear Island had,

> [S]tatutory and contract claims with discernable and calculable amounts in dispute which provide ***adequate remedies at law***; however, this finding was not used to consider the common law elements for Temporary Injunction, rather it was further evidence that the Plaintiff did not show it will or might be adversely affected.

(*Id.*) (emphasis added).

Bear Island sets forth in Section II.b., *infra*, why the Circuit Court's ruling that Bear Island has adequate remedies at law is erroneous. Notwithstanding, the Circuit Court's ruling on Bear Island's purported adequate remedies at law is problematic for another reason. Even if Bear Island has adequate remedies at law (which Bear Island does not concede), the Circuit Court states that it relied on Bear Island's adequate remedies at law as "***evidence*** that [Bear Island] did not show that it will or might be ***adversely affected***." (*Id.*) (emphasis added). But the Circuit Court does not explain how (or what) Bear Island's purported adequate remedies at law has any bearing on

[6] To the extent this Court were to determine that the common law elements for temporary injunction apply to this case (which Bear Island, Lincoln, and the Circuit Court all agree it does not), Bear Island explained why it meets the three common law elements in its Motion to Alter or Amend. (Motion to Alter or Amend, pp. 8–11. To the extent necessary, Bear Island incorporates and preserves those arguments in this appeal.

whether Bear Island will or might be adversely affected. Surely, a party could be adversely affected even if the party ultimately has an adequate remedy at law. Put differently, an adequate remedy at law is not a bar that Bear Island must satisfy to obtain an injunction. Rather, as set forth within the Act, the General Assembly intended for a beer wholesaler, such as Bear Island, to immediately obtain injunctive relief in the event there is evidence that termination of a distribution agreement will or might adversely affect it, without considering whether an adequate remedy at law may be available in the future. The General Assembly did this to "promote and maintain a sound, stable, and viable three-tier system of distribution of beverages containing alcohol to the public." S.C. Code Ann. § 61-4-720(11) (emphasis added). Ultimately, requiring Bear Island to demonstrate that it has no adequate remedy at law imposes a higher bar to an injunction than demonstrating a party will or might be adversely affected, which is all the Act requires. This is another instance of the Circuit Court erroneously applying a heightened standard to Bear Island in denying Bear Island's motion for temporary injunction.

Because the Circuit Court erroneously applied a heightened evidentiary standard and inapplicable common law element for temporary injunction to Bear Island's Motion for Temporary Injunction, rather than applying the standard set forth in the Act requiring Bear Island to make a *prima facie* showing that it will be or may be adversely affected by Lincoln's termination (which it did), Bear Island requests this Court reverse the Circuit Court's ruling and grant Bear Island's request temporary injunction.

II. The Circuit Court's Factual Findings Were Insufficient and Unsupported by Evidence

The Circuit Court did not set forth sufficient findings of fact and conclusions of law to constitute the grounds of its actions as required by Rule 52(a), SCRCP. ("[I]n granting or refusing interlocutory injunctions the court shall [] set forth the findings of fact and conclusions of law

which constitute the grounds of its action."). The Circuit Court also erroneously relied on arguments of Lincoln's counsel, as opposed to facts in evidence, in denying Bear Island's Motion for Temporary Injunction. *Strategic Res. Co. v. BCS Life Ins. Co.*,367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) ("An abuse of discretion occurs when the trial court's decision is **unsupported by the evidence** or controlled by an error of law.") (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002)).

a. The Circuit Court's Ruling on Whether Bear Island is "Adversely Affected" Provides Insufficient Findings of Fact and Relies on Arguments by Counsel Rather than Evidence in the Record.

In its First Order, the Circuit Court cited to just **one** fact in evidence in support of its ruling that Bear Island is not or may not be adversely affected by Lincoln's termination of the Distribution Agreement: "[Bear Island] has not placed a purchase order with [Lincoln] under the Distribution Agreement since October, 2024." (**First Order, p. 2**). In its Motion to Alter or Amend, Bear Island contended that the Circuit Court did not set forth sufficient findings of fact in denying the Motion for Temporary Injunction, as required pursuant to Rule 52(a), SCRCP. *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002) (While circuit courts are not required to set forth findings on all the myriad factual questions arising in a particular case, circuit courts must make factual findings that allow the appellate court to ensure the law is faithfully executed.).

In particular, Bear Island argued that it submitted to the Circuit Court evidence of how it would be adversely affected by Lincoln's termination of the Distribution Agreement in its Verified Complaint (*see* ¶¶ 43–44, 59–62) and via the Affidavit of William Cram. As addressed above in Section I(a), *supra*, Mr. Cram testified that Bear Island would be adversely affected by the termination of the Distribution Agreement, including loss of retail accounts, breach of Bear Island's commitments to retailers, loss of goodwill, reputation, and brand loyalty, reduced compensation to Bear Island's sales representatives, loss of ability to compete with other

wholesalers, lost opportunity to distribute other brands, and loss of more than three years of investment of time, resources, and financial investment in selling Lincoln's Brands to Retailers across South Carolina (but especially in Hilton Head). Notably, however, the First Order is void of any of findings of facts regarding the evidence submitted in Bear Island's Verified Complaint or Mr. Cram's testimony.

In denying Bear Island's Motion to Alter or Amend, the Circuit Court asserted in its Second Order that the "essential facts [were] included in the [First Order]"[7] but then included **nine** additional bullet points:

1. [Bear Island] and [Lincoln] had an exclusive distribution agreement whereby [Lincoln] cannot distribute its product through anyone other than [Bear Island] so long as the exclusive distribution agreement is in place;

2. [Lincoln] alleged [Plaintiff] had not complied with the Distribution Agreement and issued a Notice of Termination on November 15, 2024;

3. [Lincoln] is only one of the 28 beer suppliers that have exclusive distribution agreements with [Bear Island];

4. [Bear Island] can and has continued to do business with its 27 other beer suppliers;

5. [Bear Island] has not placed a purchase order with [Lincoln] since October 2024;

6. [Lincoln] could not sell its product through another distributor while [Bear Island's] motion for injunction relief was pending;

7. In December 2024, [Bear Island's] sales agent told a retail customer when asked about getting [Lincoln's] product that [Lincoln] had no product but did not place a purchase order to service that customer and instead suggested a substitute product;

[7] The Second Order noted that "[i]f [Bear Island] wanted additional facts, it could have submitted them [in the Order]." In brief response, there is no basis in law or custom that Bear Island should re-write or correct the Circuit Court's proposed Order. Rather, as required by South Carolina's Rules of Civil Procedure, Bear Island is required, as it did, to submit these errors of law to the Circuit Court upon a Rule 59(e), SCRCP Motion to Alter or Amend. Accordingly, Bear Island properly addressed the errors of law when it sought reconsideration pursuant to Rules 52 and 59(e).

8. [Bear Island] tried to market another of its supplier's products to an existing customer of [Lincoln] (HHI Seafood festival) without placing a purchase order to service that customer; and

9. [Bear Island] removed three of [Lincoln's] taps from one of its retail customers on Hilton Head Island without placing a purchase order to service that customer.

(**Second Order, p. 5**) ("**Additional Bullet Points**").

Additional Bullet Points #1 and #5 above are merely a regurgitation of the points made within the Circuit Court's First Order. As addressed in Section I(a), *supra*, the Circuit Court's finding that Bear Island had not placed a purchase order with Lincoln since October 2024 does not describe, in full, the context of the purchase orders between Bear Island and Lincoln. Particularly, the finding of fact does not address Bear Island's multiple attempts to fulfill the October 2024 purchase order or Lincoln's refusal to sell the Brands to Bear Island due to Lincoln's impending intent to terminate the Distribution Agreement. (*See* **Affidavit of Tom Gadhue**) (Bear Island "began a mad scramble in October of purchase orders and demands for us to make appearance at marketing events despite knowing full well of our intent to terminate the Distribution Agreement").

The remaining seven Additional Bullet Points (#2–4 & #6–9 above) were copied nearly verbatim from Lincoln's Return to Bear Island's Motion to Alter or Amend. (**Lincoln's Return to Alter or Amend, pp. 7–8**). Importantly, however, none of those seven Additional Bullet Points are supported by facts in evidence. For example, Additional Bullet Point #2 above states "[Lincoln] alleged Plaintiff had not complied with the Distribution Agreement and sent Notice of Termination on November 15, 2024" is not a factual finding but merely an allegation by Lincoln that was refuted by Bear Island's Verified Complaint and Affidavit of William Cram. (**Verified Complaint, ¶¶ 34–45**; **Affidavit of William Cram**). *See Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Mere allegations, denied by the other party, are not evidence.");

see also Griffin v. Van Norman, 302 S.C. 520, 521, 397 S.E.2d 378, 379 (Ct. App. 1990) ("Allegations in a complaint denied in answer are evidence of nothing.").

Notably, five of the Additional Bullet Points from the Second Order were arguments made by Lincoln's counsel during the Motion for Temporary Injunction hearing:

> 3. [Lincoln] is one of 28 beer suppliers under exclusive distribution agreements with [Bear Island];
>
> 4. [Bear Island] can and has continued to do business with its 27 beer suppliers;
>
> 6. [Lincoln] could not sell its product through another distributor while [Bear Island's] motion for injunction relief was pending;
>
> 8. [Bear Island] tried to market another of its supplier's products to an existing customer of [Lincoln] (HHI Seafood festival) without placing a purchase order to service that customer; and
>
> 9. [Bear Island] removed three of [Lincoln's] taps from one of its retail customers on Hilton Head Island without placing a purchase order to service that customer.

(**Hearing Trans. p. 42**). None of these Additional Bullet Points were identified in any of the verified pleadings or affidavits submitted to the Circuit Court. Rather, Lincoln's counsel argued the aforementioned bullet points, without submitting **any evidence** to the Circuit Court to support these assertions. (*Id*.). Lincoln's arguments are not evidence and should not have been considered evidence by the Circuit Court in denying Bear Island's Motion for Temporary Injunction. *See Bowers*, 304 S.C. at 68, 403 S.E.2d at 129 ("Arguments of counsel are also not evidence."); *see also McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (holding the trial court properly disregarded the statements of counsel that he claimed reflected testimony appearing in depositions not otherwise entered into evidence).

Finally, Additional Bullet Point #7 is a mischaracterization of the evidence. Additional Bullet Point #7 states "[i]n December 2024, [Bear Island's] sales agent told a retail customer when asked about getting [Lincoln's] product that [Lincoln] had no product but did not place a purchase order to service that customer and instead suggested a substitute product." As addressed in the Statement of Facts, Subsection "E", *supra*, on December 16, 2024, a retailer asked a Bear Island representative for more of Lincoln's Brands. (**Affidavit of William Cram**, **¶ 6**). Bear Island's representative responded that "[u]nfortunately, we are out and Lincoln and South has none to sell us. We may need to sub for something else." (*Id.*). The retailer responded "No I will figure it out." (*Id.*). As addressed in the Statement of Facts, Subsection "D", *supra*, Bear Island placed an order with Lincoln on October 14, 2024 but Lincoln refused to sell the Brands to Bear Island and directed Bear Island to communicate through legal counsel going forward. Accordingly, the finding that Bear Island "did not place a purchase order to service that customer" in December 2024, after being refused by Lincoln in October 2024, is not supported by the facts in evidence. In sum, the nine Additional Bullet Points do not satisfy Rule 52's requirement that the Circuit Court "shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its actions," and seven of the Additional Bullet Points are not supported by any facts in evidence.

b. The Circuit Court's Ruling on Bear Island's "Adequate Remedies at Law" is Devoid of Factual Findings or a Legal Basis.

As explained in Section I.b. above, the Circuit Court concedes that it ruled on one of the three elements for common law injunction (*i.e.*, the Circuit Court explicitly ruled that Bear Island has adequate remedies at law), which the Circuit Court acknowledges are not applicable in this case. (*See* **Second Order, p. 4**). When relying on the common law elements to deny an injunction, the Circuit Court is required to set forth the basis for finding that Bear Island did not meet this element. SCRCP, Rule 52(a) ("[I]n granting or refusing interlocutory injunctions the court shall []

set forth the findings of fact and conclusions of law which constitute the grounds of its action."). But in both the First Order and the Second Order, the Circuit Court does not provide a factual basis nor cite to any legal authority for ruling that Bear Island has adequate remedies at law beyond stating that there is an applicable statute and a contract between the parties. These facts merely demonstrate that Bear Island may have ***available*** legal remedies, but do not alone demonstrate that such remedies are ***adequate***. Under South Carolina law, whether there is an adequate remedy at law is not a question decided by narrow and artificial rules. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (citing *Kirk v. Clarke*, 191 S.C. 205, 211, 4 S.E.2d 13, 16). An injunction is appropriate "where no remedy at law exists or ***where the legal remedy would fail to make the party whole***." *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 370, 588 S.E.2d 635, 639 (Ct. App. 2003) (emphasis added). Indeed, courts often find that litigants have ***available*** legal remedies that are not alone sufficient to constitute ***adequate*** remedies because they cannot make the party whole. (*See Peek*, 367 S.C. at 457, 626 S.E.2d at 36–37 (Ct. App. 2005) (holding monetary damages alone did not constitute an adequate remedy); *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 465, 626 S.E.2d 38, 41-42 (Ct. App. 2005) (holding that, although available, monetary damages were not an adequate remedy when the plaintiff, an anesthesiologist, would suffer the loss of her professional practice because she would lose her patient referral base and competency in anesthesiology had she not received a preliminary injunction permitting her to work for the defendant, a hospital); *see also, IAC, Ltd. V. Bell Helicopter Trexton, Inc.*, 160 S.W.3d 191, 200 (Tex. App. 2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction."). The First Order and Second Order do not set forth

the Circuit Court's basis for finding that Bear Island has adequate remedies at law and therefore it was an error for the Circuit Court to rely on this finding to deny Bear Island injunctive relief.

Because the Circuit Court's First Order and Second Order did not provide sufficient facts under Rule 52 of the South Carolina Rules of Civil Procedure and erred in relying on facts not supported in the evidence, Bear Island respectfully requests that this Court reverse the Orders denying Bear Island's Motion for Temporary Injunction and enjoin Lincoln from continuing to violate the Distribution Agreement.

CONCLUSION

Based on the foregoing, Appellant Bear Island respectfully requests that this Court reverse the Order Denying Bear Island's Motion for Temporary Injunction and enter an Order enjoining Lincoln from violating the Distribution Agreement and requiring it to sale its brands to Bear Island throughout the pendency of this case.

Respectfully Submitted,

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