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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

Kim Enterprises, LLC,

Respondent,

v.

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

Appellants,

AND

Youmi Cho and K&C Beauty, LLC,

Appellants,

v.

Kim Enterprises LLC and Tok Kim,

Respondents.

REPLY BRIEF OF APPELLANTS

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ARGUMENT IN REPLY

Sang Cho should never have been a party to this case. It is clear he was named as a defendant simply as a pressure tactic because he is Youmi Cho's brother. No facts or law support the lower court's finding that Sang Cho as an employee of Kim Enterprises owed it a fiduciary duty in any capacity and certainly not outside the scope of his employment for a sale that he did facilitate, negotiate, or benefit from. The lower court correctly directed a verdict on conspiracy and tortious interference with contractual relations, but erred in not also dismissing this final cause of action against Sang Cho. Respondents have nothing to offer in response.

Additional errors in the lower court's order abound, including: (1) failing to address the absence of a signed writing sufficient to satisfy the statute of frauds for the alleged oral contract to be performed over three years; (2) admitting and relying on parol evidence of the parties' negotiations rather than evidence of Tok Kim's signature to determine that Tok Kim did not sign the Purchase Agreement; (3) concluding that Tok Kim's signature on the Purchase Agreement was digitally imposed with no evidence other than Tok Kim's self-serving testimony; (4) awarding punitive damages without reviewing all of the required punitive damages factors; and, (5) failing to reduce the damages/award damages to K&C Beauty by the \$148,000 in Beauty Store net profits that Kim Enterprises admittedly withheld from K&C Beauty during the first three months after the sale.

The lower court also critically misunderstood Youmi Cho to have testified that she did not see Tok Kim sign the Purchase Agreement when her testimony is clear that she did see Tok Kim sign the contract, and this error was a critical factor in the court's decision.

In this instance, the lower court's order should be reversed and damages awarded to K&C Beauty, or alternately vacated and remanded for a new trial.

I. As a Matter of Law, Sang Cho Did Not Owe a Fiduciary Duty to Tok Kim or Kim Enterprises.

Even if all of the facts in the record concerning Sang Cho's actions are viewed in Respondents' favor, which of course Appellants contest, as a matter of law they do not support a finding that Sang Cho as an employee of Kim Enterprises owed it a fiduciary duty in its sale of the Beauty Store to K&C Beauty, when the sale was outside of Sang Cho's job duties, he had no authority or role in deciding to sell the store, he did not facilitate the sale or negotiate the sale price, he did not take custody or deposit sale proceeds, and at the end of the day he neither owns nor controls K&C Beauty. There is no difficulty in determining that the lower court erred in concluding that Sang Cho owed a fiduciary duty to Kim Enterprises in its sale of the Beauty Store.

The general rules for employer-employee relationships are that: (1) employees do not owe fiduciary duties to their employers;¹ (2) a fiduciary duty cannot be unilaterally imposed by one party and there must be an acceptance of the fiduciary role;² (3) only in very limited circumstances can an employee potentially be considered a fiduciary, such as when he competes with his employer, misappropriates profits, property or business opportunities, or when he breaches the

¹ *Legree v. Hammett Clinic, LLC*, No. 3:19-cv-0871-MGL-TER, 2019 U.S. Dist. LEXIS 229273, at *7 (D.S.C. Aug. 29, 2019) (“there are no fiduciary duties of loyalty owed by a non-contractual, non-fiduciary employee subject only to the rules for common law at will employment.” (quoting *Coves Darden, LLC v. Ibanez*, No. 2014-000339, 2016 S.C. App. Unpub. LEXIS 475, at *5 (S.C. Ct. App. Aug. 17, 2016))).

² *Wired Fox Techs. Inc. v. Estep*, Civil Action No.: 6:15-331-BHH, 2017 U.S. Dist. LEXIS 43993 at *32; 2017 WL 1135288 (Mar. 27, 2017) (“A fiduciary duty generally cannot be unilaterally imposed by one party; rather, ‘The evidence must show the entrusted party actually accepted or induced the confidence placed in him.’” (quoting *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817, 822 (Ct. App. 2004))). Sang Cho testified that he was not informed of the promotion and that his job duties did not change after becoming a manager. (Trial Tr. 274:1-19 (Sang Cho)). Respondents presented no evidence that Sang Cho accepted or induced the promotion to manager or the confidence that Kim Enterprises and Tok Kim allegedly placed in him.

employer's confidences.³ Because Respondents failed to show how they satisfy any of these requirements or limited exceptions, their breach of fiduciary duty claims fail.⁴

While Respondents rely heavily on *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987), this case actually supports Appellants' position. The employee at issue in *Island Car Wash*, who was found to be a fiduciary, was married to the owners' daughter and was accused of conspiring with a car wash equipment provider to overinflate equipment invoices so that he could convert excess funds from the owners/his in-laws. *Id.* at 600-601, 358 S.E.2d at 152-153. *Island Car Wash* is distinguishable for at least two reasons. First, the events in *Island Car Wash* occurred in the course of the employee's job duties to operate the car wash. Here, Respondents have never raised a complaint about how Sang Cho carried out his assigned job duties. Second, the Island Car Wash employee deceived the owners about his job duties and used this deception to perpetrate a fraud on the business and steal money. Respondents did not prove, or even alleged, that Sang Cho engaged in any similarly deceptive conduct or theft here.

Even if Sang Cho owed a fiduciary duty regarding the sale of the Beauty Store, which Appellants deny, Sang Cho could not have breached his fiduciary duty because he was not aware of the final terms of the alleged oral contract at the time of the conduct that is alleged to constitute

³ *Legree*, 2019 U.S. Dist. LEXIS 229273, at *7-8 (identifying three limited circumstances an employee could be a fiduciary of its employer) (citing *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 515-16 (4th Cir. 1999)).

⁴ Respondents also misstate the standard of review for finding a fiduciary duty. The existence of a fiduciary duty is a question of law for the court, which is reviewed de novo. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008); *Lollis v. Dutton*, 421 S.C. 467, 477, 807 S.E.2d 723, 728 (Ct. App. 2017) (legal questions are reviewed de novo). The South Carolina Supreme Court has explained that while the breach of a fiduciary duty may involve factual determinations for a jury, the determination of whether a fiduciary duty exists is a legal question for the court. *Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 927 (2011) (citing *Hendricks v. Clemson Univ.*, 353 S.C. 449, 459, 578 S.E.2d 711, 715-716 (2003)). Again, there are no facts in the record supporting Sang Cho's role as a fiduciary to Kim Enterprises.

the breach. It is undisputed that Sang Cho left the kitchen table conversation before the final discussions of the Beauty Store sale. (Trial Tr. 122:7-14 (Tok Kim); Trial Tr. 226:1-227:1, 281:18-282:3 (Sang Cho); Trial Tr. 353:6-355:20, 418:18-23 (Youmi Cho)). There is no evidence that Sang Cho was aware of the final terms of the Beauty Store sale before Youmi Cho and K&C Beauty allegedly breached the oral agreement. (Trial Tr. 283:2-284:15 (Sang Cho). As such, Sang Cho could not have breached a fiduciary duty to Kim Enterprises or Tok Kim regarding the sale of the Beauty Store.

Therefore, as a matter of law, Sang Cho did not owe a fiduciary duty to Tok Kim or Kim Enterprises. Accordingly, judgment should be reversed to deny Respondents relief on their causes of action for breach of fiduciary duty and aiding and abetting breach of fiduciary duty.

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

Respondents, and the lower court in adopting Respondents' arguments, completely ignore the substantial background facts of the transaction and fail to address the overwhelming evidence that Tok Kim signed the Asset Purchase Agreement. Additionally, the lower court critically misapprehended Youmi Cho's testimony, believing she testified that she did not witness Tok Kim sign the Asset Purchase Agreement when in fact she testified multiple times that she did see Tok Kim sign the contract.⁵

Respondents' entire argument—that the parties orally agreed to an \$800,000 sale price for the Beauty Store—rests on a single factually disputed conversation between Tok Kim, Youmi Cho, and Sang Cho that took place at Tok Kim's kitchen table. (Respondents Br. 6-7). Respondents

⁵ (Trial Tr. 424:6-426:19 (Youmi Cho); (Trial Tr. 462:8-12 (Court's Examination); Def. Exhibits 1, 2).

are asking this Court to ignore substantial evidence in the record of a written agreement and instead believe that Tok Kim decided to sell the Beauty Store he had owned for thirty years, for close to a million dollars, payable over three years, and the only “documentation” he required was one late night kitchen table conversation during which he was inebriated.⁶ This is implausible, especially when other evidence showed that Tok Kim had signed numerous legal documents, using the same legal counsel as in trial, for transactions far less than \$800,000.⁷

As such, it cannot be said that the evidence reasonably supports the trial court’s factual findings that Tok Kim did not sign the Asset Purchase Agreement, that Tok Kim’s signature on the Asset Purchase Agreement is fraudulent and digitally imposed, and that the parties entered into an oral agreement. *Hardaway Concrete Co. v. Hall Contr. Corp.*, 374 S.C. 216, 223, 647 S.E.2d 488, 491 (Ct. App. 2007) (“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.” (citations omitted)).

Respondents failed to carry their burden of proof to establish an oral contract and to prove that signed Asset Purchase Agreement was fraudulent. For these reasons, the lower court’s findings should be overturned and a new trial granted.

a. The \$250,000 Purchase Price is Supported by the Background Facts.

Conspicuously absent from the lower court’s order, and Respondents’ brief, is any discussion of how the transaction came about, including how Youmi Cho obtained the \$250,000

⁶ (Trial Tr. 418:7-419:13 (Youmi Cho testifying that Tok Kim said he was drunk during this meeting)).

⁷ Def. Ex. K6 (signed legal documentation in 2022 selling real estate for \$155,000); K8 (signed legal documentation in 2018 to purchase real estate for \$104,500); K11 (signed mortgage in 2014 for \$417,000); K13-16 (signed quit claim deeds in 2012); K21 (signed mortgage in 2010 for \$495,000); K22 (signed home equity loan in 2006 for \$199,000); K25 (signed mortgage in 2005 for \$432,000).

to purchase the Beauty Store. Reading only Respondents' brief and the lower court's order, an uninformed reader would be led to believe that the idea for the sale came out of thin air during a single kitchen table conversation at Tok Kim's house, during which all parties simply agreed that Tok Kim would sell the Beauty Store to Youmi Cho for \$800,000 just weeks before the sale was finalized. (Order ¶¶ 17-24). This is misleading and ignores the facts.

In reality, the evidence shows that the Beauty Store sale was originally Tok Kim's idea⁸ and had been planned for months based on the concept that Youmi Cho could afford to purchase the Beauty Store by selling her apartment in Korea.⁹ Youmi Cho came to the United States in July 2019 on a temporary two-year visa to allow her children to study in American schools.¹⁰ During the first school year Covid hit and disrupted Ms. Cho's school plans. At the same time, and almost immediately upon her arrival, Tok Kim had suggested that Youmi Cho sell her Korean apartment to purchase one of his beauty stores, which would enable her to keep her children in school in the United States on a longer term basis.¹¹ After considering Tok Kim's suggestion, talking with her husband about having her children attend school on a longer term basis, and concluding that the apartment sale would be enough to purchase the beauty store, Youmi Cho decided to make an unplanned return trip to Korea in the summer of 2020 to sell her apartment to fund the beauty store purchase.¹² Tok Kim was fully aware that Youmi Cho returned to Korea to sell her apartment so that she could buy one of his stores. (Trial Tr. 161:1-6 (Tok Kim)). Youmi Cho sold her apartment and netted roughly \$220,000 after paying expenses and debt.¹³ Once back in the United States,

⁸ (Trial Tr. 159:13-19 (Tok Kim), 407:12-25, 409:16-25, 410:4-7 (Youmi Cho)).

⁹ (Trial Tr. 410:8-411:4 (Youmi Cho)).

¹⁰ Appellants' Br. 5-6 (Youmi Cho's Initial Visit to the United States)).

¹¹ (Appellants' Br. 5-6 (Youmi Cho's Initial Visit to the United States)).

¹² (Appellants' Br. 5-6 (Youmi Cho's Initial Visit to the United States); Appellants' Brief 6-7 (Sale of Korean Apartment to Invest in Beauty Store)).

¹³ (Appellants' Br. 6-7 (Sale of Korean Apartment to Invest in Beauty Store)).

Youmi Cho began working with Tok Kim's recommended attorney Andy Kim to prepare immigration paperwork and the required contract to purchase the Beauty Store for \$250,000.¹⁴

Tok Kim testified that he knew that Youmi Cho's immigration attorney Andy Kim was preparing a contract for the parties to sign.¹⁵ Youmi Cho testified that she brought the contract documents prepared by Attorney Kim to Tok Kim to sign, Tok Kim signed the documents, and he deposited the \$250,000 purchase check.¹⁶ Youmi Cho also testified that Tok Kim only later attempted to change the deal in March 2021 after pressuring and duping Youmi Cho into giving him thirty-six pre-signed checks as good faith gesture to for purchasing other stores.¹⁷ Youmi Cho's testimony is consistent with how Tok Kim strongarmed the entire transition of the Beauty Store to Youmi Cho.¹⁸ Even after the December 2020 sale, Tok Kim kept control of the Beauty Store and all store revenues until March 2021,¹⁹ he directed Sang Cho not to order inventory,²⁰ and he failed to restock the shelves such that when Youmi Cho took over store control in March the shelves were empty and she had to spend future store revenues on inventory.²¹ Mark Bokesch, CPA, testified that Kim Enterprises kept net revenues belonging to K&C Beauty of over \$148,000.²²

The lower court completely ignored these critical background facts supporting the parties' agreement to a \$250,000 purchase price.

¹⁴ (Appellants' Br. 7-8 (Youmi Cho Returns to the United States & Prepares to Purchase the Beauty Store)).

¹⁵ (Trial Tr. 166:1-16 (Tok Kim)).

¹⁶ (Trial Tr. 424:6-426:19; 427:1-428:15 (Youmi Cho)).

¹⁷ (Appellants Br. at 10-11 (Second Agreement – Thirty-Six Checks)).

¹⁸ (Appellants' Br. 12-13 (Operation of the Beauty Store After the Sale)).

¹⁹ (Trial Tr. 444:7-23 (Youmi Cho) and Trial Tr. 209:5-10 (Tok Kim)).

²⁰ (Trial Tr. 295:17-296:1 (Sang Cho)).

²¹ (Trial Tr. 247:5-10, 295:17-21 (Sang Cho), 447:20-448:10 (Youmi Cho), Defense Exhibit 28 Defendant 000226 through 000228).

²² (Trial Tr. 596:18-599:5 (Bokesch)).

b. Evidence of Authenticity of the Asset Purchase Agreement Significantly Outweighs Any Evidence of Forgery.

The lower court’s findings that Tok Kim did not sign the Asset Purchase Agreement and that his signature was fraudulent and digitally imposed were not reasonable given the substantial evidence of authenticity, which significantly outweighed any evidence that Tok Kim’s signature was forged. Accordingly, the court’s conclusions are unupportable and should be vacated.

The evidence on authenticity as compared to fraud was as follows:

Evidence Purchase Agreement Authentic	Evidence Purchase Agreement Fake
<ol style="list-style-type: none"> 1. Tok Kim testified he knew Attorney Kim was drafting a contract for Beauty Store sale;²³ 2. Attorney Kim spoke with Tok Kim several times before the sale;²⁴ 3. Attorney Kim emailed the Contract & Bill of Sale to Youmi Cho on December 9, 2020;²⁵ 4. Youmi Cho testified she brought documents to Tok Kim and watched him sign the Contract & Bill of Sale;²⁶ 5. Tok Kim admits he signed the Bill of Sale;²⁷ 6. Bill of Sale references the Contract four times;²⁸ 	<ol style="list-style-type: none"> I. Tok Kim’s testimony that he did not sign the Contract³⁵ II. Tok Kim’s testimony that 36 undated checks received in March 2021 were for the Beauty Store³⁶

²³ (Trial Tr. 166:1-16 (Tok Kim)).

²⁴ (Trial Tr. 54:16-55:22 (Andy Kim)).

²⁵ (Trial Tr. 422:7-423:4 (Youmi Cho); Trial Tr. 85:19-86:7 (Andy Kim); Defense Ex. 9).

²⁶ (Trial Tr. 424:6-426:19 (Youmi Cho)).

²⁷ (Trial Tr. 187:18-189:11 (Tok Kim); Def. Ex. 2; Court’s Exhibit 1).

²⁸ (Trial Tr. 189:12-16 (Tok Kim); (Def. Ex. 2)).

³⁵ (Trial Tr. 139:22-23 (Tok Kim)). While Respondents allege that Sang Cho’s text messages corroborated Tok Kim’s testimony that the agreement was oral, the text messages were sent after the underlying lawsuit was filed and Sang Cho testified that the purpose of the messages was to understand the lawsuit paperwork. (Trial Tr. 322:25-325:19 (Sang Cho)).

³⁶ (Trial Tr. 131:10-24, 192:13-193:13 (Tok Kim)).

<p>7. Tok Kim admits he signed and cashed the \$250,000 purchase check on December 14, 2020;²⁹</p> <p>8. Attorney Kim received a copy of signed Contract & Bill of Sale for his file on December 14, 2020;³⁰</p> <p>9. Tok Kim, Patricia Kim (wife), Vincent Fletcher (longtime employee), Sang Cho (nephew & longtime employee), testified “Tok Kim” signature on Contract looks like his signature;³¹</p> <p>10. No source document in evidence from which the exact “Tok Kim” signature could have been cut and paste;³²</p> <p>11. Handwriting expert Dr. Fenoff testified no signs of cut-and-paste signature;³³</p> <p>12. Dr. Fenoff testified the person who signed 24 admitted Tok Kim signatures also signed the Contract and Bill of Sale.³⁴</p>	
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This evidence overwhelmingly supports a finding that Tok Kim signed the Purchase Agreement.

Respondents use the lack of an original signed Asset Purchase Agreement and Youmi Cho’s alleged inability to explain diligent efforts she took to locate the Asset Purchase Agreement as evidence that Tok Kim’s signature was digitally imposed.³⁷ The evidence does not support this conclusion. In fact, Youmi Cho and Sang Cho testified that they attempted to obtain the original Asset Purchase Agreement from the landlord to no avail. (Trial Tr. 292:20-293:16 (Sang Cho);

²⁹ (Def. Ex. 3; Court’s Exhibit 1).

³⁰ (Trial Tr. 61:1-24, 63:4-12, 82:3-83:12 (Andy Kim))

³¹ (Trial Tr. 187:18-188:4 (Tok Kim), 330:6-23 (Sang Cho), 477:7-478:4 (Vincent Fletcher), and 523:4-524:21 (Patricia Kim)).

³² Dr. Fenoff reviewed more than 24 Tok Kim signatures and none of them matched exactly to Tok Kim’s signature on the Asset Purchase Agreement. (Trial Tr. 665:6-10 (Dr. Fenoff)).

³³ (Trial Tr. 675:24-676:12 (Dr. Fenoff)).

³⁴ (Trial Tr. 667:13-668:3 (Dr. Fenoff)).

³⁷ (Respondents’ Br. at 16).

Trial Tr. 450:18-451:15 (Youmi Cho)). Handwriting expert Dr. Fenoff testified that he often performs handwriting analysis without any originals, and in this instance, he was still able to opine to a reasonable degree of scientific certainty that the person who signed the admitted Tok Kim signed documents also signed the Purchase Agreement. (Trial Tr. 667: 13-668:3, 675:20-676:12 (Fenoff); Def. Exhibits K1-26).

Respondents also argue that the thirty-six pre-signed checks are evidence of an oral agreement and evidence that the signed contract is a fake.³⁸ Specifically, Respondents mischaracterize Youmi Cho's testimony, contending that her original pleading stated she gave these checks under duress and she later testified that these checks were given to purchase two other stores.³⁹ There is nothing contradictory about these facts. Youmi Cho testified that she gave the thirty-six checks to Tok Kim for the purchase of two other stores but that she did so under duress and pressure from Tok Kim. (Trial Tr. 437:3-440:25) (Youmi Cho)). Both statements are true and entirely consistent.

Finally, Respondents did not offer a witness or other evidence to contradict Dr. Fenoff's testimony or to support a finding that the signature on the Asset Purchase Agreement was digitally imposed. Tok Kim's testimony alone is not enough evidence to reasonably support the lower court's findings on this issue. In actuality, the overwhelming evidence supports finding that Tok Kim signed the Asset Purchase Agreement. As such, the evidence does not reasonably support the lower court's conclusion that Tok Kim did not sign the \$250,000 Purchase Agreement, that Tok Kim's signature on the Purchase Agreement was digitally imposed, and that the parties only had an oral agreement to sell the Beauty Store for \$800,000.

³⁸ (Respondents' Br. at 15).

³⁹ (Respondents' Br. at 18).

c. The Trial Court Critically Misapprehended Youmi Cho's Testimony About Witnessing Tok Kim Sign the Asset Purchase Agreement.

Respondents casually dismiss the significance of the trial court's statement made during the post-trial motions hearing when it stopped the undersigned counsel mid-argument to indicate that it believed that Youmi Cho testified at trial that she did not see Tok Kim sign the Asset Purchase Agreement, and this was a key fact in the court's decision.⁴⁰ This was an incorrect recounting of the facts and completely the opposite of Youmi Cho's trial testimony. Perhaps the delay between trial (October 21-24, 2024) and entry of the Order (February 6, 2025) and post-trial motions hearing (February 25, 2025) caused confusion over trial testimony, but at this point, if the lower court was confused on such a critical point to its judgment, the record should have reopened, and additional testimony taken. The court's refusal to reconsider its decision only perpetuated this error.

Youmi Cho's testimony on this point was critical to the outcome of trial because Respondents rested their entire case on the theory that Tok Kim's signature on the Asset Purchase Agreement was fraudulent. Further underscoring the importance of this testimony is the blatant contradiction in Tok Kim's testimony that: (1) he knew Attorney Andy Kim was drafting a contract for the Beauty Store sale; (2) he admitted to signing one of Attorney Kim's documents, the Bill of Sale—a one page document that references the Asset Purchase Agreement four separate times; but, (3) he denied signing the Asset Purchase Agreement, which Youmi Cho testified she presented to Tok Kim at the same time as the Bill of Sale.

Q. Mr. Kim, you're aware that Youmi Cho needed a written contract to satisfy immigration requirements, didn't you?

A. She only brought one contract paper.

⁴⁰ (Appellants' Br. 23-25 (Trial Court Critically Misapprehended Youmi Cho's Testimony)).

Q. Mr. Kim, that wasn't my question. You knew that Youmi Cho needed a written contract for the purchase of the store to satisfy immigration requirements, didn't you?

A. **I know that.**

Q. Okay. So you knew Youmi Cho's immigration attorney needed a written contract in December of 2020 for the sale of the Beauty Store?

A. **I knew that.**

Q. And Youmi got a contract drafted by Mr. Andy Kim?

A. **Yes.**

(Trial Tr. 166:1-16 (Tok Kim) (emphasis added))

Q. Mr. Kim, I brought one of the Bill of Sale on the screen for you and **highlighted four times where it says -- it references the Business Asset Purchase Agreement.** You see that, don't you?

A. **That's correct.**

(Trial Tr. 189:12-16 (Tok Kim) (emphasis added)).

Q. All right. You understood that the Purchase Agreement and the Bill of Sale needed to be signed by both you and your uncle, right?

A. Yes.

Q. So did you eventually sign both documents?

A. Yes.

Q. Did your uncle eventually sign both documents?

A. Yes.

....

Q. Tell me how it came about that your uncle signed these documents.

A. I brought the document to my uncle's store. **I brought the document to Mr. Kim's store, and I signed it, and my uncle signed it.**

Q. Okay. **Did you see your uncle sign it?**

A. **He signed -- he signed in front of me, and I signed in front of my uncle.**

Q. Okay. **Both documents?**

A. **Yes.**

Q. If you turn in your binder to Defense Exhibit 1. And do you recognize this as the Purchase Agreement between Kim Enterprises and K&C Beauty?

A. Yes.

Q. Okay. If you turn to the last page of the document in your binder. Is that your signature for K&C Beauty?

A. Yes, it's correct.

Q. Is that your signature for Youmi Cho individually?

A. Yes, that's correct.

Q. And who signed for Kim Enterprises, LLC?

A. Mr. Kim did.

Q. And do you see this little checkmark next to the name? Do you see that?

A. Yes, I see it.

Q. And do you have any knowledge of how that came to be on this piece of paper?

A. So I make a mark for Mr. Kim showing him to sign here.

Q. Okay. Your testimony is that the checkmark was made by yourself?

A. Yes. I made the checkmark.

Q. All right. If you turn to page Exhibit 2 in your binder, please. Do you recognize this document as the Bill of Sale?

A. Yes.

Q. This is also a document that Mr. Andy Kim asked you to have signed as part of your purchase process?

A. Yes.

Q. All right. And did you sign on behalf of K&C Beauty, LLC?

A. Yes.

Q. Is this your signature for Youmi Cho individually?

A. Yes.

Q. Who signed on behalf of Kim Enterprises, LLC?

A. Mr. Kim did.

Q. Did you see Mr. Kim sign this document?

A. Yes. I saw directly.

(Trial Tr. 424:6-426:19 (Youmi Cho); Def. Exhibits 1, 2).

When the lower court asked Youmi Cho the same question, her response was consistent:

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

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

The lower court's misapprehension of this critical fact cannot be overstated, and it further supports the conclusion that the court's finding that Tok Kim did not sign the Asset Purchase Agreement was without evidence which reasonably supported this conclusion and the court's order should be vacated and a new trial ordered.

III. Respondents Fail to Meet the Partial Performance Exception to the Statue of Frauds.

Even assuming for the sake of argument that the Asset Purchase Agreement is fake, the lower court's finding that the parties entered into an oral agreement requiring performance over three years fails to satisfy the statue of frauds because there is no signed writing evidencing the

essential terms of the agreement as identified by the court—a \$250,000 down payment followed by thirty-six monthly payments of \$15,000 and one final payment of \$10,000.⁴¹ In fact, the lower court did not even address Appellants’ statute of frauds argument in its final order, even though Appellants continuously raised this key legal issue before, during, and after trial. (Def. Mot. Partial Summary Judgment; Memo Supp. Mot. Summary Judgment at 5; Trial Tr. 543-44 (Directed Verdict Motion); Post Trial Mot. 12-14).

Respondents now contend that Youmi Cho’s actions removed the oral contract from the statute of fraud under the theory of partial performance; however, this argument fails.⁴²

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.

Settlemyer v. McCluney, 359 S.C. 317, 320, 596 S.E.2d 514, 516 (Ct. App. 2004) (citing *Gibson v. Hrysikos*, 293 S.C. 8, 13-14, 358 S.E.2d 173, 176 (Ct. App. 1987)). Respondents’ argument clearly fails on the first two prongs.

Prong One – Clear Evidence of Oral Agreement

To satisfy the first prong of the part performance test, the proponent must present competent and satisfactory proof of contractual terms that are clear, definite, and certain. *Fesmire v. Digh*, 385 S.C. 296, 311, 683 S.E.2d 803, 811 (Ct. App. 2009) (citations and internal quotation

⁴¹ (Order ¶¶ 56-57; Appellants’ Br. 28-29 (reviewing the absence of signed writings); *Springob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014) (“In order to satisfy the statute of frauds, there must be a writing signed by the party against whom enforcement is sought, and the writings must establish the essential terms of the contract without resort to parol evidence.” (citations and internal quotation marks omitted)); *Collins Music Co. v. Cook*, 281 S.C. 580, 583, 316 S.E.2d 418, 420 (Ct. App. 1984) (“[N]o action shall be brought to charge a person upon an agreement that is not to be performed within one year from its making unless the agreement is in writing and signed by the person sought to be charged.”; S.C. Code Ann. § 32-3-10(5).

⁴² (Respondents’ Br. at 20-23).

marks omitted). In *Fesmire*, the court found that there was no clear evidence of the oral contract where the only evidence of the oral contract was contradictory and the self-serving testimony of the individual seeking specific performance of the oral contract and improper statements taken from settlement negotiations. *Id.* at 312, 683 S.E.2d at 812. Here, as in *Fesmire*, Respondents' primary evidence of the oral contract is the contradictory⁴³ and self-serving testimony of Tok Kim, the individual seeking specific performance of the alleged oral contract. (Trial Tr. 127:7-10) (Tok Kim)). There is no other testimony that supports Respondents' position.

Respondents contend that the thirty-six checks are evidence of the oral agreement. However, the checks are not clear, definite, and certain evidence of an oral agreement for the sale of the Beauty Store, as the checks have no written indication that they were provided to purchase the Beauty Store, do not identify the parties to the transaction, what is being sold, the price, or the payment terms. (Appellants' Br. at 28-29; Pl. Exhibit 1). Moreover, the Beauty Store purchase took place in December 2020 and the thirty-six checks were not provided to Tok Kim until March 2021, which Youmi Cho testified was related to a separate agreement for two other beauty supply stores and were given to Tok Kim under extreme pressure and duress. (Trial Tr. 437:3-441:20) (Youmi Cho) and Defense Exhibit 1). These checks are not sufficiently definite to satisfy the statute of frauds.

⁴³ Tok Kim's testimony about signing Attorney Kim's contract documents is blatantly contradictory. Tok Kim testified that he knew Attorney Andy Kim was drafting a contract for the Beauty Store sale, he admitted signing one of Attorney Kim's documents, the Bill of Sale—a one page document that referenced the Asset Purchase Agreement four separate times—but yet denied signing the Asset Purchase Agreement, which Attorney Kim testified to providing to Youmi Cho and Youmi Cho testified she presented to Tok Kim at the same time as the Bill of Sale. (Trial Tr. 166:1-16, 189:12-16 (Tok Kim); Trial Tr. 85:19-86:7 (Andy Kim); Trial Tr. 424:6-426:19 (Youmi Cho)).

Respondents also contend that Sang Cho's text messages are evidence of the oral agreement⁴⁴; however, these text messages were sent almost a full year after the agreement was entered, after this lawsuit was filed, and are taken out of context.⁴⁵ Additionally, Mr. Cho's text messages are not evidence of the oral agreement because Sang Cho did not have knowledge of the final terms of the agreement. (Trial Tr. 283:2-284:15 (Sang Cho)). Similarly, Tok Kim, Sang Cho, and Youmi Cho each testified that Sang Cho was not part of the final agreement.⁴⁶

As such, Respondents fail to satisfy prong one because they cannot identify proof of contractual terms that are clear, definite, and certain outside of the contradictory and self-serving testimony of Tok Kim.

Prong Two – Agreement Partially Executed

Respondents have also failed to establish the second prong of partial performance. To satisfy prong two, the party seeking to rescue the oral contract from the statute of frauds must show acts of performance or part performance that are clearly and unequivocally referable to such agreement. *Fesmire*, 385 S.C. at 313, 683 S.E.2d at 812. Courts have held that payment of the purchase price in whole or in part is not in and of itself regarded as such part performance as will take the contract out of the statute of frauds. *Fesmire*, 385 S.C. at 311, 683 S.E.2d at 811 (citations and internal quotation marks omitted). In *Fesmire*, the Court held that actions that could have been consistent with the opposing parties' version of the contract and subsequent events were not sufficient to satisfy the second prong of the partial performance test. *Fesmire*, 385 S.C. at 313, 683 S.E.2d at 812.

⁴⁴ (Respondents' Br. at 7).

⁴⁵ (Trial Tr. 322:25-325:19 (Sang Cho)).

⁴⁶ (Trial Tr. 122:7-14 (Tok Kim); Trial Tr. 226:1-227:1, 281:18-283:4 (Sang Cho); Trial Tr. 353:6-355:20, 418:18-23 (Youmi Cho)).

Here, Respondents allege that the \$250,000 payment on December 14, 2020, and the thirty-six checks provided three months later in March 2021, are evidence of partial performance of the oral agreement for purchase of the Beauty Store for \$800,000. (Trial Tr. 127:7-10 and 131:22-24 (Tok Kim)). First, as stated in *Fesmire*, payment in whole or in part standing alone is not sufficient to remove an oral contract from the statute of frauds when such payment is consistent with the opposing party's version of the contract, or contracts, as in this case. Even if the checks could be considered some evidence to support Respondents version of the contract, they do not clearly and unequivocally relate to Tok Kim's alleged oral agreement. As in *Fesmire*, the timing of the checks here are consistent with Youmi Cho's version of the parties' written contract for the sale of the Beauty Store and a subsequent separate agreement for the purchase of the other beauty stores. (Trial Tr. 437:3-440:25) (Youmi Cho). Therefore, Respondents failed to introduce sufficient evidence to satisfy the second prong of the partial performance test.

Respondents also aver that that statute of frauds should not bar the oral contract because it would enable fraudulent conduct. However, as stated above, Respondents did not prove that Tok Kim's signature on the Asset Purchase Agreement was digitally imposed and fraudulent. Refusing to enforce the statute of frauds actually enables Respondents to commit a fraud on Appellants.

For these reasons, Respondents cannot demonstrate part performance sufficient to remove its alleged oral contract from the statute of frauds. Therefore, the statute of frauds bars enforcement of the alleged oral agreement.

IV. The Parties Had a Meeting of the Minds Sufficient to Enforce the Asset Purchase Agreement.

Respondents, and the lower court, incorrectly conclude that the parties had no meeting of the minds on the Asset Purchase Agreement because neither party read the document.⁴⁷ This misstates the trial testimony and the law on meeting of the minds. First, Youmi Cho testified that she ran the contract through Google Translate before the parties signed the document and that Tok Kim said he was too busy to read the contract. (Trial Tr. 458:10-460:9 (Youmi Cho)). Second, it is doubtful that Tok Kim having conducted business the United States for decades and having executed dozens of written agreements, (Def. Exhibits K1-26), was unable to read the Asset Purchase Agreement, and even if he could not, South Carolina law is clear that a party cannot avoid a contractual obligation simply by claiming to not have read the contract. Each party signing a contract “is deemed to have read and understood the effect of the contract.” *Wellin v. Farace*, 2022 U.S. Dist. LEXIS 228613 at *19, 2022 WL 17811722 (D.S.C. Dec. 17, 2022) (“Under South Carolina law, ‘a party who signed a contract is deemed to have read and understood 'the effect' of the contract.’” (quoting *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139, 146 (Ct. App. 2013))).

Additionally, Respondents misstate what is required for a meeting of the minds. All that is required is that the parties have a meeting of the minds on “all essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893-94 (1989) (citations omitted). Such essential terms in this instance would include, for example, the identity of the buyer and seller (Kim Enterprises, LLC and K&C Beauty, LLC), the item being purchased (the Beauty Store), the purchase price (\$250,000), and the effective date of the purchase (December 15, 2020),

⁴⁷ (Respondents’ Br. at 20).

all of which are easily identifiable from the face of the Purchase Agreement and were testified to extensively by the parties. (Def. Exhibit 1, at 1). Further, Youmi Cho testified that she relied on an attorney to draft the Asset Purchase Agreement, which Tok Kim testified he was aware of, (Trial Tr. 421:12-422:6 (Youmi Cho) and 166:10-13 (Tok Kim)); Attorney Andy Cho testified that he spoke with Tok Kim about the purchase, (Trial Tr. 54:16-55:22 (Andy Kim)); and Attorney Kim affirmed that the signed agreement was the version he drafted, (Trial Tr. 61:1-24, 63:4-12, 82:3-83:12 (Andy Kim)). These are sufficient facts to evidence a meeting of the minds on the Purchase Agreement.

While it is unclear how significant this erroneous legal conclusion was to the lower court, this was an abuse of discretion and a new trial is warranted.

V. The Lower Court's Award of Punitive Damages Was Unconstitutional and Not Supported by the Evidence.

Appellants set forth the correct standard of review for the evaluation of punitive damages. Appellate courts must conduct a de novo review when evaluating the constitutionality of a punitive damage award. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 583, 686 S.E.2d 176, 182-183 (2009). Respondents allege that the punitive damage award is constitutional because the *Gore* guideposts have been met; however, Respondents ignore the *Gamble* factors that are also part of the analysis.⁴⁸ *Id.* at 587, 686 S.E.2d at 185. In *Mitchell v. Fortis*, the South Carolina Supreme Court explained the three-factor *Gore* test: (1) reprehensibility, (2) ratio actual harm to punitive damages, and (3) comparative penalty analysis. This test essentially combines all of the factors in *Gore* and *Gamble*. *Id.* at 585, 686 S.E.2d at 184. Here, the lower court erred because it failed to apply any test to sufficiently analyze the propriety of punitive damages in this case.

⁴⁸ (Respondents' Br. at 26-27).

Degree of Reprehensibility

In considering the degree of reprehensibility, the United States Supreme Court has further explained that “a court should consider whether (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.” *Id.* at 587, 686 S.E.2d at 185 (quoting *State Farm v. Campbell*, 538 U.S. 408, 419 (2003)). Here, the trial court, at a minimum, did not analyze items (i), (ii), (iii), (iv) for reprehensibility under *Gore* and *Campbell*.

Weighing these reprehensibility factors, the punitive damage award is excessive and unconstitutional. The harm was economic, rather than physical, which typically weighs against the reprehensibility of the conduct. *Id.* at 589, 686 S.E.2d at 186 (observing where harm is economic rather than physical it typically weighs against reprehensibility). Additionally, there is no evidence that Appellants disregarded the health or safety of Tok Kim, that Tok Kim or Kim Enterprises was financially vulnerable,⁴⁹ or that Appellants conduct was more than an isolated incident.

Ratio of Punitive to Actual Damages

Concerning the ratio of punitive damages to actual damages, “a court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay.” *Id.* at 587-588, 686 S.E.2d at 185. Here, the trial court did not evaluate any of

⁴⁹ Tok Kim testified that at the time of the sale of the Beauty Store he was not under any financial pressures. (Trial Tr. 126:16-19 (Tok Kim)).

these items when determining the ratio of the punitive damage award. While Respondents allege that the ratio satisfies due process because it is a single ratio, the Supreme Court has made clear that there are no rigid benchmarks for punitive damages. *Id.* (quoting *Campbell*, 538 U.S. at 425-426).

Comparative Penalty Awards

For the third *Gore* guidepost, when identifying comparable cases, “a court may consider the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant’s conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.” *Id.* at 588-589, 686 S.E.2d at 186. The trial court did not review any comparable cases.

Therefore, because the trial court failed to sufficiently evaluate the *Gore* and *Gamble* factors, and the evidence reasonably weighs against these guideposts, the punitive damage award is unsupported by the evidence, unconstitutional, and should be set aside.

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

Respondents incorrectly argue that the judgment should not have been reduced by the \$148,000 in net revenues that Kim Enterprises kept after it sold the Beauty Store to K&C Beauty because Appellants’ evidence on this issue was unreliable. All of the numbers used to calculate net profits withheld from K&C Beauty came from documents and information provided by the Respondents in discovery. Respondents do not take issue with revenue but only with the expense figures that came directly from their discovery responses. The Court should see through this charade.

Tok Kim cashed the \$250,000 purchase check on December 14, 2020. (Def. Exhibit 3). Tok Kim admitted that he did not turn over control of the store or begin remitting store revenues

to K&C Beauty until March 6, 2021. (Trial Tr. 209:5-25 (Tok Kim)). There is no evidence that Kim Enterprises was entitled to retain Beauty Store profits after the sale. There is no factual or legal reason why these profits do not rightfully belong to K&C Beauty. In fact, Tok Kim assigned the lease of the Beauty Store to Youmi Cho on December 9, 2020. (Defense Exhibit 4, Assignment of Lease). It defies logic that Youmi Cho would purchase the Beauty Store and assume the lease but receive no profits from the Beauty Store for nearly three months. Based on Tok Kim's own testimony that he retained all store revenues between December 14, 2020 and March 6, 2021, the question is how much net profits (sales less expenses) did Kim Enterprises keep from K&C Beauty.

To answer this question, Appellants served discovery requests on Respondents asking for expense information. In response to Appellants' request for all documents "evidencing any expenses You incurred to operate, or in any way incurred on behalf of, the Beauty Store in December 2020, January 2021, February 2021, or March 2021," Respondents failed to provide any documents but instead set forth a table identifying the requested expenses. (Def. Ex. 32). Mark Bokesch used these expenses identified by Respondents as the expenses for this calculation of net revenues withheld from K&C Beauty. (Trial Tr. 596:9-600:6 (Mark Bokesch) and Defense Demonstrative D8(a)).⁵⁰ Respondents cannot seriously now contend that using their own discovery responses is somehow unfair or unsubstantiated.

The fact that Respondents did not identify any costs to replace inventory during these months is entirely consistent with trial testimony from Sang Cho that he was told by Tok Kim not to restock the shelves after Youmi Cho purchased the Beauty Store in December 2020, (Trial Tr. 295:17-296:1 (Sang Cho)); and Youmi Cho's testimony that when she took over Beauty Store

⁵⁰ While Respondents attempt to undermine Youmi Cho's damages expert, C. Mark Bokesch, CPA, CVA, CFE ("Bokesch"), it is worth noting that Respondents did not contradict Mr. Bokesch's testimony on this point or choose to call their own rebuttal expert.

operations in March of 2021 she found a substantial amount of expired inventory and the shelves of the Beauty Store were so sparse that customers asked if the store was closing, (Trial Tr. 247:5-10, 295:17-21 (Sang Cho), 447:20-448:10 (Youmi Cho), Defense Exhibit 28 Defendant 000226 through 000228).

Accordingly, the lower court abused its discretion in not reducing the Judgment by the uncontroverted testimony of profits retained by Kim Enterprises between December 15, 2020, and March 6, 2021. As such, the judgment is excessive in light of the evidence and should be reduced by amounts due and payable to K&C Beauty of \$148,860.34 in net profits along with \$56,988.20 in pre-judgment interest.

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

It was an error of law for the trial court to rely on parol evidence—the kitchen table conversation and receipt of checks—to invalidate the Asset Purchase Agreement. If parol evidence was admissible at all on the authenticity of the Asset Purchase Agreement, it would have been limited to the question of whether Tok Kim’s signature on the Asset Purchase Agreement was fraudulent. Respondents do not dispute that parol evidence was used to invalidate the Asset Purchase Agreement, and yet Respondents provide no legal authority that would permit the use of parol evidence to make such a determination.

Respondents misconstrue the fraud exception in arguing that the alleged fraudulent acts in breaching the oral agreement and creating a fake contract allowed the admission of parol evidence. The fraud exception to the parol evidence rule refers to "fraud either in the execution or in the inducement of a contract." *United States Leasing Corp. v. Janicare, Inc.*, 294 S.C. 312, 317, 364 S.E.2d 202, 205 (Ct. App. 1988). Simply alleging fraud in the breach of contract, as Respondents have done here, is not an exception to the parol evidence rule. *Id.* The fraud exception to parol

evidence is limited to instances where fraud is alleged to have occurred in the execution or inducement of the contract and as related to a present or preexisting fact at the time of the contract, not as to alleged unfulfilled promises. *Id.* (citations and internal quotation marks omitted).

Even if parol evidence was admissible, it should have been limited to evidence concerning whether Tok Kim's signature on the Asset Purchase Agreement was forged. This would include parol evidence that Youmi Cho saw Tok Kim sign the Asset Purchase Agreement; Tok Kim's testimony that Youmi Cho only brought him one page Bill of Sale and he did not sign the Asset Purchase Agreement; Dr. Fenoff's testimony that the same person who signed the twenty-four known sample documents also signed the Asset Purchase Agreement and Bill of Sale; and Dr. Fenoff's testimony that without the original contract he cannot rule out a digital copy and paste but there are no signs that it was a copy and paste. (Trial Tr. 462:8-12 (Court's Examination), Trial Tr. 139:22-23, 181:1-5, 183:2-5, and 188:19-21 (Tok Kim)), Trial Tr. 667:13-668:3, 676:7-9 (Dr. Fenoff); Trial Tr. 424:6-426:19 (Youmi Cho)). Respondents could have also obtained their own handwriting expert but chose not to do so.

The trial court relied exclusively on parol evidence of the kitchen table conversation and the thirty-six checks given to Tok Kim three months after the sale to conclude in its Order that the Asset Purchase Agreement was a digital forgery. Because parol evidence so infected the trial and judgment, a new trial should be granted.

CONCLUSION

For the reasons set forth herein, Appellants request that the Court reverse the Order and (1) find that the only reasonable conclusion supported by the evidence is that Tok Kim signed the Asset Purchase Agreement and the Asset Purchase Agreement is the controlling agreement for the sale of the Beauty Store; (2) rule that Respondents' alleged oral agreement is barred by the statute

of frauds; (3) rule that the purchase price of the Beauty Store is \$250,000; (4) rule that Sang Cho was not a fiduciary of Tok Kim or Kim Enterprises; and (5) order profits kept from K&C Beauty returned to it along with pre-judgment interest and the \$60,000 in checks K&C Beauty gave to Tok Kim and received nothing in exchange.

In the alternative, Appellants request that the Court vacate the Order and remand the case for a new trial.

Respectfully submitted,

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October 10, 2025

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

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Respondent,

v.

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

Appellants.

AND

Youmi Cho and K&C Beauty, LLC,

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v.

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Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Reply Brief of Appellant complies with Rule 211 (b), SCACR and the Supreme Court's April 15, 2014 Order regarding personal identifiers.

[Signature page to follow]

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PROOF OF SERVICE

I certify that the Reply Brief of Appellants has been served on H. Freeman Belser, counsel for Respondent Kim Enterprises, LLC and Tok Kim by email sent to his primary e-mail address listed in the Attorney Information System, freeman@belserpa.com and on Creston W. Brown, counsel for Respondents, Kim Enterprises, LLC and Tok Kim, by email sent to his primary e-mail address listed in the Attorney Information System, creston@belserpa.com, on October 10, 2025.

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