

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
York County
The Honorable William A. McKinnon

Appellate Case No. 2025-001362
Civil Action No. 2021-CP-46-01792

Eswin Aguilar,
..... Appellant,

v.

AGCO Corp.,
..... Respondent.

INITIAL BRIEF OF RESPONDENT

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INTRODUCTION

This appeal concerns a 2019 Massey Ferguson MF4707 tractor (the “Tractor”). AGCO Corp. paid to repair the Tractor at no cost under its two-year Limited Warranty. When AGCO notified Appellant that the Tractor was ready, he refused its return and sued. After four years of litigation, four amended complaints, and full discovery, the circuit court granted summary judgment on the non-warranty claims for conversion, civil conspiracy, South Carolina Unfair Trade Practices Act (“SCUTPA”), and South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act (“FPA”) and the express-warranty and negligent-bailment claims survived summary judgment. The court denied Appellant’s Rule 59(e) motion. Appellant appealed.

Having twice failed in the circuit court, Appellant presents the same arguments a third time. Each of the issues raised on appeal fails as a matter of law: (i) conversion—AGCO’s possession of the Tractor was authorized and there was no demand for return; (ii) civil conspiracy—there was no agreement, no independent wrong, and no special damages; (iii) SCUTPA and FPA—this was a commercial transaction with no public-facing misrepresentation; and (iv) the contract-based counts—AGCO is neither a party to nor a beneficiary of the Retail Instalment Contract and any administrative fee was charged by AGCO Finance, not AGCO. The court tested these claims against a complete record and rejected them. Appellant repackages the same theories on appeal. A third pass fares no better.

This Court should affirm.

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court erred in granting partial summary judgment where the record shows no genuine issue of material fact and AGCO is entitled to judgment as a matter of law?
2. Whether the circuit court erred in granting summary judgment on the SCUTPA claim where the record shows no public-facing misrepresentation and the transaction was commercial?

COUNTER-STATEMENT OF THE CASE AND FACTS

AGCO submits a focused counter-statement addressing Appellant’s points because the issues turn on a narrow set of facts the court has twice addressed.¹

I. AGCO Is Neither a Party nor a Beneficiary; AGCO Finance—not AGCO—charged an Administrative Fee.

AGCO manufactures tractors and other farm equipment and sells through a network of independent dealers, including Nance Tractor and Implement, Inc. (“Nance”). *See* Fourth Am. Compl. (“Complaint”), ¶¶ 6, 10 (R. __); Answer to Fourth Am. Compl. (“Answer”), ¶¶ 6, 10 (R. __). Appellant operates a tree farm in South Carolina. Aguilar Dep. 13:6–12 (R. __). In 2019, he purchased the Tractor from Nance and financed the purchase pursuant to the Retail Instalment Contract and Security Agreement, labeled “Agricultural and Commercial Use” (the “Instalment Contract”). *See* Compl., ¶ 14, Ex. A (R. __); Answer, ¶ 14 (R. __); Aguilar Dep. 12:12–14, 18:21–19:15, 20:18–20, 142:2–144:1, 197:17–21 (R. __). Appellant and Nance signed the Instalment Contract, AGCO is neither a party to nor a third-party beneficiary of it. *See* Compl., Ex. A (R. __); Aguilar Dep. 23:1–24:18 (R. __); AGCO’s Resp. to Pl.’s Second Reqs. to Admit, ¶ 12 (R. __); AGCO’s Resp. to Pl.’s Third Set of Interrog., ¶ 1 (R. __).

¹ AGCO does not address the express-warranty and negligent-bailment claims. But, to not be “bound by the matters stated or alleged in [A]ppellant’s statement of the case,” Rule 208(b)(2), SCACR, AGCO denies Appellant’s statement of the case as to those claims and offers its Counter-Statement herein.

Nance assigned the Instalment Contract to AGCO Finance, LLC, which charged an administrative fee. *See* Compl., ¶¶ 16, 24, Exs. A, B (R. ___); Answer, ¶¶ 16, 24 (R. ___); Aguilar Dep. 26:19–27:2 (R. ___).

II. The Limited Warranty Assigns Transportation Costs to the Owner.

The Tractor was sold with AGCO’s two-year Limited Warranty. *See* Compl., ¶ 65 (R. ___); Answer, ¶ 65 (R. ___); Aguilar Dep., Ex. 3 at AGCO00001 (R. ___). Under the Limited Warranty, the Owner is responsible for transportation costs:

OWNER’S OBLIGATION

It is the responsibility of the Owner to transport the equipment . . . to the service shop of an authorized AGCO Dealer or alternatively to reimburse the Dealer for any travel or transportation expense involved in fulfilling this warranty. This Warranty does NOT cover . . . freight charges . . . or special handling requirements

Aguilar Dep., Ex. 3 at 2 (R. ___) (emphasis added).

III. Appellant Authorized AGCO To Retrieve the Tractor for Warranty Repairs.

Appellant pleaded—and later testified—that he authorized AGCO to retrieve the Tractor for repairs. The circuit court drew a reasonable inference, based on Appellant’s own testimony and the undisputed record, that AGCO’s possession was authorized and Appellant refused the Tractor’s return:

<u>Order</u>	<u>Record</u>
<p>“Plaintiff acknowledges in his Fourth Amended Complaint that he expressly authorized Defendant to pick up the Tractor for repairs.” Order on Def.’s Mot. for Summ. J. at 4 (R. ___) (citing Compl. ¶ 96).</p>	<p>“Plaintiff authorized AGCO to pick up the Tractor to perform repairs on April 22, 2021, and AGCO arrived to pick up the Tractor on April 28, 2021.” Compl. ¶ 96.</p>
<p>“When asked if AGCO had permission to pick up the Tractor, Plaintiff said, ‘Maybe so. But I don’t remember. [T]hey didn’t tell me when they were coming to pick</p>	<p>Q. “Did you give AGCO permission to pick up the tractor?” A. “You know, I just don’t know. I don’t remember. I don’t remember. Fair? Maybe so. But I don’t remember. But what I do know, they didn’t tell me when they were</p>

it up.” <i>Id.</i> at 3 (R. __) (citing Aguilar Dep. 69:19–25).	coming to pick it up. They didn’t tell me where they took it. That I know.” Aguilar Dep. 69:19–25.
“Plaintiff or his spouse must have provided a gate code or manually opened the gate for AGCO to retrieve the Tractor.” <i>Id.</i>	“[M]y gate was closed and they had to call me to open the gate. Shocker.” <i>Id.</i> at 67:16–18. “[S]omebody buzzed me at my gate, told me they were there to pick up the tractor.” <i>Id.</i> at 136:22–24. “[I]f I’m not at the house, my wife sees them, she more likely opened the gate because obviously someone was trying to get in.” <i>Id.</i> at 201:12–15.
“Though Plaintiff did not inquire about the Tractor’s destination, he likely knew it was taken to Nance, as he later requested that no more work be done there and agreed for it to be sent to Powell Tractor, Inc. for repairs.” <i>Id.</i>	Q. “Nance, an authorized dealer of AGCO . . . attempted to fix the tractor on a number of occasions, didn’t they?” A. “That’s correct.” <i>Id.</i> at 214:5–8 (R. __). <i>See also id.</i> at 53:2–4 (R. __) (“I reached out to these people there at Nance and they sen[t] out a mechanic”); 108:19–21 (R. __) (Q. “This was all when Nance returned the tractor?” A. “Yeah.”); 119:10–11 (R. __) (“I deal with Nance because they sold me the tractor”); 156:1–6 (R. __) (“I’m pretty sure I picked it up from Nance.”); 163:11–13 (R. __) (“I met . . . with a mechanic for Nance and he proceeded to do some series of tests to the tractor.”).

IV. After Repairs Were Completed, Appellant Did Not Accept Return and Asked AGCO To Route All Communications Through Counsel.

On October 29, 2021, AGCO notified Appellant that Powell Tractor, Inc. (“Powell”), an authorized dealer, completed the warranty repairs and the Tractor was ready for delivery. Appellant stated he did not want the Tractor, was pursuing legal action, and that all communications should go through his counsel. *See* Oct. 11, 2023 Aff. of Willis ¶ 3 (R. __); Oct. 17, 2024 Aff. of Willis ¶ 7 (R. __); Compl., ¶ 79 (R. __); Answer, ¶ 79 (R. __); Aguilar Dep. 82:2–83:12, 93:24–94:5, 94:19–95:2, 117:25–118:8, 181:16–17, 138:22–24 (Q. “You didn’t want the [T]ractor to be fixed and you didn’t want the [T]ractor at all, right?” A. “No. I didn’t want my [T]ractor at all.”), 211:17–212:3 (Q. “Did Jacob Willis tell you that the [T]ractor was ready to be picked up?” A. “I think he said it was ready”) (R. __); AGCO’s Resp. to Pl.’s Third Set of Interrog., ¶ 3 (R. __). As requested, AGCO ceased direct contact. *See* Oct. 17, 2024 Aff. of Willis ¶ 10 (R. __).

V. Summary Judgment Proceedings and Rulings

After full briefing and a hearing, the circuit court granted AGCO's motion for summary judgment as to conversion, civil conspiracy, SCUTPA, and FPA, and denied it as to express warranty and negligent bailment. *See* AGCO's Mot. & Mem. for Summ. J. (Feb. 26, 2025) (R. __); Pl.'s Mem. in Opp'n (Mar. 10, 2025) (R. __); Hr'g Tr. Mot. for Summ. J. (Mar. 13, 2025) (R. __); Order on Def.'s Mot. for Summ. J. (Mar. 27, 2025) (R. __). The court's oral rulings match the written order and state: (i) possession was authorized; (ii) no demand for return was made; (iii) neither an unlawful act nor special damages were shown; and (iv) no public-facing conduct or consumer transaction occurred. *See* Hr'g Tr. Mot. for Summ. J. (Mar. 13, 2025) (R. __).

A. The circuit court concluded the conversion claim fails because AGCO's possession was authorized.

At summary judgment, the court asked Appellant to identify the alleged "unlawful act"; none was provided.

Circuit Court: [D]id they have his permission to pick up the tractor?

Appellant: *They certainly had his permission to pick up the tractor, but he figured . . . you're picking up the tractor to either give me a refund or get me a replacement. He didn't expect them to bring that thing back, he didn't have any faith it would work.*

Circuit Court: Well, did he demand its return?

Appellant: Unfortunately, this case had already started, we were several months into it. There was some communication exchange to the effect that . . . the lawyers need to talk about this, and it was never discussed again.

Id. at 12:11–13:4 (R. __) (emphasis added). The court granted summary judgment on conversion because "[i]t was picked up with permission." *Id.* at 13:5–7 (R. __).

B. The circuit court concluded the civil conspiracy claim fails for lack of an underlying unlawful act.

At summary judgment, the court pressed Appellant to identify the alleged “unlawful act,” and none was offered.

Circuit Court: What is the unlawful act? . . . I’m really skeptical of that.

Appellant: [D]istributing a contract to consumers in South Carolina

Circuit Court: It’s not a crime to sign an adhesion contract

Appellant: [Y]ou’re correct, [an adhesion contract] is not in and of itself illegal”

Id. at 16:4–21 (R. ___). This exchange confirms Appellant identified no predicate unlawful act to support a civil-conspiracy claim.

C. The circuit court concluded the FPA claim fails because the statute does not apply.

At summary judgment, the court raised the threshold issue of the statute’s applicability.

Circuit Court: This act doesn’t apply to consumer transactions, right?

Appellant: I do not agree with that, Your Honor.

Circuit Court: Okay. . . . So, it applies to every sales contract in South Carolina?

Appellant: No.

Id. at 19:17–18, 20:9–14. This exchange confirms the statute is inapplicable to the transaction at issue, and the FPA claim fails as a matter of law.

D. Disposition of the Motion for Summary Judgment

The court granted AGCO’s motion for summary judgment on “all the causes of action except for negligent bailment and breach of the warranty,” finding “at least jury questions on those two issues.” *Id.* at 21:11–15. On March 27, 2025, the court entered an eight-page Order memorializing these rulings. *See* Order on Def.’s Mot. for Summ. J. (Mar. 27, 2025) (R. ___).

VI. Rule 59(e) Motion to Alter or Amend

On April 4, 2025, Appellant filed a Rule 59(e) motion to alter or amend, challenging the court's March 27, 2025 Order. *See* Pl.'s Mot. to Alter or Amend (Apr. 4, 2025) (R. __); AGCO's Resp. in Opp'n (June 9, 2025) (R. __); AGCO's Am. Resp. in Opp'n (June 11, 2025) (R. __). The court held a virtual hearing. Hr'g Tr. Mot. to Alter or Amend (June 11, 2025) (R. __).

A. The circuit court upheld its ruling that AGCO is not a third-party beneficiary of the Instalment Contract.

At the hearing, the court revisited AGCO's status under the Instalment Contract but reaffirmed its prior finding that AGCO is not a third-party beneficiary.

Circuit Court: Talk me through, carefully, your third-party beneficiary argument. [W]hat is your basis for that?

Appellant: AGCO's website states that AGCO Finance is a joint venture of AGCO and a bank.

Circuit Court: [I]s that all that you have is the website statement that it's a joint venture?

Appellant: Yes, Your Honor

Circuit Court: But the contract says they don't have any rights under this agreement; doesn't it?

Appellant: I don't think the contract's legible, Your Honor.

Circuit Court: I disagree on that . . . I wear progressive lenses and I can read it. . . . So if I rule against you on the third-party beneficiary claim on the issue, what's left of your motion to reconsider?

Appellant: [T]hat would certainly dispose of the civil conspiracy claim and the [SCUTPA] claim.

Hr'g Tr. Mot. to Alter or Amend 19:2–20:6; 28:4–29:3 (June 11, 2025) (R. __). The court upheld its ruling that AGCO is not a third-party beneficiary, leaving no basis for derivative claims.

B. The circuit court upheld its ruling that there is no unlawful act or legal basis for the civil conspiracy claim.

Appellant's counsel acknowledged that the conspiracy claim rested solely on the alleged third-party-beneficiary relationship and that it was a conspiracy to distribute an adhesion contract. But he did not cite any case law in support.

Circuit Court: [D]o you have any case law in South Carolina that would support a civil conspiracy claim on that basis?

Appellant: Well, I don't . . . no, Your Honor.

Id. at 9:2–21. The court upheld its prior ruling, finding no unlawful act or legal basis for the civil conspiracy claim.

C. The circuit court upheld its ruling that the FPA claim is outside the statute's scope.

The court reiterated that the FPA does not govern the commercial transaction at issue. *Id.* at 29:11–16 (R. ___) (Circuit Court: “I’m going to rule against you on the [FPA]. We went through that. I thought that was well argued on both sides the first time.”). The court left the prior summary judgment ruling on the FPA claim intact.

D. The circuit court upheld its ruling that possession was authorized and no return was requested.

Because Appellant voluntarily surrendered the Tractor and never requested its return, the court upheld its ruling that the conversion claim failed.

Circuit Court: There's no question that he did voluntarily turn the tractor over to be serviced, correct?

Appellant: No question about it, Your Honor.

Circuit Court: [I]f he says in his deposition he never asked for it back, how can it be a conversion claim? [T]he fact that the plaintiff never asked for the tractor to be returned, in the Court's opinion, forecloses a conversion claim.

Id. at 31:2–10; 32:20–22 (R. __). The court found no error in its prior ruling that authorized possession defeats conversion as a matter of law.

E. Disposition of the Rule 59(e) Motion

On June 27, 2025, the court denied Appellant’s Rule 59(e) motion, holding that it applied Rule 56’s burden-shifting framework, the dispositive findings are supported by the record, and Appellant showed no “manifest error of law or fact” and no “newly discovered evidence or injustice” warranting modification. Order Den. Pl.’s Mot. to Alter or Amend (June 27, 2025) (R. __).

This appeal followed. *See* Notice of Appeal (R. __).

STANDARD OF REVIEW

“Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Trivelas v. S.C. Dep’t of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001). “When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCF,” and summary judgment “is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citing Rule 56(c), SCRCF).

Questions of contract construction present issues of law that may be resolved on summary judgment. *See Thalia S. ex rel. Gromacki v. Progressive Select Ins. Co.*, 401 S.C. 395, 399, 736 S.E.2d 863, 865 (Ct. App. 2012). Whether a nonparty is an intended third-party beneficiary is a question of law turning on the contracting parties’ intent as expressed in the instrument. *See Beverly v. Grand Strand Reg’l Med. Ctr., LLC*, 435 S.C. 594, 603, 869 S.E.2d 812, 817 (2022).

ARGUMENT

I. The Circuit Court Properly Granted Partial Summary Judgment Because the Record Shows No Genuine Issue of Material Fact and AGCO Is Entitled to Judgment as a Matter of Law.

Appellant identifies no substantive error in the court’s rulings. Rather, he focuses on matters of form over substance and relies on conjecture about the court’s reasoning—neither of which provides a basis for reversal. *See Warren v. Lagrone*, 12 S.C. 45, 51 (1879) (appellate court cannot consider grounds of appeal based solely upon “surmise and conjecture”). This Court may affirm “any ruling, order, or judgment upon any ground(s) appearing in the Record.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 418, 526 S.E.2d 716, 722 (2000) (quoting Rule 220(c), SCACR). The court reviewed the record and granted summary judgment on each challenged claim—conversion, civil conspiracy, SCUTPA, and FPA.

A. The circuit court applied Rule 56’s burden-shifting framework.

Appellant contends that AGCO was “never compelled to offer any argument in support of its motion” and that the court did not consider the briefs and supporting materials. *See* Appellant Br. at 11–12. The record refutes that. The court reviewed the briefs and supporting materials and invited Appellant to respond. *See* Order on Def.’s Mot. for Summ. J. (Mar. 27, 2025) at 1 (R. __) (“After careful consideration of the briefs, supporting materials the parties submitted, oral argument presented by counsel, and applicable law”); Order Den. Mot. to Alter or Amend (June 27, 2025) at 1 (R. __) (“After careful consideration of the briefs, oral argument presented by counsel, and applicable law”). That is an ordinary sequence once the movant has met its burden. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (once the moving party carries its initial burden, Rule 56(e) requires the nonmoving party to “come forward with specific facts showing that there is a *genuine issue for trial*”) (citation and marks omitted).

But Rule 56 does not prescribe the sequence of oral argument. Where the record is developed and the court used the hearing to “interrogat[e] counsel” to “ascertain what material facts exist,” *see* Rule 56(d), SCRPC, it had discretion under Rule 56(d) to begin with the nonmovant. Rule 43(j) gives the movant the right to open and close the argument on a motion; it governs the order of argument, not the court’s preliminary questioning, and that right is satisfied where, as here, the court invited the nonmovant to speak first but afforded the movant an extended reply. *See* Rule 43(j), SCRPC; *see also State v. Beaty*, 423 S.C. 26, 39 n.8, 813 S.E.2d 502, 509 n.8 (2018) (noting Rule 43(j) controls the content and order of argument in civil cases).

Here, the court reviewed the briefs and supporting materials and invited Appellant to respond first—while expressly offering the movant an extended reply. *See* Hr’g Tr. Mot. for Summ. J. 7:1–3 (Mar. 13, 2025) (R. ___) (“Mr. Carroll . . . I’ve read the memo. Why don’t I just stop you. Let me hear from Mr. [Studemeyer] and I’ll give you an extended reply. Would that suit?”). That sequencing was consistent with the Rules. *See* Rule 56(d), SCRPC; Rule 43(j), SCRPC. As the court explained:

Plaintiff’s assertion of “improper burden-shifting” based on hearing sequence is unpersuasive. The record confirms the Court had reviewed AGCO’s motion and supporting materials before inviting Plaintiff’s argument—an invitation that was procedural, not substantive, and consistent with common practice where the moving party’s position is already well-briefed and documented.

Order Den. Mot. to Alter or Amend (June 27, 2025) at 2 (citing *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (R. __)). And by affording the movant an extended reply, the court respected Rule 43(j)’s allocation of the open-and-close in motion practice.

The court did what Rule 56(c) requires: it evaluated the record—including pleadings, depositions, interrogatory answers, and admissions—determined that no genuine issue of material fact exists, and entered partial summary judgment. Once the movant met its Rule 56 burden, the

burden shifted to Appellant to identify record evidence creating a genuine issue of material fact as to each challenged claim. *See Baughman*, 306 S.C. at 115, 410 S.E.2d at 545. Appellant identified none.

B. The circuit court did not err in finding that AGCO is not a third-party beneficiary of the Instalment Contract.

Appellant asserts that AGCO was a third-party beneficiary of the Instalment Contract. However, Appellant previously conceded: “It is undisputed that AGCO is not a party to the [Instalment Contract].” Pl.’s Mot. to Alter or Amend (Apr. 4, 2025) at 4 (R. __).

Appellant offers no evidence that AGCO was a third-party beneficiary—only conjecture based on AGCO’s joint-venture relationship with AGCO Finance. *See* Appellant Br. at 12–14. That rests on a website statement. Hr’g Tr. Mot. to Alter or Amend 19:2–20:6; 28:4–29:3 (June 11, 2025) (R. __).. But a reference to a “joint venture” on a website is not competent proof of agency or third-party-beneficiary status. Agency in South Carolina requires evidence of the principal’s right to “direct and control.” *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 65, 352 S.E.2d 284, 286–88 (Ct. App. 1986). Here, there is no evidence that AGCO Finance had any right to direct or control AGCO, and there is no contract language showing AGCO was a direct beneficiary.

The circuit court found that:

Plaintiff’s claim that AGCO was a third-party beneficiary of the Retail Instalment Contract was unsupported by any admissible evidence. The Court relied on the Contract’s face, AGCO’s verified discovery responses, and Plaintiff’s own pleadings. Plaintiff’s conjecture about AGCO’s corporate affiliations does not create a genuine issue of material fact.

Order Den. Mot. to Alter or Amend (June 27, 2025) at 3 (R. __)

A third-party beneficiary exists only when the contracting parties intended to “directly benefit” the third party; incidental benefits do not suffice. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). South Carolina courts reject third-party claims

where the contract language does not clearly express such intent. *See, e.g., Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 17–19, 605 S.E.2d 750, 752–53 (Ct. App. 2004) (holding condo HOA was not an intended third-party beneficiary of a tenant's lease; absent contract language showing intent to directly benefit the HOA); *Bob Hammond Const. Co. v. Banks Const. Co.*, 312 S.C. 422, 424–25, 440 S.E.2d 890, 891–92 (Ct. App. 1994) (rejecting third-party-beneficiary status where the contract did not manifest an intent to benefit the subcontractor; any benefit was merely incidental). These cases underscore that speculation about corporate affiliations or business relationships cannot substitute for contract text manifesting an intent to benefit the alleged beneficiary.

Appellant cites *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 391 S.E.2d 538 (1989). *See* Appellant Br. at 13. But *Tiger* did not hold—or analyze—that a joint venture, standing alone, makes nonparties intended beneficiaries of a separate contract. By contrast, the Supreme Court's more recent discussion in *Beverly v. Grand Strand Regional Medical Center, LLC*, confirms that third-party status turns on clear contractual promises to the third party. 432 S.C. 581, 596–603, 856 S.E.2d 561, 568–72 (2022). *Beverly* is readily distinguishable: there, the contract expressly promised benefits to Blue Cross Blue Shield of South Carolina (BCBS) members (e.g., the provider “shall seek payment for Covered Services solely from BCBS and ‘will not solicit any payment from [BCBS] Members’”). *Beverly*, 435 S.C. at 597, 869 S.E.2d at 814. Here, there is no comparable promise: the Instalment Contract contains no commitment to AGCO, no language conferring rights on AGCO, and no indication the parties intended to directly benefit AGCO.

Federal authority addressing the same AGCO dealer/finance structure is instructive. In *First v. Rolling Plains Implement Co., Inc.*, the appellant purchased a combine from an authorized dealer; it was manufactured by AGCO Corp. and financed by AGCO Finance. 108 F.4th 262, 267

(5th Cir. 2024). The appellant “believed that all AGCO entities were the same” and sued AGCO Corp. and AGCO Finance, among others. *Id.* While such “confusion may be understandable given [the] similar names,” the Fifth Circuit held that misunderstanding does not create a genuine issue of fact. *Id.* The court affirmed summary judgment for AGCO Finance on the warranty claims because the same Instalment Contract form at issue in this case contained “no warranty representations,” and declined to impute dealer statements to AGCO Corp., reiterating that “[c]orporations are distinct legal entities.” *Id.* at 272, 274.

On this record, the Instalment Contract provides no direct benefit to AGCO and no right of AGCO Finance to direct or control AGCO. Appellant’s speculation cannot supply what the Instalment Contract lacks. *See Fabian v. Lindsay*, 410 S.C. 475, 490–92, 765 S.E.2d 132, 141 (2014); *Helms Realty*, 363 S.C. at 340–41, 611 S.E.2d at 488. AGCO is not an intended third-party beneficiary of the Instalment Contract.

C. The circuit court did not err in finding that the FPA does not apply.

The FPA applies to all agreements between “a *manufacturer*, distributor, wholesaler, . . . and an *equipment dealer* including . . . all other agreements in which the manufacturer, distributor, wholesaler . . . has any direct or indirect interest. S.C. Code Ann. § 39-6-120 (emphasis added). The circuit court found “no genuine dispute of material fact that Plaintiff is not an ‘equipment dealer’ but instead operates a tree farm.” Order on Def.’s Mot. for Summ. J. (Mar. 27, 2025) at 8 (R. __). The court also found that the Instalment Contract was executed between entities not within the scope of agreements covered by the FPA—Appellant, Nance, and AGCO Finance. *See id.*

Appellant argues that AGCO has a “direct or indirect interest” in the Instalment Contract, based on its joint-venture relationship with AGCO Finance. *See Appellant Br.* at 15. That argument

fails for the same reasons that AGCO is not a third-party beneficiary of the Instalment Contract. *See supra* § I.B. This Court should affirm summary judgment on the FPA claim.

D. The circuit court did not err in rejecting the conversion claim as a matter of law.

With lawful initial possession, conversion requires a demand followed by wrongful detention. *See Moore v. Weinberg*, 373 S.C. 209, 227, 644 S.E.2d 740, 749 (Ct. App. 2007), *aff'd*, 383 S.C. 583, 681 S.E.2d 875 (2009) (plaintiff may prevail “by showing the unauthorized detention of property, after demand”); *Roberts v. James*, 160 S.C. 291, 158 S.E. 689, 691 (1931) (“Trover will not lie against one rightfully in possession. Such possession must first be transformed into a wrongful one by a refusal to surrender the property. Hence, demand and refusal are necessary”) (citation omitted). Without a demand and refusal, lawful possession does not become wrongful detention. *See Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 51, 135 S.E.2d 311, 313 (1964) (“Since conversion is a wrongful act, it cannot arise from the exercise of a legal right.”).

Here, Appellant concedes that AGCO “was authorized to pick up the Tractor on April 28, 2021,” but argues that “does not mean that the Respondent was permitted to tinker with it indefinitely.” Appellant Br. at 17 (citing *Cannon v. Pulliam Motor Co.*, 230 S.C. 131, 137, 94 S.E.2d 397, 400 (1956)). First, Appellant’s “indefinite tinkering” theory sounds in warranty, not conversion. Second, the refusal-of-delivery finding is supported by undisputed record evidence. Third, Appellant’s collateral points create no genuine issue of fact.

1. Appellant’s “indefinite tinkering” theory sounds in warranty, not conversion.

Cannon addresses breach-of-warranty, not conversion. *See Cannon*, 230 S.C. at 137, 94 S.E.2d at 400. Appellant’s arguments on appeal should not be confused with claims the court let proceed. *See Order on Def.’s Mot. for Summ. J.* (Mar. 27, 2025) at 1–2 (R. __) (denying motion for summary judgment as to the breach of express-warranty and negligent-bailment claims). By

contrast, conversion turns on unauthorized control or detention. *See SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990).

2. *The refusal-of-delivery finding is supported by undisputed record evidence.*

AGCO notified Appellant that the Tractor was repaired and ready for delivery, but he declined return and chose to litigate instead. *See* Oct. 11, 2023 Aff. of Willis ¶ 3 (R. ___); Oct. 17, 2024 Aff. of Willis ¶ 7 (R. ___). The Fourth Amended Complaint and AGCO’s Answer confirm the communication between Appellant and AGCO. *See* Compl., ¶ 79 (R. ___) (“Jacob Willis of AGCO called the Plaintiff in late October of 2021, after this action had been commenced, and the Plaintiff instructed Willis to contact his attorney.”); Answer, ¶ 79 (R. ___) (“AGCO admits only that Jacob Willis contacted Plaintiff on or about October 29, 2021 and informed him that the Tractor had been repaired and was ready to be delivered to him, but that Plaintiff responded that he did not want the Tractor and was pursuing legal action.”). Appellant also testified that AGCO told him the Tractor “was ready” and Appellant “told him he needed to talk to [his] counsel.” Aguilar Dep. 93:24–94:5 (R. ___). That is refusal. Appellant’s brief confirms the same. *See* Appellant Br. at 19–20 (Appellant “did not want the Tractor back”; Willis represented that the Tractor was “ready.”).

Either way—whether by refusing return, declining return, or electing to litigate—the effect is the same: Appellant did not demand the Tractor’s return. Conversion also requires a present right to immediate possession. *See Regions Bank v. Schmauch*, 354 S.C. 648, 667–68, 582 S.E.2d 432, 442 (Ct. App. 2003). Having declined return after a readiness notice, Appellant cannot show unauthorized detention against a present right.

3. *Appellant’s collateral points do not create a genuine issue.*

Appellant points to subsequent work orders related to the repair of the Tractor to suggest that repairs were not complete in October 2021. *See* Appellant Br. at 20. But the record confirms an October 29 notice that the Tractor was repaired and ready to be delivered, and Appellant offers no

competent contrary evidence, only speculation. *See, e.g., Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 464, 892 S.E.2d 297, 302 (2023) (where “the factfinder would be required to speculate . . . [petitioner] failed to establish a genuine issue of material fact, and [respondents] were entitled to summary judgment as a matter of law”). At most, the work orders reflect follow-up warranty work—issues the court preserved for trial under express-warranty and negligent-bailment claims, not conversion.

Likewise, whether Appellant knew the Tractor’s location or could tow it is immaterial. *See* Appellant Br. at 20. He told AGCO he did not want the Tractor returned. Speculation cannot defeat summary judgment when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits,” are uncontradicted. Rule 56(c), SCRCP. Appellant must do more than raise a “metaphysical doubt” as to a material fact; he must present competent evidence creating a genuine issue of material fact. *Kitchen Planners*, 440 S.C. at 461, 892 S.E.2d at 300. Appellant cannot.

On this record, conversion fails as a matter of law. AGCO’s possession was lawful; after notice that the Tractor was repaired and ready for delivery, Appellant declined return and made no demand. His “indefinite tinkering” point sounds in warranty, and the remaining assertions create no genuine issue. This Court should affirm summary judgment.

E. The circuit court did not err in finding that SCUTPA does not apply because the transaction was commercial.

The judgment should be affirmed because SCUTPA does not apply. Two independent grounds support that conclusion: (i) the parties’ objective agreement demonstrates a commercial transaction at formation; and (ii) Appellant’s lawn-mowing assertion creates no genuine issue and identifies no impact on the public interest.

1. *First, the record establishes a commercial transaction.*

Contract interpretation turns on “the terms the parties used” and “the objective manifestation of the parties’ assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it.” *Rd., LLC v. Beaufort Cnty.*, 443 S.C. 11, 26, 902 S.E.2d 366, 373 (2024) (citations omitted). *See also Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976) (“Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions.”).

Appellant signed and acknowledged that he read the “Retail Instalment Contract and Security Agreement (*Agricultural and Commercial Use*).” Compl., Ex. A (R. __) (emphasis added); Compl. ¶ 14 & Ex. A (“BUYER ACKNOWLEDGES HAVING READ THE ENTIRE CONTRACT”) (R. __); Answer ¶ 14 (R. __). He also confirmed in deposition that the contract was for “Agricultural and Commercial Use.” *See* Aguilar Dep. 18:21–19:15. Nance assigned the Instalment Contract to AGCO Finance, LLC, a lender that finances farming equipment—underscoring the non-consumer character. Compl. ¶ 16 (R. __); Answer ¶ 16 (R. __). South Carolina law looks to these objective terms and contemplated purpose at formation; after-the-fact testimony cannot convert a commercial purchase into a consumer one. *See Ellie, Inc. v. Miccichi*, 358 S.C. 78, 94, 594 S.E.2d 485, 493–94 (Ct. App. 2004).

2. *Second, Appellant’s lawn-mowing testimony does not create a genuine issue.*

Although Appellant now argues that he “primarily used the Tractor to mow his lawn,” Appellant Br. at 21, his brief concedes he used the Tractor “for the benefit of his business,” *id.* at 6. The record matches that concession. *See* Aguilar Dep. 43:15–16 (R. __) (“The tractor was to cut the grass and to get my tree farm going.”); *id.* at 13:6–19 (R. __) (Appellant “planned to cultivate a small tree farm” and to use those plants as part of his landscaping business.); *id.* at 17:8–13 (R. __) (Without the

tree farm, Appellant would have to order trees from nurseries for his landscaping business.). Later incidental personal use does not alter the transaction’s commercial character, which is determined at the time of contracting. *See Rd., LLC*, 443 S.C. at 26 (emphasizing that intent is assessed at “the time the contract was made,” not by after-the-fact characterizations). Appellant identifies no advertising, policy, or practice directed to the public, or any evidence of past occurrences or likely repetition. A single private dispute only affecting the parties to the commercial transaction—without public-facing conduct—does not satisfy SCUTPA’s public-interest element. *See Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 453, 814 S.E.2d 643, 655 (Ct. App. 2018) (“In order to be actionable under SCUTPA, the unfair or deceptive act or practice must have an impact on the public interest” and “[a]n unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act’s embrace.”) (citations omitted). As the circuit court recognized, because “Plaintiff purchased the Tractor for commercial, not consumer, use,” his SCUTPA claim fails as a matter of law. Order on Def.’s Mot. for Summ. J. (Mar. 27, 2025) at 6 (R. __); *see also Noack Enters., Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 349–50 (Ct. App. 1986).

II. The Circuit Court Properly Granted Partial Summary Judgment on the SCUTPA Claim Because the Record Shows No Public-Facing Misrepresentation.

Regardless of how the transaction is characterized, SCUTPA does not apply and the judgment should be affirmed. Two independent grounds support affirmance: (i) there is no public-facing misrepresentation—this is a single, private dispute with no marketplace reach or potential for repetition; and (ii) if the Court nonetheless considers Appellant’s theories, each fails one or more SCUTPA elements. *See Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010) (plaintiff must prove an unfair or deceptive act, impact on the public interest, and monetary or property loss proximately caused by the practice).

A. The SCUTPA claim fails because there was no public-facing conduct or potential for repetition.

The record shows no AGCO statement or practice directed to the public, and no pattern suggesting repetition. To be actionable under SCUTPA, a practice must “adversely affect the public interest” and be “proved by specific facts.” *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994). “[C]onduct which only affects the parties to the transaction provides no basis” for relief. *Id.* See also *Skywaves I*, 423 S.C. at 453–55, 814 S.E.2d at 655–56 (explaining that private, one-off disputes do not satisfy SCUTPA’s public-interest prong).

Appellant’s own authority, *Haley Nursery Co. v. Forrest*, 298 S.C. 520, 381 S.E.2d 906 (1989), confirms that the public-interest prong turns on public-facing, repeatable conduct. In *Haley*, assurances appeared on invoices and a price catalog disseminated to all customers. *Haley*, 298 S.C. at 524–25. This record is the opposite: a single sale, dealer-level warranty servicing, and a manual line instructing purchasers to request warranty details—none shown to be advertising, standard terms, or otherwise marketplace-facing. See Order Den. Pl.’s Mot. to Alter or Amend (June 27, 2025) at 3–4 (R. __).

Appellant’s citations to S.C. Code Ann. § 39-5-20(a) and 16 C.F.R. § 702.3 do not change the analysis. See Appellant Br. at 22–23. Section 39-5-20(a) declares “[u]nfair methods of competition and unfair or deceptive acts” unlawful; it does not dispense with the separate requirement that a private SCUTPA claim affect the public interest. *Haley*, 298 S.C. at 524–25. If there was a disclosure issue under section 702.3, the conduct alleged here remains non-public: a one-customer dispute, not uniform messaging or a standard policy directed to the market. The public-interest element therefore fails.

B. Appellant’s theories do not satisfy SCUTPA’s elements.

Even on Appellant’s view of *Haley*, summary judgment remains appropriate because his specific theories are legally and factually deficient. The court identified multiple, independent defects: (i) 16 C.F.R. § 702.3 “applies only to consumer products” and does not govern this commercial purchase, *see* Order on Def.’s Mot. for Summ. J. (Mar. 27, 2025) at 6 (R. ___); (ii) the towing-cost theory fails because the Limited Warranty assigns towing and transport to the Owner, and no contrary South Carolina obligation is identified, *id.*; (iii) the “administrative fee” theory fails because AGCO “is neither a party to, nor a beneficiary of, the Instalment Contract” and no evidence shows AGCO charged or misled anyone about any administrative fee, *id.* at 6–7 (R. ___); (iv) the country-of-origin theory fails because AGCO made no affirmative misrepresentation about country of origin, and Appellant never asked about it, *id.* at 7 (R. ___); (v) ceasing direct communications after counsel appears is not an unfair practice and falls outside “trade or commerce” as SCUTPA uses that term, *id.*; and (vi) the “fabricated discovery” allegation is unsupported and likewise falls outside SCUTPA, *id.* Any one of these defects defeats the claim; together, they negate the unfair-act, public-interest, and causation elements.

Accordingly, *Haley* confirms that SCUTPA liability requires repeatable, public-facing conduct; this record contains none. Because the alleged conduct affects only the parties to a single sale and lacks any potential for repetition, the public-interest element fails. That conclusion is independently dispositive. Appellant’s remaining theories also fail SCUTPA’s elements as a matter of law.

CONCLUSION

This Court should affirm the circuit court’s March 27, 2025 summary judgment order dismissing with prejudice the claims for conversion, civil conspiracy, SCUTPA, and FPA, and

likewise the June 27, 2025 order denying Plaintiff's motion to alter or amend, on any ground supported by the Record.

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