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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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 RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err when making findings of fact, after carefully considering and weighing the evidence at trial, that: (a) the operative sales contract between the parties was an oral contract evidenced by thirty-seven (37) written checks that had been partially performed, (b) Tok Kim did not sign the Asset Purchase Agreement, and (c) Tok Kim's signature was digitally imposed onto the Asset Purchase Agreement?
- II. Did the trial court err when enforcing an oral contract evidenced by thirty-seven (37) written checks that had been partially performed over multiple months without issue?
- III. Did the trial court err when concluding Sang Cho was a fiduciary to Kim Enterprises?
- IV. Did the trial court err when awarding punitive damages to Kim Enterprises?
- V. Did the trial court err when making a finding of fact, after carefully considering and weighing the evidence at trial, that Appellants' expert's "rough" lost profit calculation, which omitted a known cost of goods sold number of eighty percent (80%), was unreliable?
- VI. Did the trial court err in concluding Tok Kim did not sign the APA and that the operative contract between the parties was an oral contract evidenced by thirty-seven (37) written checks that had been partially performed?

STATEMENT OF THE CASE

This case concerns the sale and purchase of the assets of a hair and beauty supply store at 3315 Broad River Road, Suite 90, Columbia, S.C. 29210 (the “Broad River Store”). The sale of the assets of Broad River Store was between single-member limited liability companies owned by family members Tok Kim, and his niece, Youmi Cho. Tok Kim is the single member of Kim Enterprises, LLC (“Kim Enterprises”), and Youmi Cho is the single member of K&C Beauty, LLC (“K&C Beauty”). Kim Enterprises (owned by Tok Kim) agreed to sell the assets of his Broad River Store to K&C Beauty (owned by Tok Kim’s niece, Youmi Cho).

The primary issue in this case is whether the sales price of the assets of the Broad River Store was (a) \$800,000 pursuant to a partially performed oral contract evidenced by one \$250,000 check tendered up front as a down payment and thirty-six (36) pre-signed, undated checks of \$15,000, four of which were exchanged and cashed over a four month period without incident or issue, or (b) \$250,000 according to a document titled Business Asset Purchase Agreement (“APA”) that was created as part of Youmi Cho’s E-2 Visa application.

Kim Enterprises, on November 11, 2021, filed a collection action against Youmi Cho and K&C Beauty for the \$490,000 unpaid balance of the \$800,000 agreed upon sales price for the assets of the Broad River Store. (Compl. ¶¶ 12-17). Youmi Cho and K&C Beauty, on January 14, 2022, answered and asserted counterclaims against Kim Enterprises and asserted claims against Tok Kim in his individual capacity, alleging that Kim Enterprises and Tok Kim withheld store profits after the sale and that Kim Enterprises transferred unsaleable inventory that had to be thrown away. (Ans. & Counterclaims ¶¶ 47-67). K&C Beauty also alleged that the agreement between the parties for the sale of the assets of Broad River Store was not verbal and evidenced by a written contract that listed the sales price as \$250,000, not \$800,000. (*Id.* ¶ 32.)

The parties engaged in discovery, and Kim Enterprises took Youmi Cho and non-parties' Woon (Andy) Kim, Esq. and Sang Cho's depositions in March 2023. Andy Kim served as Youmi Cho's lawyer in preparing her E-2 Visa, which Youmi Cho received in connection with her purchase of the assets of the Broad River Store. Sang Cho is Youmi Cho's brother, and Tok Kim's nephew. Sang Cho had worked at the Broad River Store for his uncle, Tok Kim, since January 1, 2013. After Youmi Cho took possession of the Broad River Store, Sang Cho continued working at the Broad River Store as Youmi Cho's employee.

During these March 2023 depositions, Kim Enterprises discovered vast inconsistencies between the sworn deposition testimony and the allegations and defenses asserted in Youmi Cho & K&C Beauty's Answer and Counterclaims. Kim Enterprises also discovered other unscrupulous conduct undertaken by Youmi Cho and Sang Cho designed to damage Kim Enterprises.

Youmi Cho & K&C Beauty, facing these vast inconsistencies in Youmi Cho and other non-parties' March 2023 deposition testimony, attempted to save face and filed a Motion to Amend the Answer and Counterclaims on April 21, 2023. Kim Enterprises also filed a Motion to Amend the Complaint shortly thereafter, and both Motions were granted by the Honorable Maite Murphy on September 12, 2023.

Kim Enterprises, with the leave of Court, filed its Amended Complaint on September 12, 2023, and added eight new causes of action, as well as added Sang Cho as a defendant. (Am. Compl. ¶¶ 72-127). Youmi Cho, Sang Cho, and K&C Beauty answered the Amended Complaint and Youmi Cho and K&C Beauty asserted counterclaims against Kim Enterprises and also asserted claims against Tok Kim in his individual capacity.

The Honorable Jocelyn Newman, on April 11, 2024, signed a Consent Order of Reference to the Richland County Master in Equity, the Honorable Joseph M. Strickland. Starting on

Monday, October 21, 2024, Judge Strickland held a four-day bench trial in Columbia, S.C. at the Master In Equity division at 2500 Decker Blvd., Courtroom 1. Caroline Kyung Ha Kim served as the court-approved interpreter and interpreted the testimony of Tok Kim and Youmi Cho.

At the conclusion of Kim Enterprises' presentation of evidence, Appellants moved for directed verdict on all of Kim Enterprises' causes of action, and the trial court granted a partial direct verdict on four of the nine causes of action (Fraud, Conversion, Civil Conspiracy, and Tortious Interference with Contractual Relations). Appellants renewed their motion for directed verdict on the remaining causes of action at the close of evidence, and Judge Strickland denied that motion as to the five remaining causes of action (Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Unjust Enrichment, Breach of Fiduciary Duty, and Aiding and Abetting Breach of Fiduciary Duty).

On February 6, 2025, the trial court entered an order in favor of Kim Enterprises on all five remaining causes of action (Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Unjust Enrichment, Breach of Fiduciary Duty, and Aiding and Abetting Breach of Fiduciary Duty). The trial court also denied all of Appellants' counterclaims. The trial court issued judgment against Appellants, jointly and severally, in favor of Kim Enterprises in the amount of \$874,549.32, which included a punitive damages award of \$245,000.

On February 17, 2025, Appellants filed numerous post-trial motions. On February 25, 2025, the trial court heard Appellants' post-trial motions and denied them at the conclusion of the oral arguments. Appellants, on February 25, 2025, filed a Supplemental Memorandum. The trial court, on March 6, 2025, entered an Order denying the post-trial motions.

This appeal followed.

STATEMENT OF THE FACTS

Background on the Parties

Tok Kim owns Kim Enterprises. (Trial Tr. 113:17-18 (Tok Kim)). Kim Enterprises sells hair products. (Trial Tr. 113:19-114:3 (Tok Kim)). Tok Kim has worked in the hair product business for thirty-five (35) years. (Trial Tr. 114:12-14 (Tok Kim)). Patricia Kim, who is the wife of Tok Kim, (Trial Tr. 485:20-22 (Patricia Kim)), handles human resources and payroll for Kim Enterprises' beauty supply stores. (Trial Tr. 488:22-24 (Patricia Kim)). Nonchemical hair products, such as weaves and wigs, do not have expiration dates. (Trial Tr. 148:2-4 (Tok Kim); 250:1-12 (Sang Cho)).

Tok Kim previously owned four (4) hair and beauty supply stores in the Columbia, S.C. area. (Trial Tr. 114:15-18 (Tok Kim)). In mid-late 2020, Tok Kim agreed to sell one of his four stores, the Broad River Store at issue in this case, to his niece, Youmi Cho. (Trial Tr. 112:17-18 (Tok Kim)). Tok Kim owned and operated the Broad River Store for thirty (30) years prior to selling it to Youmi Cho. (Trial Tr. 115:3-5 (Tok Kim)). When Tok Kim sold the Broad River Store to Youmi Cho, it had two employees, one being Defendant Sang Cho, and the other being Shayla Woodard. (Trial Tr. 115:9-116:3 (Tok Kim)).

Sang Cho is the brother of Youmi Cho and the nephew of Tok Kim. (Trial Tr. 224:3-6 (Sang Cho)). Sang Cho started working at the Broad River Store on January 1, 2013. (Trial Tr. 224:20-225:5 (Sang Cho)). Sang Cho managed the Broad River Store prior to its sale to Youmi Cho. (Trial Tr. 116:7-14 (Tok Kim); 466:19-21 (Vincent Fletcher)). Sang Cho reported to Vincent Fletcher, Kim Enterprises' general manager. (Trial Tr. 463:11-15 (Vincent Fletcher); 464:9-12 (Vincent Fletcher)). Sang Cho, as the manager of the Broad River Store, hired employees, trained employees, and managed inventory. (Trial Tr. 466:22-467:1 (Vincent Fletcher)). Prior to Tok

Kim's sale of the Broad River Store to Youmi Cho, Sang Cho had more knowledge of the operations of the Broad River Store than anybody. (Trial Tr. 336:22-337:3 (Sang Cho)).

The Sales Price of the Broad River Store

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

The Discussions in Tok Kim's Kitchen About the Sales Price of the Broad River Store

In the leadup to the sale of the Broad River Store, Tok Kim, Sang Cho, and Youmi Cho all met in Tok Kim's kitchen to discuss the sales price. (Trial Tr. 122:15-18 (Tok Kim); 226:1-8 (Sang Cho); 352:2-4 (Youmi Cho)). Kim Enterprises and Appellants all agree this discussion occurred in Tok Kim's kitchen. (*Id.*) Youmi Cho facilitated this meeting in Tok Kim's kitchen, and she invited her brother and confidant Sang Cho to accompany her. (Trial Tr. 226:9-14 (Sang Cho)). Tok Kim, in his kitchen with Youmi Cho and Sang Cho, stated the sales price for the Broad River Store was \$800,000. (Trial Tr. 226:15-18 (Sang Cho)). There is no dispute that Tok Kim stated the sales price was \$800,000 for the Broad River Store. (*Id.*)

Sang Cho, while in Tok Kim's kitchen with Youmi Cho, stated Tok Kim should sell the Broad River Store to Youmi Cho for \$500,000. (Trial Tr. 124:17-125:24 (Tok Kim); 226:19-227:1 (Sang Cho); 354:8-11 (Youmi Cho)). Tok Kim stated he would not sell the Broad River Store for \$500,000. (Trial Tr. 124:17-125:24 (Tok Kim); 227:16-20 (Sang Cho)). Tok Kim was not under

any financial pressure necessitating the sale of the Broad River Store for less than the \$800,000 he sought. (Trial Tr. 126:16-19 (Tok Kim)).

Tok Kim became very angry at the suggestion he should sell the Broad River Store for \$500,000. (Trial Tr. 230:4-6 (Sang Cho); 354:17-22 (Youmi Cho)). Tok Kim yelled “Hell No” to the suggestion he sell the Broad River Store for \$500,000. (Trial Tr. 227:16-23 (Sang Cho)). Tok Kim stated he would not sell the Broad River Store for less than \$800,000. (Trial Tr. 126:12-15 (Tok Kim)).

Sang Cho’s Text Messages Corroborating Tok Kim’s Position

Sang Cho, after receiving a copy of the lawsuit, texted his cousin, Suzie Mancine, and stated the agreement to sell the Broad River store was verbal. (Trial Tr. 233:10-15 (Sang Cho); Plaintiff’s Ex. 2). This text message corroborates Tok Kim’s testimony that the agreement to sell the store was verbal.

Sang Cho texted that the agreement to sell the Broad River store involved a \$250,000 down payment. (Trial Tr. 235:22-236:6 (Sang Cho); Plaintiff’s Ex. 2). This text message corroborates Tok Kim’s testimony that the agreement to sell the store involved a down payment, and that the down payment was \$250,000.

Sang Cho texted that the \$250,000 down payment was paid in December. (Trial Tr. 237:8-11 (Sang Cho); Plaintiff’s Ex. 2). This text message corroborates Tok Kim’s testimony that the \$250,000 down payment was made in December. Sang Cho texted that the agreement to sell the Broad River store involved \$15,000 checks. (Trial Tr. 242:17-243:21 (Sang Cho); Plaintiff’s Ex. 2). This text message corroborates Tok Kim’s testimony that the agreement to sell the store involved \$15,000 checks.

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

Youmi Cho informed Tok Kim that she received the business license for K&C Beauty on March 7, 2021. (Trial Tr. 132:6-11 (Tok Kim)). Tok Kim handed over operations of the Broad River Store to Youmi Cho on March 8, 2021, the day after Youmi Cho informed Tok Kim that she received the business license for K&C Beauty. (Trial Tr. 147:23-148:1 (Tok Kim)). Before Youmi Cho informed Tok Kim that she received her business license on March 7, 2021, Patricia Kim trained Youmi Cho and Sang Cho on various human resource and payroll functions as pertains to the Broad River Store. (Trial Tr. 488:25-489:22 (Patricia Kim)).

Youmi Cho was unable to obtain a credit card terminal when she took over the Broad River Store on March 8, 2021, because she did not yet have a social security number. (Trial Tr. 132:6-11 (Tok Kim)). Although Youmi Cho was unable to process credit cards at the Broad River Store, Tok Kim allowed Youmi Cho to utilize his credit card processing terminal. (Trial Tr. 132:20-25 (Tok Kim); 380:3-12 (Youmi Cho); Plaintiff's Ex. 12).

Tok Kim, after the end of each month starting in April, gave Youmi Cho the cash equivalent of what she charged on his credit card terminal, less sales tax and reimbursement for inventory Tok Kim purchased for Youmi Cho. (Trial Tr. 133:20-135:23 (Tok Kim); Plaintiff's Ex. 12). Because Youmi Cho did not have a social security number when she received her business license, she was unable to purchase all necessary inventory. (Trial Tr. 135:16-23 (Tok Kim)). Tok Kim purchased inventory for Youmi Cho. (Trial Tr. 134:25-135:23 (Tok Kim)).

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

Tok Kim exchanged the first of the thirty-six (36) pre-signed \$15,000 installment checks with Youmi Cho in mid-May 2021. (Trial Tr. 379:15-17 (Youmi Cho)). Tok Kim exchanged two additional pre-signed \$15,000 installment checks with Youmi Cho for cash and deposited the

fourth pre-signed \$15,000 installment check into his bank account. (Trial Tr. 380:13-20 (Youmi Cho)).

Youmi Cho stopped payment on the fifth pre-signed \$15,000 installment check in mid-September 2021. (Trial Tr. 142:21-143:11 (Tok Kim); 380:21-381:7 (Youmi Cho)).

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

Kim Enterprises, pursuant to Rule 32, SCRCF, published Andy Kim's Deposition transcript into evidence, subject to certain objections that were ruled upon by the Court. Andy Kim testified that he served as Youm Cho's lawyer in preparing her E-2 Visa, which Youmi Cho received in connection with her purchase of the Broad River Store. (Trial Tr. 52:15-53:18 (Andy Kim)).

Andy Kim drafted an APA as part of the E-2 Visa paperwork for Youmi Cho's E-2 Visa. (Trial Tr. 63:13-65:10 (Andy Kim)). Concerning the APA, Andy Kim communicated exclusively with Youmi Cho. (Trial Tr. 63:13-65:10 (Andy Kim)). The purpose of the APA was to show the United States Citizenship and Immigration Services (USCIS) that Youmi Cho, the Visa applicant, had an ownership interest in a valid United States business. (Trial Tr. 68:12-69:3 (Andy Kim)).

Youmi Cho provided Andy Kim the \$250,000 amount that he inserted into the APA concerning the stated purchase price. (Trial Tr. 65:25-66:8 (Andy Kim); 69:23-25 (Andy Kim)). Andy Kim did not discuss the \$250,000 figure with Tok Kim. (Trial Tr. 70:6-10 (Andy Kim); 103:12-104:8 (Andy Kim)). Andy Kim created the APA from other APA templates he used on other E-2 Visa applications. (Trial Tr. 73:1-18 (Andy Kim)). Andy Kim also created a Bill of Sale, as the USCIS also requires that an applicant submit a Bill of Sale in addition to an APA. (Trial Tr. 73:19-74:2 (Andy Kim)).

An E-2 Visa applicant must invest, at a minimum, fifty percent of the business' purchase price in the United States. (Trial Tr. 74:14-75:6 (Andy Kim)). For example, if an E-2 Visa applicant

purchased a business for \$800,000, she would have to put down at least \$400,000. (Trial Tr. 76:6-77:1 (Andy Kim)). If an E-2 Visa applicant agreed to purchase a business for \$800,000, and she only had \$250,000 in cash with which to make a down payment, she would be unable to obtain an E-2 Visa. (Trial Tr. 77:3-22 (Andy Kim)).

If an E-2 Visa applicant agreed to purchase a business for \$800,000, and she only had \$250,000 in cash with which to make a down payment, the only way to obtain an E-2 Visa would be for the buyer to mislead her immigration lawyer about the true terms of the deal. (Trial Tr. 80:5-20 (Andy Kim)). Tok Kim testified he did not sign the APA. (Trial Tr. 139:22-24 (Tok Kim)).

Neither Youmi Cho nor Tok Kim Has Ever Read the Asset Purchase Agreement

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

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

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

The Inventory and Training at the Broad River Store

Tok Kim, prior to selling the assets of the Broad River Store, ensured the Broad River Store was fully stocked with inventory. (Trial Tr. 147:23-148:1 (Tok Kim); 465:9-12 (Vincent Fletcher)). Tok Kim, prior to turning over the Broad River Store to Youmi Cho, transferred inventory from his other stores to the Broad River Store. (Trial Tr. 256:7-16 (Sang Cho); Trial Tr. 464:16-465:8 (Vincent Fletcher)).

Tok Kim, prior to turning over the Broad River Store, trained Youmi Cho how to operate a store cash register. (Trial Tr. 148:15-149:6 (Tok Kim)). Patricia Kim, prior to Tok Kim turning over the Broad River Store to Youmi Cho, trained Youmi Cho and Sang Cho how to complete business-related paperwork and forms necessary to run the Broad River Store. (Trial Tr. 149:17-21 (Tok Kim); 488:25-490:1 (Patricia Kim)).

Tok Kim's Digitally Imposed Signature Onto the APA

Although Tok Kim has been asking Youmi Cho for the purported original signed APA for three years to prove its existence, Youmi Cho not only failed to provide the original, but she was unable to explain any diligent efforts she undertook to locate it. (Trial Tr. 390:5-22 (Youmi Cho); 430:13-434:5 (Youmi Cho)).

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

Dr. Fenoff testified that he is unable to testify, one way or the other, whether Tok Kim physically signed the APA. (Trial Tr. 668:25-669:4 (Roy Fenoff); 670:21-24 (Roy Fenoff)). According to Dr. Fenoff, readily available inexpensive and easy-to-use technology allows for easy cut and pasting of signatures onto a document. (Trial Tr. 669:19-670:20 (Roy Fenoff)). In fact, Dr. Fenoff testified about a study recently conducted by the federal government where federal agents

were able to create fake passports and driver's licenses with publicly available software and use those fake passports and driver's licenses to successfully reenter the United States ninety-nine percent (99%) of the time. (Trial Tr. 674:12-675:10 (Roy Fenoff)).

Dr. Fenoff first communicated with Youmi Cho in March 2022, at which time he asked Youmi Cho for an original of the signed APA for his handwriting analysis. (Trial Tr. 670:25-671:19 (Roy Fenoff)). Youmi Cho, over three years ago, only gave Dr. Fenoff a photocopy of the signed APA. (Trial Tr. 673:1 (Roy Fenoff)). Youmi Cho never gave Dr. Fenoff the purported original signed APA. (*Id.*)

STANDARD OF REVIEW

ISSUES 1 and 6

“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)). “The rule is the same whether the trial court's findings are made with or without reference.” *Id.* “The trial court's findings are equivalent to a jury's findings in a law action.” *Id.* (citing *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 567, 211 S.E.2d 876, 877 (1975)). The appellate court “must determine whether *any evidence* reasonably supports the factual findings of the trial court.” *Id.* (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 776) (emphasis added).

ISSUE 2

“In an action in equity, tried by the judge alone, without a reference, [an appellate court] has jurisdiction to find facts in accordance with its views of the preponderance of the evidence.” *Stackhouse v. Cook*, 271 S.C. 518, 521, 248 S.E. 2d 482, 484 (1978) (citing *Townes*, 266 S.C. at 81, 221 S.E.2d at 773).

ISSUE 3

“[A]n action for breach of fiduciary duty is either an action at law or in equity depending on the remedy sought.” *Bennett v. Est. of King*, 436 S.C. 614, 621-22, 875 S.E.2d 46, 50 (2022) (citing *Verenes v. Alvanos*, 387 S.C. 11, 18, 690 S.E.2d 771, 774 (2010)). According to the Supreme Court in *Verenes*, “[c]haracterization of an action as equitable or legal depends on the [plaintiff]’s ‘main purpose’ in bringing the action.” *Verenes*, 387 at 16, 690 S.E.2d at 773 (citation omitted) (internal quotation marks omitted). “The main purpose of the action should generally be ascertained from the body of the complaint.” *Id.* (citation omitted) (internal quotation marks omitted). “The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable.” *Id.*

“[A] claim of breach of fiduciary duty is an action at law and the trial judge’s findings will be upheld unless without evidentiary support.” *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005).

“In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge’s findings.” *Townes*, 266 S.C. at 86, 221 S.E.2d at 775. “The rule is the same whether the judge’s findings are made with or without, a reference. *Id.* “The judge’s findings are equivalent to a jury’s findings in a law action.” *Id.*

ISSUE 4

An appellate court “must affirm the trial court’s findings of punitive damages *if any evidence* reasonably supports the judge’s factual findings.” *Holt*, 362 S.C. at 207, 608 S.E.2d at 132 (emphasis added).

ISSUE 5

“The trial court is vested with *considerable discretion* over the amount of a damages award, and [an appellate court’s] review of the amount of damages is limited to the correction of errors of law.” *Vortex Sports & Entm’t, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008) (citation omitted) (emphasis added). “In reviewing a damages award, [appellate courts] do not weigh the evidence, *but determine if any evidence supports the award.*” *Id.* (emphasis added).

“To recover damages, the evidence must enable the [fact finder] to determine the amount of damages with reasonable certainty or accuracy.” *Magnolia N. Prop. Owners’ Ass’n v. Heritage Cmtys., Inc.*, 397 S.C. 348, 374-75, 725 S.E.2d 112, 126 (Ct. App. 2012) (citing *Whisenant v. James Island Corp.*, 227 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)).

ARGUMENTS

Appellants demonstrate strong disagreement with the trial court’s findings of fact and conclusions of law but fail to present any basis justifying reversible error. Put simply, Appellants’ arguments are nothing more than “how could the trial court not have believed my clients and have believed Kim Enterprises’ representatives instead?” The answer to that question is why we have trials: for parties to put evidence into the record, whether by testimony, exhibit, or otherwise, and for a finder of fact to weigh that evidence and make findings of fact. Then, the trial judge applies the facts to the law, and judgment is entered.

When there are diametrically dueling versions of events about key issues, as is the case here, a fact finder cannot find for both sides. The proverbial traffic light cannot be both red and green at the same time. Appellants’ apparent frustration with the fact finder deeming *their* evidence not credible is not a reason to disturb Kim Enterprises’ judgment. The trial process worked here as designed.

As noted above, this matter was tried non-jury by the Richland County Master in Equity. Accordingly, the finder of fact was the trial judge who also applied the facts to the law. The trial judge, after witnessing and listening to days of witness and expert testimony and viewing and considering numerous exhibits from the parties that were entered into evidence, made findings of fact and conclusions of law that must not be disturbed.

- I. The trial court properly concluded, after carefully considering and weighing the evidence at trial, that: (a) the operative sales contract between the parties was an oral contract evidenced by thirty-seven (37) written checks that had been partially performed, (b) Tok Kim did not sign the Asset Purchase Agreement, and (c) Tok Kim’s signature was digitally imposed onto the Asset Purchase Agreement.**

“[R]easonable evidence supports the factual finding of the court[,]” *Hardaway Concrete*, 374 S.C. at 223, 647 S.E.2d at 491 (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 776), that: the operative sales contract between the parties was an oral contract evidenced by thirty-seven (37) written checks that had been partially performed, Tok Kim did not sign the APA, and Tok Kim’s signature was digitally imposed onto the APA.

Although the appellate standard of review is whether *any evidence* reasonably supports the factual findings of the court, *Hardaway Concrete*, 374 S.C. at 223, 647 S.E. 2d at 491 (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 776), the evidence presented by Kim Enterprises at trial as to these three factual matters was overwhelming.

The trial court viewed and weighed the following non-exhaustive evidence to arrive at these findings of fact. This non-exhaustive list of evidence overwhelmingly clears the “any evidence” threshold set forth in *Hardaway Concrete*.

- a. Tok Kim testified the sales price of the Broad River Store was \$800,000. (Trial Tr. 122:4-8 (Tok Kim)).

- b. Tok Kim testified that the payment terms for the Broad River Store were as follows: \$250,000 up front via a check in December, (Trial Tr. 127:7-10 (Tok Kim); Defendants' Ex. 3), followed by thirty-six (36) monthly installment payments evidenced by thirty-six (36) pre-signed, undated checks of \$15,000, with the first installment to occur mid-May 2021, (Trial Tr. 131:22-24 (Tok Kim); Plaintiff's Ex. 1), and a final payment of \$10,000 after the conclusion of the thirty-six (36) monthly installment payments.
- c. Sang Cho's text messages that corroborated Tok Kim's testimony and undercut Youmi Cho's testimony. (Trial Tr. 233:10-243:21 (Sang Cho); Plaintiff's Ex. 2).
- d. Youmi Cho testified that she and Tok Kim exchanged the first of the thirty-six (36) pre-signed \$15,000 installment checks in mid-May 2021 (Trial Tr. 379:15-17 (Youmi Cho)) and that she and Tok Kim exchanged two additional pre-signed \$15,000 installment checks for cash, and Tok Kim deposited the fourth pre-signed \$15,000 installment check into his bank account (Trial Tr. 380:13-20 (Youmi Cho)). The Court concluded this course of conduct, along with Kim Enterprises turning over the Broad River Store to K&C Beauty, constituted partial performance of the oral contract.
- e. The consistency between all parties (Tok Kim, Youmi Cho, and Sang Cho) concerning the discussion at Tok Kim's kitchen about Tok Kim's strong and forceful rebuke at the suggestion he sell the store for \$500,000 further supports Tok Kim's testimony about the \$800,000 sales price. (Trial Tr. 122:15-18 (Tok Kim); 124:17-125:24 (Tok Kim); 126:12-15 (Tok Kim); 226:1-227:20 (Sang Cho); 353:24-354:22 (Youmi Cho)). If the fact finder was to believe Youmi Cho and Sang Cho, the negotiation at Tok Kim's kitchen proceeded as follows: (1) Tok Kim stated the sales price was \$800,000, (2) Sang Cho suggested the sales price should be \$500,000, (3) Tok Kim became extremely angry and yelled "Hell No" at the suggestion he

discount the sales price by \$300,000 to \$500,000, and then (4) Tok Kim suddenly agreed to sell the store for \$250,000, which is half the \$500,000 number he emphatically rejected moments before. Accepting this version of events defies logic and credulity and by itself provides “reasonable evidence” to support the factual findings of the Court, *Hardaway Concrete*, 374 S.C. at 223, 647 S.E. 2d at 491 (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 776).

- f. The testimony of Youmi Cho’s handwriting expert, Dr. Fenoff, further supports Tok Kim’s position as opposed to Appellants. Specifically, Dr. Fenoff not only testified that he cannot opine, one way or the other, whether Tok Kim physically signed the APA, (Trial Tr. 668:19-669:4 (Roy Fenoff); 676:22-677:9 (Roy Fenoff)), but the act of cutting and pasting a signature onto a document is extremely easy to accomplish, (Trial Tr. 669:19-670:20 (Roy Fenoff)). In fact, Dr. Fenoff testified about a study recently conducted by the federal government where federal agents were able to create fake passports and driver’s licenses with publicly available software and use those fake passports and driver’s licenses to successfully reenter the United States ninety-nine percent (99%) of the time. (Trial Tr. 674:12-675:10 (Roy Fenoff)).
- g. The fact finder also recognized and weighed evidence that although Tok Kim had been asking Youmi Cho for a copy of the supposed original signed APA for three years to prove its existence, Youmi Cho not only failed to provide the original signed APA, but was unable to explain any diligent efforts she undertook to locate the purported original signed APA. (Trial Tr. 390:5-22 (Youmi Cho); 430:13-434:5 (Youmi Cho)). The finder of fact rightfully concluded that Appellants didn’t look for the original signed APA because such a document doesn’t exist. A reasonably curious and attentive fact finder, when presented with a dispute over the authenticity of a document, would expect that the party attempting to enforce the terms

of the document would actually want to locate the document for all to see. But, if the document is a fraudulent document, a reasonably curious and attentive fact finder could conclude, as did the fact finder in this case, that the absence of any diligent effort to locate the original signed APA allows, in part, for a strong presumption of its lack of authenticity.¹

Of importance to note, the trial court, in its order, *also* addressed Youmi Cho's lack of credibility and unpersuasive attempts to explain away unconvertable facts. These few examples speak volumes as to the credibility, or lack thereof, of Youmi Cho. Youmi Cho's lack of credibility allowed for the fact finder to place greater weight on Tok Kim's testimony and discount Youmi Cho's. For example,

- h. Youmi Cho's testimony that the meeting in Tok Kim's kitchen began with Tok Kim becoming extremely angry at the suggestion he sell the Broad River Store for \$500,000, then immediately agreeing to sell the store for half that amount, (Trial Tr. 355:16-20 (Youmi Cho)), is illogical.
- i. Youmi Cho's testimony as to the reason she gave Tok Kim thirty-six (36) pre-signed, undated checks of \$15,000 lacks any factual support in the record. Youmi Cho testified that when she answered the initial Complaint she alleged the thirty-six (36) checks were given under duress and an undefined threat to her immigration status. (Trial Tr. 358:1-15 (Youmi Cho)). But, at trial, Youmi Cho changed course and testified the thirty-six (36) pre-signed, undated checks of \$15,000 were for the purchase of two other beauty supply stores owned by Tok Kim. (Trial Tr. 357:6-8 (Youmi Cho)). And, although Youmi Cho contends the purported agreement to purchase two other beauty supply stores was verbal, unlike the oral contract concerning the

¹ Appellants' Footnote 6 in its Initial Brief of Appellants, which appears to fault the trial court misapprehending the application of the best evidence rule in Paragraph 50 of the Order, misreads Paragraph 50. The trial court's language in that Paragraph, in conjunction with the rest of the Order, reiterate its conclusion, as the fact finder, that the absence of any diligent effort to locate the original signed APA allows, in part, for a strong presumption of its lack of authenticity. Notably, Appellants' own expert asked for the original APA for his analysis but was ignored.

Broad River Store, there was no partial performance, of any kind whatsoever, concerning two of Tok Kim's other hair and beauty supply stores.

At bottom, the fact finder did not believe the testimony of Youmi Cho, which the fact finder had the right to do. The fact finder placed greater weight on the evidence put forth by Kim Enterprises. Appellants are unable to credibly assert that there is a lack of "any evidence [that] reasonably supports the factual findings of the court." *Hardaway Concrete*, 374 S.C. at 223, 647 S.E.2d at 491 (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 776). The evidence within the record as to the trial court's factual findings is substantial.

A. Appellants mischaracterize the trial court's comments at the beginning of the post-trial motions hearing.

At the ***beginning*** of the sixty-six (66) minute Post-Trial Motions' hearing, Judge Strickland made comments about his recollection concerning one aspect of Youmi Cho's testimony. After making these comments, Judge Strickland then heard over an hour of oral arguments concerning Appellants' eleven (11) specific issues raised in the Post-Trial Motions. At the conclusion of the sixty-six (66) minute hearing, Judge Strickland stated "***Based on what I've heard today, the motions are denied.***" (Post Tr. Mot. Hr'g Tr. 53:20-21 (Judge Strickland)) (emphasis added). Appellants, *after* the Post-Trial Motions' hearing, submitted a Supplemental Memorandum to the Court. The trial court, in its Order denying Appellants' Post-Trial Motions, noted it carefully considered "the brief submitted prior to the Hearing in support of Post-Trial Motions, ***a supplemental brief submitted after the Hearing***, as well as ***the arguments of counsel at the Hearing***," and ultimately denied the Post-Trial Motions. (Order Denying Post-Trial Mot. at 2) (emphasis added).

Appellants' attempts to undermine the trial court's oral proclamation at the end of the Post-Trial Motions, as well as rewrite the trial court's Order Denying Post-Trial Motions, must be

rejected. The trial court, after carefully listening to the eleven (11) issues raised in Appellants Post-Trial Motions, rejected each and every argument, both orally and in writing.

B. Appellants fail to address the trial court order’s discussion of the meeting of the minds prerequisite to the formation of a contract.

Notably, Appellants’ discussion of contract law ignores the trial court’s analysis in its Order concerning the lack of a meeting of the minds as to the APA even if the trial court assumed the APA was authentic, which the trial court did not. The trial court opined:

Notwithstanding Tok Kim’s testimony that he did not sign the APA, Trial Tr. 139:22-24 (Tok Kim), the basic and essential elements of a contract could not, as a matter of law, have been met, ***because Youmi Cho testified that she did not read the APA.*** Trial Tr. 385:6-386:9 (Youmi Cho); 389:5-8 (Youmi Cho); 458:13-22 (Youmi Cho); 459:23-460:11 (Youmi Cho). Thus, there can be no intent, or meeting of the minds, between the purported parties as to the various terms of the APA. *See generally Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893-94 (1989) (citation omitted) (noting that “South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement” and “[t]he ‘meeting of the minds’ required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.”). Stated differently, two parties cannot enter into a contract when either one, or both, have never read, and are unable to understand, the contract and its terms.

(Order ¶ 59) (emphasis added).

II. The trial court did not err when enforcing an oral contract evidenced by thirty-seven (37) written checks that had been partially performed over multiple months without incident or issue.

As an initial matter, Appellants state the incorrect standard of review in their Initial Brief of Appellants on this issue. In an action attempting to enforce an oral contract, where the non-enforcing party asserts the statute of frauds as an affirmative defense, and there has been partial performance, the appellate court has jurisdiction to find facts in accordance with its view of the preponderance of

the evidence.” *Settlemeier v. McCluney*, 359 S.C. 317, 319-22, 596 S.E.2d 514, 516-17 (Ct. App. 2004).

“To compel specific performance of an oral agreement where part performance is alleged to remove the contract from the statute of frauds, a court of equity must find: 1) clear evidence of an oral agreement; 2) the agreement had been partially executed; and 3) the party who requested performance had completed or was willing to complete his part of the oral agreement.” *Id.* at 320, 596 S.E.2d at 516. South Carolina’s statute of frauds is codified at S.C. Code Ann. § 32-3-10(5).

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

Youmi Cho testified that she and Tok Kim exchanged the first of the thirty-six (36) pre-signed \$15,000 installment checks in mid-May 2021, (Trial Tr. 379:15-17 (Youmi Cho)), and that she and Tok Kim exchanged two more pre-signed \$15,000 installment checks for cash and Tok Kim deposited the fourth pre-signed \$15,000 installment check into his bank account, (Trial Tr. 380:13-20 (Youmi Cho)). Also, Tok Kim testified that he handed over operations of the Broad River Store to Youmi Cho on March 8, 2021. (Trial Tr. 147:23-148:1 (Tok Kim)). The Court concluded this course of conduct constituted partial performance of the oral contract to defeat an affirmative defense of the statute of frauds.

Moreover, Defendant Sang Cho, Youmi Cho’s brother, confidant, and a co-defendant in this matter, wrote in text messages to another family member, after receiving a copy of the

Complaint in this matter, that: (a) the purchase price of the assets of the Broad River Store was \$800,000, (b) the sale agreement was verbal, and (c) the verbal sale agreement required a \$250,000 down payment with subsequent \$15,000 checks to follow. (Trial Tr. 233:10-243:21 (Sang Cho); Plaintiff's Ex. 2).

The trial court did not err when concluding the aforementioned course of conduct and documents meet the three-factor test set forth in *Settlemeier* to remove the oral contract outside the statute of frauds. As to the first factor, there is clear evidence of an oral agreement. *Notwithstanding* Sang Cho's text messages evidencing the oral contract, the course of conduct involving (a) the \$250,000 downpayment, (b) the tendering of thirty-six (36) pre-signed, undated \$15,000 checks, and (c) four months of exchanging for cash or depositing four of the thirty-six (36) pre-signed, undated \$15,000 checks, without incident or issue, serves to provide this Court a preponderance of the evidence that an oral contract existed.

Concerning the second factor, the oral contract has been partially executed, as Youmi Cho has paid \$310,000 towards the \$800,000 purchase price (the \$250,000 down payment check plus four \$15,000 installments paid monthly without incident or issue). Lastly, Kim Enterprises, the party requesting performance, completed its part of the oral contract: Kim Enterprises, through its owner Tok Kim, tendered possession of the assets of the Broad River Store to K&C Beauty through its owner, Youmi Cho, yet Kim Enterprises has not been fully paid for tendering of those assets to K&C Beauty. (Trial Tr. 147:23-148:1 (Tok Kim)).

In sum, the purpose of the statute of frauds is to prevent fraud, not enable it. *See, e.g., Remy Holdings Int'l, LLC v. Fisher Auto Parts, Inc.*, 90 F.4th 217, 229 fn 10 (4th Cir. 2024) (noting "because the object of the statute of frauds is to prevent fraud, Virginia courts refuse to apply the common law statute of frauds when doing so would result in a fraud or perpetrate a wrong.")

(internal quotation omitted) (emphasis added). Appellants' efforts to use South Carolina's statute of frauds to enable fraudulent conduct must not be allowed by this Court. Allowing the statute of frauds to enable fraudulent conduct would constitute a grave injustice. South Carolina Courts, similar to Virginia courts, should refuse to apply the common law statute of frauds when doing so would result in a fraud or perpetrate a wrong.

III. The trial court did not err when concluding Sang Cho breached his fiduciary duties to Kim Enterprises.

As a preliminary matter, Appellants state the incorrect standard of review in their Initial Brief of Appellants on this issue. Although the existence of a fiduciary duty is a legal question, the specific facts and circumstances of the relationship between the parties are critical in making this determination. *See Armstrong v. Collins*, 366 S.C. 204, 222, 621 S.E.2d 368, 377 (Ct. App. 2005) (“[T]o determine whether a fiduciary relationship existed, th[e appellate court] must look to the particulars of the relationship between the parties.”). The trial court’s findings of fact on whether a fiduciary relationship existed “will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge’s findings.” *Townes*, 266 S.C. at 86, 221 S.E.2d at 775.

“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.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992) (citation omitted).

Here, Sang Cho was not a mere low-level employee at Kim Enterprises. Sang Cho managed the Broad River Store prior to its sale to Youmi Cho. (Trial Tr. 116:7-14 (Tok Kim); 466:19-21 (Vincent Fletcher)). Sang Cho, as the manager of the Broad River Store, hired employees, trained employees, and managed inventory. (Trial Tr. 466:22-467:1 (Vincent Fletcher)). And, prior to the

sale of the Broad River Store to K&C Beauty, Sang Cho had more knowledge of the operations of the store than anybody. (Trial Tr. 336:22-337:3 (Sang Cho)).

The trial court concluded that Tok Kim reposed special confidence in his nephew, Sang Cho, giving him extensive responsibilities at the Broad River Store, with the power to hire and fire employees, as well as manage inventory. (Trial Tr. 466:22-467:1 (Vincent Fletcher)).

South Carolina's Court of Appeals has already concluded a family member who managed a family business, under similar factual circumstances to this case, may be considered a fiduciary. In *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987), George F. Norris, III ("Norris") was married to the daughter of the owners of a car wash. *Id.* at 600, 358 S.E.2d at 152. Norris was in charge of setting up and running the car wash. *Id.* This is similar to Sang Cho's management and running of the Broad River Store for his uncle, Tok Kim. (Trial Tr. 466:22-467:1 (Vincent Fletcher)).

In *Island Car Wash*, Norris conspired to defraud his in-laws. 292 S.C. at 600, 358 S.E.2d at 152-53. Here, the trial court concluded that Sang Cho "engag[ed] in conduct described within this Order that perpetuated Youmi Cho and K&C's breach of the contract and fraudulent actions." (Order ¶ 73). Specifically, the trial court asserted that "Sang Cho, a longtime employee of Kim Enterprises, is unable to leave employment and turn on his former employer in such a manner." (*Id.*)

Appellants' heavy citation to, and reliance on, the unpublished United States District Court case of *Legree v. Hammett Clinic, LLC*, C/A No. 3:19-cv-0871-MGL-TER, 2019 U.S. Dist. LEXIS 229273 (D.S.C. Aug. 29, 2019) is misplaced, as the factual differences between the employee in that case and this case are substantial. In *Legree*, the employee being sued for breach of fiduciary

duty was a receptionist with no familial relationship to the owner(s) of the employer. The rank-and-file employee in *Legree* is markedly different than Sang Cho.

Moreover, Appellants' citation to Sang Cho's testimony disagreeing with Tok Kim and Vincent Fletcher's testimony about Sang Cho's involvement in the business is irrelevant at this stage of the litigation. The fact finder, after carefully weighing and considering evidence at trial, decided to believe Tok Kim and Vincent Fletcher as opposed to Sang Cho.

Specifically, the trial judge, physically sitting with the parties and the witnesses during the trial, had the ability to listen to the parties' testimony, see their facial expressions when asked questions, take notice of their body language, and separate the wheat from the chafe based on his good judgment obtained through a distinguished and successful career as a South Carolina Judge. Appellants' clear disappointment and frustration with the fact finder's factual findings as applied to the law are not grounds for reversal.

Lastly, Sang Cho's vague and conflicting trial testimony about his relationship as a manager at the Broad River Store, and the responsibilities bestowed upon him by Tok Kim, further supported, in some respect, the duplicitous nature of Sang Cho's breaches of fiduciary duty and his steadfast refusal to honestly answer questions posed to him while under oath. For example,

- a. Sang Cho could not recall, after repeated questioning, when he became a manager of the Broad River Store. (Trial Tr. 225:18-25 (Sang Cho); (Trial Tr. 249:1-8 (Sang Cho)).
- b. Sang Cho testified that although he worked at the Broad River Store after Tok Kim turned over the store to Youmi Cho on March 8, 2021, he was not employed by anyone and had no idea who actually owned the Broad River Store. (Trial Tr. 244:13-247:1 (Sang Cho)).

The trial court correctly concluded that Sang Cho, the nephew of Tok Kim, who managed the Broad River Store and hired and trained employees, as well as ordered inventory, was a fiduciary of Kim Enterprises.

IV. The trial court did not err when awarding punitive damages.

As a starting point, Appellants state the incorrect standard of review in their Initial Brief of Appellants on this issue. An appellate court “must affirm the trial court’s findings of punitive damages *if any evidence* reasonably supports the judge’s factual findings.” *Holt*, 362 S.C. at 207, 608 S.E.2d at 132 (emphasis added).

Appellants cite S.C. Code Ann. § 15-32-520(D) in support of their position that the trial 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.” (App. Initial Br. at 35). Preliminarily, S.C. Code Ann. § 15-32-520(D) involves a trial court’s review of a *jury’s* punitive damages decision. In this case, there was no jury, just the trial court judge. Appellants also aver the trial court failed to analyze the factors set forth in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). (App. Initial Br. at 34).

The South Carolina Supreme Court case of *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009) is somewhat helpful on this issue. In *Fortis Ins. Co.*, the Supreme Court noted “*Gamble* remains relevant to the post-judgment due process analysis, but only insofar as it adds substance to the [*BMW of North America v. Gore*, 517 U.S. 559 (1996)] guideposts.” *Id.* at 587, 686 S.E.2d at 185.

Concerning the *Gore* guideposts, the trial court, in its Order, addressed Defendants’ degree of culpability and reprehensibility, finding “Youmi Cho and K&C agreed to pay Kim Enterprises \$800,000 for the assets of the Broad River Store, and they have only paid Kim Enterprises

\$310,000 of the \$800,000 agreed upon purchase price” and this “*concoction of and pushing of a false narrative to explain away their breach of the contract constitute fraudulent acts.*” (Order ¶¶ 70-71) (emphasis added). As to Sang Cho, the trial court noted he “engaged in conduct described within this Order that *perpetuated Youmi Cho and K&C’s breach of the contract and fraudulent actions.*” (*Id.* ¶ 73) (emphasis added).

The trial court also noted that the ratio of punitive damages to actual damages was .5. *See* (Order ¶ 71) (“These fraudulent acts by Youmi Cho and K&C justify punitive damages in an amount of \$245,000, *which is one half of the amount still owed of \$490,000.*”) (emphasis added). Point five is a fraction of the “single digit ratio between punitive and compensatory damages, to a significant degree, [that] will satisfy due process.” *State Farm v. Campbell*, 538 U.S. 408, 425 (2003).

And, the .5 ratio is on the low end of punitive damages awards in South Carolina. *See Fortis*, 385 S.C. at 593, 686 S.E.2d at 188 (“South Carolina courts have most often upheld verdicts on the low end of the single-digit spectrum, but have frequently deviated from this norm in cases involving particularly egregious conduct.”).

The trial court’s Order went through extensive detail setting forth findings of fact that justified the imposition of punitive damages. As noted above, this trial was a bench trial. There is no allegation or evidence that the trial court judge’s punitive damages award is so excessive to be the result of passion, caprice, prejudice, or some other influence outside the evidence.

At bottom, there is no reason to disturb the trial court’s well-reasoned award of punitive damages of a point five ratio.

V. The trial court did not err when it made a finding of fact, after carefully considering and weighing the following evidence at trial, that Appellants' expert's "rough" lost profit calculation, which omitted a known cost of goods sold number of eighty percent (80%), was unreliable.

To begin with, Appellants set forth the incorrect standard of review in their Initial Brief of Appellants on this issue. It is well established that "[t]he trial court is vested with considerable discretion over the amount of a damages award, and [an appellate court's] review of the amount of damages is limited to the correction of errors of law." *Vortex Sports*, 378 S.C. at 208, 662 S.E.2d at 450 (citation omitted). "In reviewing a damages award, [appellate courts] do not weigh the evidence, but determine if *any evidence* supports the award." *Id.* (emphasis added).

"To recover damages, the evidence must enable the [fact finder] to determine the amount of damages with *reasonable certainty or accuracy*." *Magnolia N. Prop. Owners' Ass'n*, 397 S.C. at 374-75, 725 S.E.2d at 126 (citing *Whisenant*, 227 S.C. at 13, 281 S.E.2d at 796) (emphasis added).

Here, for the reasons set forth below, the trial court properly awarded Appellants zero dollars in damages. Appellants, at the bench trial, claimed damages that were entirely unsubstantiated and unreliable. Specifically, as to Appellants' claim for alleged "lost profits" improperly retained by Kim Enterprises, Youmi Cho's damages expert, C. Mark Bokesch, CPA, CVA, CFE ("Bokesch"), opined at trial that Youmi Cho is entitled to \$148,860.34 in alleged lost profits from December 16 through March 6, but admitted that figure does not include a cost of goods sold percentage for inventory acquisition or labor costs. (Trial Tr. 631:2-632:16 (Mark Bokesch)). Bokesch specifically testified he knew the costs of goods sold, based on Kim Enterprises' tax returns, was eighty percent (80%). (Trial Tr. 631:12-15 (Mark Bokesch)). Bokesch admitted that his damages calculation was a "rough calculation", and the trial court, in its Order, averred it did not "place any weight on a 'rough' lost profit calculation that omits a cost of goods

sold number, especially when the cost of goods sold is eighty percent (80%).” (Order ¶ 66). Glaringly, Appellants, in their initial brief, omit that Bokesch’s lost profit analysis failed to account for the biggest cost factor: cost of goods sold. (App. Initial Br. at 37-38).

A. Appellants’ discussion of the business license is of no consequence to Appellants’ purported damages that the trial court rejected.

Tok Kim testified that Youmi Cho informed him that she obtained K&C Beauty’s business license on March 7, 2021. (Trial Tr. 132:6-11 (Tok Kim)). Tok Kim handed over operations of the Broad River Store to Youmi Cho on March 8, 2021, the day after Youmi Cho informed Tok Kim that she received the business license for K&C. (Trial Tr. 147:23-148:1 (Tok Kim)). Although Appellants, in their brief, reference an email from the Richland County Business Center noting K&C Beauty received its business license on April 7, 2021, that email does not negate the fact that Tok Kim testified that Youmi Cho told him she obtained her business license on March 7, 2021. (Trial Tr. 132:6-11 (Tok Kim)). Notably, this purported email (Def’s Ex. 37) was not provided to Kim Enterprises in discovery and was first provided to Kim Enterprises by Appellants in the middle of the trial. Regardless, there is no evidence in the record that Tok Kim had any knowledge of this email or the actual date that Richland County Business Center issued K&C Beauty a business license *other than* the date told to him by Youmi Cho.

Admittedly, this email evidences further deception by Youmi Cho. In particular, it appears that Youmi Cho misled her uncle when she told him, on March 7, 2021, that K&C Beauty received its business license from Richland County. If the email from Richland County Business Center is to be believed, Youmi Cho did not receive her business license on March 7, 2021, but apparently decided to operate the Broad River Store anyway without a valid business license.

Appellants ask this Court to re-weigh the evidence presented and introduced at trial and come to a different factual conclusion about purported damages claimed by them. Evidence

supports the trial court's awarding Appellants zero dollars for a factually unsupported claim of \$148,860.34 in "lost profits". And, because there are no errors of law to be corrected by this Court, Appellants' argument must be rejected.

VI. The trial court did not err in concluding Tok Kim did not sign the APA and that the operative contract between the parties was an oral contract evidenced by thirty-seven (37) written checks that had been partially performed.

The sixth issue raised by Appellants is essentially a rehash of Issues I and II above. As noted in the Statement of the Case, the primary issue in this case is whether the sales price of the assets of the Broad River Store was (a) \$800,000 pursuant to a partially performed oral contract evidenced by one \$250,000 check tendered up front as a down payment and thirty-six (36) pre-signed, undated checks of \$15,000, four of which were exchanged and cashed over a four month period without incident or issue, or (b) \$250,000 according to a document titled Business Asset Purchase Agreement that was created as part of Youmi Cho's E-2 Visa application.

The trial court, after carefully considering and weighing the evidence at trial, concluded the contractual agreement between the parties was an oral contract for \$800,000 evidenced by thirty-seven (37) written checks that was partially performed, not \$250,000 according to an APA that was created as part of Youmi Cho's E-2 Visa application.

A. Appellants motion in limine on parol evidence was nothing more than a disguised attempt to control the mode of trial and deprive Kim Enterprises, the real plaintiff, from putting on its case in chief first. The trial court properly rejected Defendants' motion in limine.

Appellants, throughout their Initial Brief, attempt to treat the APA as the operative contract in this case—it is not. The APA is not a real contract, as Tok Kim did not sign the APA. The trial court recognized Appellants' Motion in Limine on Parol Evidence to be nothing more than a disguised attempt to control the mode of trial and deprive Kim Enterprises, the real plaintiff, from

putting on its case in chief first. As evidenced by the pre-trial-motions hearing transcript, the trial court, after hearing Appellants' convoluted Motion in Limine on Parol Evidence, asked Appellants "So what exactly are you asking for?" (Pre-Trial Mot. Hr'g Tr. 37:5-6 (Judge Strickland)). Appellants' counsel responded:

I mean, what I'd ask for would be the Court to – to hear testimony on this signature of the – of the contract. Which is their client can testify to it, our client can testify to it, Mr. Fenoff can testify to it. I think those are probably the three people that can testify to the signature on the – on the contract, whether its real or not.

(Pre-Trial Mot. Hr'g Tr. 37:8-15 (Mr. Paavola)). Counsel for Kim Enterprises responded, "Your Honor, I just feel my client would be very prejudiced if – if now defendants can dictate how I put on my case in chief." (Pre-Trial Mot. Hr'g Tr. 37:16-17 ("Mr. Brown)). The trial court responded and ruled:

Okay. Yeah. I – I don't – I'm not comfortable with that. Let the plaintiff put their case up, call his witnesses. You put your case up, call your witnesses after cross-examining his witnesses. And we'll probably get a motion for – for a non-suit at some point. And, I think, lets do it the old fashioned way. Just have the opening statements, plaintiff calls his witnesses, any pretrial motions that are left over. And we've blocked out the whole week for – for this. So that should give us some flexibility.

(Pre-Trial Mot. Hr'g Tr. 37:19-38:4 (Judge Strickland)).

Notwithstanding Appellants' continued desire to enforce the wrong contract between the parties, Appellants' argument on this issue seemingly derides the judgment of the trial court in its role as a fact finder. Specifically, Appellants, in their Initial Brief, boldly opine "*[a]s 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 parole evidence and not on the evidence as to the execution of the contract itself." (App. Initial Br. at 40) (emphasis added). What Appellants really feared, and what actually happened, is that the trial court correctly

concluded the applicable contract for the sale of the assets of the Broad River Store was an oral contract evidenced by thirty-seven (37) written checks that was partially performed, and Appellants breached that partially performed oral contract. Appellants' breaches of the oral contract were also accompanied by fraudulent acts that included, among other things, the creation of a fraudulent contract and an attempt to use *that* fraudulent contract to deprive Kim Enterprises of hundreds of thousands of dollars.

Did Appellants issue subpoenas to the Landlord that allegedly has, or at one time had, the *original* APA and ask for the document? No, they did not. Did Appellants depose any of the individuals who worked for the Landlord to testify that the Landlord requested the *original* APA as part of the agreement to lease the Broad River Store? No, they did not. Did Appellants use any of the vast arsenal of discovery tools provided by the South Carolina Rules of Civil Procedure to locate the supposed *original* APA? No, they did not. And, why did Appellants make no such efforts? Because there is no *original* APA. This was clear to the trial court judge after a four-day trial, and the trial court judge's findings of fact and conclusions of law should not be disturbed by this Court.

From a practical standpoint, accepting Appellants' arguments could lead to disastrous consequences for the general public. If an unscrupulous person digitally imposes an acquaintance's readily available signature onto a written contract that has a merger clause, can that wrongdoer automatically enforce that contract and prevent the unsuspecting victim from challenging the validity of that document? According to Appellants, the answer is an emphatic yes.

Such a result is insane. And scary. And troubling. Dr. Fenoff not only testified how easily signatures can be digitally imposed onto documents, but how he is unable to opine, one way or the other, whether an individual physically signed a document without having access to the original. Appellants' easy road map to perpetuate fraud should not be permitted by this Court.

CONCLUSION

For the reasons set forth herein, this Court should affirm the Order of the trial court in all respects.

Respectfully submitted,

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