

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

RECEIVED

Nov 10 2025

SC Court of Appeals

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.

RECORD ON APPEAL
Volume 1 of 4

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INDEX

Orders

1. Order Denying Defendants' Post-Trial Motions (March 4, 2025) 8

Judgments

2. Final Order & Judgment (February 6, 2025) 10

Pleadings and Motions

3. Plaintiff's Summons and Complaint (November 11, 2021) 29
4. Defendants' Answer and Counterclaims with Exhibits (January 14, 2022) 33
 - a. Exhibit 1 (Business Asset Purchase Agreement) 44
 - b. Exhibit 2 (Wells Fargo Check Details) 53
 - c. Exhibit 3 (Landlord's Consent to Assignment) 54
5. Plaintiff's Amended Summons and Complaint (September 12, 2023) 59
6. Defendants' Answer to Amended Complaint and Counterclaims with Exhibits (October 2, 2023) 75
 - a. Exhibit 1 (Business Asset Purchase Agreement) 92
 - b. Exhibit 2 (Wells Fargo Check Details) 101
 - c. Exhibit 3 (Landlord's Consent to Assignment) 102
7. Defendants' Motion Partial Summary Judgment (March 29, 2024) 107
8. Defendants' Memorandum Support Motion Partial Summary Judgment with Exhibits (October 14, 2024) 109
 - a. Exhibit 1 (Business Asset Purchase Agreement) 122
 - b. Exhibit 2 (Bill of Sale) 130
 - c. Exhibit 3 (Wells Fargo Check Details) 131
 - d. Exhibit 4 (30(b)(6) Kim Enterprises, LLC) 132
 - e. Exhibit 5 (Deposition Transcript of Tok Kim) 135
 - f. Exhibit 6 (Deposition Transcript of Sang Cho) 142
 - g. Exhibit 7 (Deposition Transcript of Youmi Cho) 154
9. Plaintiff's Response Opposition Defendants' Memorandum Support for Partial Summary Judgment with Exhibits (October 15, 2024) 160

a. Exhibit A (Deposition Transcript of Tok Kim)	170
b. Exhibit B (Wells Fargo Check Details)	173
c. Exhibit C (Checks – provided directly to court)	174
d. Exhibit D (Sang Cho’s Text Messages)	182
e. Exhibit E (Deposition Transcript of Tok Kim)	185
f. Exhibit F (Deposition Transcript of Vincent Fletcher)	186
g. Exhibit G (Deposition Transcript of Sang Cho)	190
10. Defendants’ Reply Support Motion Partial Summary Judgment (October 18, 2024)	193
11. Defendants’ Motion in Limine on Parol Evidence and Trial Order (October 18, 2024)	202
12. Defendants’ Motion in Limine on Parol Evidence (October 19, 2024)	207
13. Defendants’ Post-Trial Motions with Exhibits (February 17, 2025)	211
a. Exhibit A (Stipulation on Signed Documents)	238
b. Exhibit B (April 7, 2021, Email Richland County Business Center)	240
c. Exhibit C (Trial Transcript)	243
14. Defendants Supplemental Memorandum Post-Trial Motion (February 25, 2025)	364
15. Notice of Appeal (March 6, 2025)	373

Transcripts

16. Transcript of Motion for Summary Judgment and Motion in Limine on Parol Evidence and Trial Order, pp. 1-42 (October 18, 2024)	375
17. Transcript of Bench Trial Volume I, pp. 1-168 (October 21, 2024)	417
a. Opening Statement Remarks by Mr. Brown (pg 22)	437
b. Opening Statement Remarks by Mr. Paavola (pg 33)	448
c. Testimony of Andy Kim (as read) (pg 48)	463
i. Direct Examination by Mr. Brown (pg 48)	463
ii. Cross Examination by Mr. Paavola (pg 81)	496
iii. Redirect Examination by Mr. Brown (pg 102)	517
iv. Recross Examination by Mr. Paavola (pg 106)	521
d. Testimony of Tok Kim (pg 110)	525

i. Direct Examination by Mr. Brown (pg 111).....	526
ii. Cross Examination by Mr. Paavola (pg 150).....	565
18. Transcript of Bench Trial Volume II, pp. 169-362 (October 22, 2024)	609
a. Testimony of Tok Kim (pg 178).....	613
i. Continued Cross Examination by Mr. Paavola (pg 178)	613
b. Testimony of Sang Cho (pg 223).....	658
i. Direct Examination by Mr. Brown (pg 223)	658
ii. Cross Examination by Ms. Thibault (pg 268)	703
iii. Redirect Examination by Mr. Brown (pg 333).....	768
c. Testimony of Youmi Cho (pg 347)	782
i. Direct Examination by Mr. Brown (pg 347).....	782
19. Transcript of Bench Trial Volume III, pp. 363-480 (October 23, 2024)	823
a. Testimony of Youmi Cho (pg 366).....	825
i. Continued Direct Examination by Mr. Brown (pg 366).....	825
ii. Cross Examination by Mr. Paavola (pg 402)	861
iii. Redirect Examination by Mr. Brown (pg 453).....	912
b. Testimony of Vincent Fletcher (pg 463).....	922
i. Direct Examination by Mr. Brown (pg 463)	922
ii. Cross Examination by Mr. Thibault (pg 468).....	927
20. Transcript of Bench Trial Volume IV, pp. 481-677, 700-709 (October 24, 2024)	958
a. Testimony of Patricia Kim (pg 485)	960
i. Direct Examination by Mr. Brown (pg 485)	960
ii. Cross Examination by Mr. Paavola (pg 490)	965
b. Motion for Directed Verdict (pg 528).....	1003
c. Testimony of Mark Bokesch (pg 546)	1021

i. Direct Examination by Mr. Paavola (pg 546).....	1021
ii. Cross Examination by Mr. Belser (pg 600).....	1075
iii. Redirect Examination by Mr. Paavola (pg 630)	1105
iv. Recross Examination by Mr. Belser (pg 635)	1110
d. Testimony of Roy Fenoff, PH.d. (pg 640)	1116
i. Direct Examination by Mr. Paavola (pg 641).....	1116
ii. Cross Examination by Mr. Brown (pg 668)	1143
iii. Redirect Examination by Mr. Paavola (pg 675)	1150
iv. Recross Examination by Mr. Brown (pg 676).....	1151
e. Motions for Directed Verdict (pg 700)	1153
21. Transcript of Hearing on Defendants Post Trial Motions, pp. 1-55 (February 25, 2025)	1199

Exhibits

22. Court’s Exhibit 1.....	1254
23. Plaintiff Exhibits	
a. Exhibit 1 (Wells Fargo Checks).....	1256
b. Exhibit 1 (Exhibit 01 to Andy Kim’s Deposition Designations Andy Kim)	1269
c. Exhibit 2 (Sang Cho’s Text Messages).....	1307
d. Exhibit 12 (Monthly Reconciliation).....	1311
24. Defense Exhibits:	
Exhibit 1.....	1322
Exhibit 2.....	1330
Exhibit 3.....	1331
Exhibit 4.....	1332
Exhibit 5.....	1333
Exhibit 6.....	1338
Exhibit 7.....	1339
Exhibit 8.....	1352
Exhibit 9.....	1361
Exhibit 18.....	1375
Exhibit 21.....	1388
Exhibit 28 pp. 1-3	1406
Exhibit 30.....	1409
Exhibit 31.....	1412
Exhibit 32.....	1415

Exhibit 33.....	1417
Exhibit 36.....	1419
Exhibit 37.....	1420
Exhibit Q1.....	1423
Exhibit Q2.....	1431
Exhibit K1.....	1432
Exhibit K2.....	1433
Exhibit K3.....	1434
Exhibit K4.....	1439
Exhibit K5.....	1440
Exhibit K6.....	1441
Exhibit K7.....	1445
Exhibit K8.....	1449
Exhibit K9.....	1453
Exhibit K10.....	1455
Exhibit K11.....	1457
Exhibit K12.....	1471
Exhibit K13.....	1473
Exhibit K14.....	1477
Exhibit K15.....	1481
Exhibit K16.....	1485
Exhibit K17.....	1489
Exhibit K18.....	1491
Exhibit K19.....	1492
Exhibit K20.....	1493
Exhibit K21.....	1494
Exhibit K22.....	1500
Exhibit K23.....	1513
Exhibit K24a.....	1516
Exhibit K24b.....	1517
Exhibit K25.....	1518
Exhibit K26.....	1534

25. Defense Demonstratives

4.....	1559
8(a).....	1560

26. Certificate of Appellant

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

[Signature page to follow]

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November 10, 2025
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
FIFTH JUDICIAL CIRCUIT
Kim Enterprises, LLC,)
Civil Action No. 2021-CP-40-05596
Plaintiff,)
vs.)
Youmi Cho, K&C Beauty, LLC, and)
Sang Cho,)
Defendants.)

Youmi Cho and K&C Beauty, LLC,)
Counterclaim Plaintiffs,)
vs.)
Kim Enterprises, LLC and Tok Kim,)
Counterclaim Defendants.)

ORDER DENYING

YOUMI CHO, SANG CHO, AND K&C BEAUTY, LLC'S POST-TRIAL MOTIONS

This matter came before me for a Hearing on Tuesday, February 25, 2025, as to Defendants and Counterclaim Plaintiffs' Post-Trial Motions to Alter or Amend the Findings of Fact and Conclusions of Law; To Alter or Amend Judgment; New Trial Nisi Remittitur; and New Trial Absolute (the "Post-Trial Motions"). The Hearing was held in Columbia, South Carolina at the Master In Equity Department at 2500 Decker Blvd., Columbia, S.C.

H. Freeman Belser, Esq. and Creston W. Brown, Esq. of Belser Law Firm, P.A represented Plaintiff Kim Enterprises, LLC ("Kim Enterprises") and Counterclaim Defendants Kim Enterprises and Tok Kim. David Paavola, Esq. and Ashley Thibault, Esq. of Kenison, Dudley & Crawford, LLC represented Defendants Youmi Cho, K&C Beauty, LLC ("K&C"), and Sang Cho and Counterclaim Plaintiffs Youmi Cho and K&C.

The Court, after carefully considering the brief submitted prior to the Hearing in support of the Post-Trial Motions, a supplemental brief submitted after the Hearing, as well as the arguments of counsel at the Hearing, denies the Post-Trial Motions.

IT IS SO ORDERED.


The Honorable Joseph F. Strickland

Columbia, S.C.
February 28, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Kim Enterprises, LLC,	)	Civil Action No. 2021-CP-40-05596
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Youmi Cho, K&C Beauty, LLC, and	)	
Sang Cho,	)	
	)	
Defendants.	)	
	)	
_____ Youmi Cho and K&C Beauty, LLC,	)	
	)	
Counterclaim Plaintiffs,	)	
	)	
vs.	)	
	)	
Kim Enterprises, LLC and Tok Kim,	)	
	)	
_____ Counterclaim Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came before me for a Bench Trial starting Monday, October 21, 2024, and ending Thursday, October 24, 2024. The Bench Trial was held in Columbia, South Carolina at the Master In Equity Department at 2500 Decker Blvd., Columbia, S.C.

H. Freeman Belser, Esq. and Creston W. Brown, Esq. of Belser Law Firm, P.A represented Plaintiff Kim Enterprises, LLC ("Kim Enterprises") and Counterclaim Defendants Kim Enterprises and Tok Kim. David Paavola, Esq. and Ashley Thibault, Esq. of Kenison, Dudley & Crawford, LLC represented Defendants Youmi Cho, K&C Beauty, LLC ("K&C"), and Sang Cho and Counterclaim Plaintiffs Youmi Cho and K&C. Prior to trial, the Court provided the Parties a list of approved interpreters to utilize at trial, and the Parties selected Caroline Kyung Ha Kim, who interpreted the testimony of Tok Kim and Youmi Cho.

Kim Enterprises, in its case-in-chief, called (1) Tok Kim, (2) Sang Cho, (3) Youmi Cho, (4) Vincent Fletcher, and (5) Patricia Kim. Kim Enterprises, in its case-in-chief, also published Woon (Andy) Kim, Esq.'s Deposition transcript into the record. Defendants, in their case-in-chief, called (1) Mark Bokesch, CPA, CVA, CFE, (2) Roy Fenoff, PH.D, and (3) Jariel Capers.

After hearing the testimony of the witnesses, assessing the credibility of the witnesses, carefully reviewing the exhibits admitted at trial, and reading the parties' pre-trial briefs and post-trial proposed findings of fact and conclusions of law, the Court now makes the following findings of fact and conclusions of law in accordance with South Carolina Rule of Civil Procedure 52(a). To the extent any findings of fact constitute conclusions of law, or vice-versa, they shall so be regarded.

INTRODUCTION

This case concerns the sale and purchase of the assets of a hair and beauty supply store at 3315 Broad River Road, Suite 90, Columbia, S.C. 29210 (the "Broad River Store"). The sale of the assets of Broad River Store was between single-member limited liability companies owned by family members Tok Kim, and his niece, Youmi Cho. The primary issue in this case is whether the sales price was (a) \$800,000 pursuant to a partially performed verbal agreement evidenced by one \$250,000 check tendered up front as a down payment and thirty-six (36) pre-signed, undated checks of \$15,000, four of which were exchanged and cashed over a four month period without incident, or (b) \$250,000 according to a document titled Business Asset Purchase Agreement ("APA") that was created as part of Youmi Cho's E-2 Visa application.

PROCEDURAL HISTORY

Kim Enterprises filed a breach of contract action against Youmi Cho and K&C on November 11, 2021. Youmi Cho and K&C, on January 14, 2022, filed an Answer, Counterclaim, and Third-Party Complaint alleging breach of contract against Kim Enterprises (Count 1), conversion against Kim Enterprises and Tok Kim (Count 2), and breach of contract accompanied by a fraudulent act against Kim Enterprises (Count 3).

Kim Enterprises subsequently amended its Complaint, adding Sang Cho as a party and alleging breach of contract against Youmi Cho and K&C (Count 1), breach of contract accompanied by a fraudulent act against Youmi Cho and K&C (Count 2), fraud against

Youmi Cho and K&C (Count 3), conversion against Youmi Cho and K&C (Count 4), unjust enrichment against Youmi Cho and K&C (Count 5), breach of fiduciary duty against Sang Cho (Count 6), aiding and abetting breach of fiduciary duties against Youmi Cho and K&C (Count 7), civil conspiracy against Youmi Cho and Sang Cho (Count 8), and tortious interference with contractual relations against Sang Cho (Count 9). Defendants Youmi Cho, Sang Cho, and K&C filed an Answer and Counterclaims alleging breach of contract against Kim Enterprises (Count 1), conversion against Kim Enterprises and Tok Kim (Count 2), breach of contract accompanied by a fraudulent act against Kim Enterprises (Count 3), and money had and received against Kim Enterprises and Tok Kim (Count 4).

The Court, after Kim Enterprises' case in chief, dismissed Kim Enterprises' Third, Fourth, Eighth, and Ninth causes of action.

I. EVIDENCE AT TRIAL / FINDINGS OF FACT

A. Background

1. Tok Kim owns Kim Enterprises. Trial Tr. 113:17-18 (Tok Kim¹).
2. Kim Enterprises sells hair products. Trial Tr. 113:19-114:3 (Tok Kim).
3. Tok Kim has worked in the hair product business for thirty-five (35) years. Trial Tr. 114:12-14 (Tok Kim).
4. Patricia Kim, who is the wife of Tok Kim, Trial Tr. 485:20-22 (Patricia Kim), handles human resources and payroll for Kim Enterprises' beauty supply stores, Trial Tr. 488:22-24 (Patricia Kim).
5. Nonchemical hair products, such as weaves and wigs, do not have expiration dates. Trial Tr. 148:2-4 (Tok Kim); 250:1-12 (Sang Cho).
6. Tok Kim previously owned four hair and beauty supply stores in the Columbia, S.C. area. Trial Tr. 114:15-18 (Tok Kim).
7. In mid-late 2020, Tok Kim agreed to sell one of his four stores, the Broad River Store at issue in this case, to his niece, Youmi Cho. Trial Tr. 112:17-18 (Tok Kim).
8. Tok Kim owned and operated the Broad River Store for thirty (30) years prior to selling it to Youmi Cho. Trial Tr. 115:3-5 (Tok Kim).

¹ The Court, when citing to trial testimony in this Order, will note the name of the testifying individual next to each citation to the trial record.

9. When Tok Kim sold the Broad River Store to Youmi Cho, it had two employees, one being Defendant Sang Cho, and the other being Shayla Woodard. Trial Tr. 115:9-116:3 (Tok Kim).
10. Sang Cho is the brother of Youmi Cho and the nephew of Tok Kim. Trial Tr. 224:3-6 (Sang Cho).
11. Sang Cho started working at the Broad River Store on January 1, 2013. Trial Tr. 224:20-225:5 (Sang Cho).
12. Sang Cho managed the Broad River Store prior to its sale to Youmi Cho. Trial Tr. 116:7-14 (Tok Kim); 466:19-21 (Vincent Fletcher).
13. Sang Cho, as the manager of the Broad River Store, hired employees, trained employees, and managed inventory. Trial Tr. 466:22-467:1 (Vincent Fletcher).
14. Prior to Tok Kim's sale of the Broad River Store to Youmi Cho, Sang Cho had more knowledge of the operations of the store than anybody. Trial Tr. 336:22-337:3 (Sang Cho).

B. The Sales Price of the Broad River Store

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

i. The Discussions in Tok Kim's Kitchen About the Sales Price

17. In the leadup to the sale of the Broad River Store, Tok Kim, Sang Cho, and Youmi Cho all met in Tok Kim's kitchen to discuss the sales price. Trial Tr. 122:15-18 (Tok Kim); 226:1-8 (Sang Cho); 352:2-4 (Youmi Cho).
18. Youmi Cho facilitated this meeting in Tok Kim's kitchen, and she invited Sang Cho to accompany her. Trial Tr. 226:9-14 (Sang Cho).
19. Tok Kim, in his kitchen with Youmi Cho and Sang Cho, stated the sales price for the Broad River Store was \$800,000. Trial Tr. 226:15-18 (Sang Cho).

20. Sang Cho, while in Tok Kim's kitchen with Youmi Cho, stated Tok Kim should sell the Broad River Store to Youmi Cho for \$500,000. Trial Tr. 124:17-125:24 (Tok Kim); 226:19-227:1 (Sang Cho); 354:8-11 (Youmi Cho).
21. Tok Kim stated he would not sell the Broad River Store for \$500,000. Trial Tr. 124:17-125:24 (Tok Kim); 227:16-20 (Sang Cho).
22. Tok Kim became very angry at the suggestion he should sell the Broad River Store for \$500,000. Trial Tr. 230:4-6 (Sang Cho); 354:17-22 (Youmi Cho).
23. Tok Kim yelled "Hell No" to the suggestion he sell the Broad River Store for \$500,000. Trial Tr. 227:16-23 (Sang Cho).
24. Tok Kim stated he would not sell the Broad River Store for less than \$800,000. Trial Tr. 126:12-15 (Tok Kim).

ii. Sang Cho's Text Messages Corroborating Tok Kim's Position

25. Sang Cho, after receiving a copy of the lawsuit, texted his cousin, Suzie Mancine, and stated the agreement to sell the Broad River store was verbal. Trial Tr. 233:10-15 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the agreement to sell the store was verbal.
26. Sang Cho texted that the agreement to sell the Broad River store involved a \$250,000 down payment. Trial Tr. 235:22-236:6 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the agreement to sell the store involved a down payment, and that the down payment was \$250,000.
27. Sang Cho texted that the \$250,000 down payment was paid in December. Trial Tr. 237:8-11 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the \$250,000 down payment was made in December.
28. Sang Cho texted that the agreement to sell the Broad River store involved \$15,000 checks. Trial Tr. 242:17-243:21 (Sang Cho); Plaintiff's Ex. 2. This text message corroborates Tok Kim's testimony that the agreement to sell the store involved \$15,000 checks.

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

29. Youmi Cho informed Tok Kim that she received the business license for K&C on March 7, 2021. Trial Tr. 132:6-11 (Tok Kim).

30. Tok Kim handed over operations of the Broad River Store to Youmi Cho on March 8, 2021, the day after Youmi Cho informed Tok Kim that she received the business license for K&C. Trial Tr. 147:23-148:1 (Tok Kim).
31. Before Youmi Cho informed Tok Kim that she received her business license on March 7, 2021, Patricia Kim trained Youmi Cho and Sang Cho on various human resource and payroll functions as pertains to the Broad River Store. Trial Tr. 488:25-489:22 (Patricia Kim).
32. Youmi Cho was unable to obtain a credit card terminal when she took over the Broad River Store on March 8, 2021, because she did not yet have a social security number. Trial Tr. 132:6-11 (Tok Kim).
33. Although Youmi Cho was unable to process credit cards at the Broad River Store, Tok Kim allowed Youmi Cho to utilize his credit card processing terminal. Trial Tr. 132:20-25 (Tok Kim); 380:3-12 (Youmi Cho); Plaintiff's Ex. 12.
34. Tok Kim, after the end of each month starting in April, gave Youmi Cho the cash equivalent of what she charged on his credit card terminal, less sales tax and reimbursement for inventory Tok Kim purchased for Youmi Cho. Trial Tr. 133:20-135:23 (Tok Kim); Plaintiff's Ex. 12.
35. Because Youmi Cho did not have a social security number when she received her business license, she was unable to purchase all necessary inventory. Trial Tr. 135:16-23 (Tok Kim). Tok Kim purchased inventory for Youmi Cho. Trial Tr. 134:25-135:23 (Tok Kim).

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

36. Tok Kim exchanged the first of the thirty-six (36) pre-signed \$15,000 installment checks with Youmi Cho in mid-May 2021. Trial Tr. 379:15-17 (Youmi Cho).
37. Tok Kim exchanged two more pre-signed \$15,000 installment checks with Youmi Cho for cash and deposited the fourth pre-signed \$15,000 installment check into his bank account. Trial Tr. 380:13-20 (Youmi Cho).
38. Youmi Cho stopped payment on the fifth pre-signed \$15,000 installment check in mid-September 2021. Trial Tr. 142:21-143:11 (Tok Kim); 380:21-381:7 (Youmi Cho).

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

39. Kim, pursuant to Rule 32, SCRCP, published Andy Kim's Deposition transcript into evidence, subject to certain objections that were ruled upon by the Court. Andy Kim testified that:

- a. Andy Kim served as Youmi Cho's lawyer in preparing her E-2 Visa, which Youmi Cho received in connection with her purchase of the Broad River Store. Trial Tr. 52:15-53:18 (Andy Kim).
- b. Andy Kim drafted an APA as part of the E-2 Visa paperwork for Youmi Cho's E-2 Visa. Trial Tr. 63:13-65:10 (Andy Kim).
- c. Concerning the APA, Andy Kim communicated exclusively with Youmi Cho. Trial Tr. 63:13-65:10 (Andy Kim).
- d. The purpose of the APA was to show the United States Citizenship and Immigration Services (USCIS) that Youmi Cho, the Visa applicant, had an ownership interest in a valid United States business. Trial Tr. 68:12-69:3 (Andy Kim).
- e. Youmi Cho provided Andy Kim the \$250,000 amount that he inserted into the APA concerning the stated purchase price. Trial Tr. 65:25-66:8 (Andy Kim); 69:23-25 (Andy Kim).
- f. Andy Kim did not discuss the \$250,000 figure with Tok Kim. Trial Tr. 70:6-10 (Andy Kim); 103:12-104:8 (Andy Kim).
- g. Andy Kim created the APA from other APA templates he used on other E-2 Visa applications. Trial Tr. 73:1-18 (Andy Kim).
- h. Andy Kim also created a Bill of Sale, as the USCIS also requires that an applicant submit a Bill of Sale in addition to an APA. Trial Tr. 73:19-74:2 (Andy Kim).
- i. An E-2 Visa applicant must invest, at a minimum, fifty percent of the business' purchase price in the United States. Trial Tr. 74:14-75:6 (Andy Kim). For example, if an E-2 Visa applicant purchased a business for \$800,000, she would have to put down at least \$400,000. Trial Tr. 76:6-77:1 (Andy Kim). If an E-2 Visa applicant agreed to purchase a business for \$800,000, and she only

had \$250,000 in cash with which to make a down payment, she would be unable to obtain an E-2 Visa. Trial Tr. 77:3-22 (Andy Kim).

- j. If an E-2 Visa applicant agreed to purchase a business for \$800,000, and she only had \$250,000 in cash with which to make a down payment, the only way to obtain an E-2 Visa would be for the buyer to mislead her lawyer about the true terms of the deal. Trial Tr. 80:5-20 (Andy Kim).

40. Tok Kim testified he did not sign the APA. Trial Tr. 139:22-24 (Tok Kim).

F. Neither Youmi Cho or Tok Kim has Ever Read the Asset Purchase Agreement

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

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

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

44. There is no evidence in the record that Tok Kim or Youmi Cho read the entire APA.

G. The Inventory and Training at the Broad River Store

45. Tok Kim, prior to selling the Broad River store, ensured the Broad River Store was fully stocked with inventory. Trial Tr. 147:23-148:1 (Tok Kim); 465:9-12 (Vincent Fletcher).

46. Tok Kim, prior to turning over the Broad River Store to Youmi Cho, transferred inventory from his other stores to the Broad River Store. Trial Tr. 256:7-16 (Sang Cho).

47. Tok Kim, prior to turning over the Broad River Store, trained Youmi Cho how to operate a store cash register. Trial Tr. 148:15-149:6 (Tok Kim).

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

H. Tok Kim's Digitally Imposed Signature Onto the APA

49. Tok Kim did not sign the APA. For the reasons set forth below, the only reasonable conclusion by the fact finder is that Youmi Cho had Tok Kim's signature digitally imposed onto the APA.

50. Although Tok Kim has been asking Youmi Cho for a copy of the original APA for three years, Youmi Cho not only failed to provide the original, but she is unable to explain any diligent efforts she undertook to locate it. Trial Tr. 390:5-22 (Youmi Cho); 430:13-434:5 (Youmi Cho). The Court is unpersuaded that the APA was physically signed by Tok Kim. An original signed APA would be the best evidence of its existence.

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

52. Dr. Fenoff testified that he is unable to testify, one way or the other, whether Tok Kim physically signed the APA. Trial Tr. 668:25-669:4 (Roy Fenoff); 670:21-24 (Roy Fenoff).

53. According to Dr. Fenoff, readily available inexpensive and easy-to-use technology allows for easy cut and pasting of signatures onto a document. Trial Tr. 669:19-670:20 (Roy Fenoff).

54. Dr. Fenoff first communicated with Youmi Cho in March 2022, at which time he asked Youmi Cho for an original of the APA for his analysis. Trial Tr. 670:25-671:19 (Roy Fenoff).

55. Youmi Cho only gave Dr. Fenoff a photocopy of the APA. Trial Tr. 673:1 (Roy Fenoff).

II. CONCLUSIONS OF LAW

56. Kim Enterprises' agreement to sell, and Youmi Cho's agreement to purchase, the assets of the Broad River Store was verbal and partially performed (the "Verbal Agreement").
57. Under the terms of the Verbal Agreement, Kim Enterprises agreed to convey the assets of the Broad River Store to Youmi Cho's newly organized limited liability company, K&C, for \$800,000, payable as follows: \$250,000 up front, followed by thirty-six (36) monthly installments of \$15,000 beginning mid-May 2021, and concluding with a final payment of \$10,000.
58. Pursuant to the Verbal Agreement between Kim Enterprises and K&C, K&C gave Kim Enterprises a \$250,000 check as a down payment, followed by thirty-six (36) pre-signed, undated checks made payable to Tok Kim in the amount of \$15,000 each. Consistent with this Verbal Agreement, Tok Kim, each month, starting in May 2021, began exchanging the \$15,000 installment checks for cash with Youmi Cho.
59. The Court is unpersuaded by Youmi Cho's assertion the APA, which was created as part of her E-2 Visa application, is evidence of an agreement between the parties to sell the Broad River Store for \$250,000. Notwithstanding Tok Kim's testimony that he did not sign the APA, Trial Tr. 139:22-24 (Tok Kim), the basic and essential elements of a contract could not, as a matter of law, have been met, because Youmi Cho testified that she did not read the APA. Trial Tr. 385:6-386:9 (Youmi Cho); 389:5-8 (Youmi Cho); 458:13-22 (Youmi Cho); 459:23-460:11 (Youmi Cho). Thus, there can be no intent, or meeting of the minds, between the purported parties as to the various terms of the APA. *See generally Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893-94 (1989) (citation omitted) (noting that "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement" and "[t]he 'meeting of the minds' required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known."). Stated differently, two parties cannot enter into a

contract when either one, or both, have never read, and are unable to understand, the contract and its terms.

60. The Court is unpersuaded by other aspects of Youmi Cho's testimony and her attempts to explain away uncontroverted and unfavorable facts. For example:

- a. Youmi Cho's testimony that the meeting in Tok Kim's kitchen began with Tok Kim becoming extremely angry at the suggestion he sell the Broad River Store for \$500,000, then immediately agreeing to sell the store for half that amount, Trial Tr. 355:16-20 (Youmi Cho), is illogical.
- b. Youmi Cho's testimony as to the reason she gave Tok Kim thirty-six (36) pre-signed, undated checks of \$15,000 lacks any factual support in the record. Youmi Cho testified that when she answered the initial Complaint she alleged the thirty-six (36) checks were given under duress and an undefined threat to her immigration status. Trial Tr. 358:1-15 (Youmi Cho). But, at trial, Youmi Cho testified the thirty-six (36) pre-signed, undated checks of \$15,000 were for the purchase of two other beauty supply stores owned by Tok Kim. Trial Tr. 357:6-8 (Youmi Cho). And, although Youmi Cho contends the purported agreement to purchase two other beauty supply stores was verbal, unlike the Verbal Agreement concerning the Broad River Store, there was no partial performance, of any kind whatsoever, concerning two of Tok Kim's other hair and beauty supply stores.

61. Tok Kim is the only party that entered into evidence an *original* document evidencing the agreement to sell the Broad River Store (the thirty-two (32) pre-signed \$15,000 installment checks). Plaintiff's Ex. 1. These original documents, and the part performance thereafter, are the best evidence of the parties' intent, which was Tok Kim's intent to sell the Broad River Store for \$800,000, and Youmi Cho's intent to purchase the Broad River Store for \$800,000. See, e.g., *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 282, 486 S.E.2d 742, 746 (S.C. 1997) (citing 29A Am.Jur.2d *Evidence* § 1049 (1994)) (discussing how the Best Evidence Rule "provides that when the contents of a writing are sought to be provided, the original document must be produced ***unless some reason can be shown for its unavailability.***") (emphasis added).

62. Throughout the trial, Tok Kim's testimony as to the intent of the parties remained consistent. Tok Kim testified the sales price was \$800,000, and he never testified differently. Trial Tr. 122:4-8 (Tok Kim). Tok Kim's testimony concerning the payment terms of the \$800,000 price, which consisted of thirty-seven (37) signed checks (a \$250,000 down payment check and thirty-six (36) pre-signed \$15,000 installment checks), has never changed.
63. Tok Kim's testimony concerning the terms of the Verbal Agreement were corroborated by Sang Cho's text messages with his cousin, Suzie Mancine. Plaintiff's Ex. 2. Specifically, Sang Cho's text messages corroborated that the agreement to sell the Broad River Store was: (a) verbal, (b) consisted of a down payment, (c) the down payment was \$250,000, (d) the down payment was made in December, and (e) the balance involved \$15,000 checks. Plaintiff's Ex. 2.
64. The consistency between all parties (Tok Kim, Youmi Cho, and Sang Cho) concerning the discussion at Tok Kim's kitchen about Tok Kim's rebuke at the suggestion he sell the store for \$500,000 further supports Tok Kim's testimony about the \$800,000 sales price. Trial Tr. 122:15-18 (Tok Kim); 124:17-125:24 (Tok Kim); 126:12-15 (Tok Kim); 226:1-227:20 (Sang Cho); 353:24-354:22 (Youmi Cho). If Youmi Cho and Sang Cho are to be believed, the negotiation at Tok Kim's kitchen proceeded as follows: (1) Tok Kim stated the sales price was \$800,000, (2) Sang Cho suggested the sales price should be \$500,000, (3) Tok Kim became extremely angry and yelled "Hell No", and then (4) Tok Kim suddenly agreed to sell the store for \$250,000, which is half the \$500,000 number he emphatically rejected moments before. Accepting this version of events defies logic and credulity.
65. The testimony of Youmi Cho's handwriting expert, Dr. Fenoff, further supports Tok Kim's position as opposed to Youmi Cho's. Specifically, Dr. Fenoff not only testified that he cannot opine, one way or the other, whether Tok Kim signed the APA, Trial Tr. 668:19-669:4 (Roy Fenoff); 676:22-677:9 (Roy Fenoff), but the act of cutting and pasting a signature on a document is extremely easy to accomplish, Trial Tr. 669:19-670:20 (Roy Fenoff). In fact, Dr. Fenoff testified about a study recently conducted by the federal government where federal agents were able to create fake passports and driver's licenses with publicly available software and use those fake passports and

driver's licenses to successfully reenter the United States ninety-nine percent (99%) of the time. Trial Tr. 674:12-675:10 (Roy Fenoff).

66. The testimony of Youmi Cho's business valuation expert, Mr. Bokesch, also supports an \$800,000 valuation. As an initial matter, the Court is generally unpersuaded by Mr. Bokesch's testimony, which only serves to reverse engineer a business valuation that equals the dollar value Youmi Cho provided to Andy Kim as part of her E-2 Visa application.

Tok Kim and Youmi Cho did not engage a business valuation expert prior to the sale of the Broad River Store. Tok Kim, a willing seller, and Youmi Cho, a willing buyer, agreed upon an \$800,000 purchase price for the assets of the Broad River Store.

Notwithstanding Mr. Bokesch's reverse-engineered business evaluation procured by Youmi Cho only after litigation commenced, Mr. Bokesch based his testimony and business valuation calculations on rules of thumb in a business valuation guide called "Business Reference Guide" ("BRG"). Trial Tr. 616:24-617:8 (Mark Bokesch). Mr. Bokesch used the 2020 version, which did not have a standalone "percent of sales" rule of thumb. Trial Tr. 617:9-15 (Mark Bokesch). Mr. Bokesch testified that business valuation analysts strongly prefer using a revenue method to value a business. Trial Tr. 588:22-25 (Mark Bokesch). Business valuation analysts like the revenue method, according to Mr. Bokesch, because that method is safe. Trial Tr. 588:22-25 (Mark Bokesch).

The 2023 BRG, unlike the 2020 BRG utilized by Mr. Bokesch, does have a revenue valuation method. Specifically, the 2023 BRG has a sixty percent (60%) of revenue valuation rule of thumb. Trial Tr. 618:1-8 (Mark Bokesch). Mr. Bokesch testified that applying the sixty percent (60%) valuation rule of thumb from the 2023 BRG, multiplied by the Broad River Store's \$1,240,092 in annual sales, equals a business valuation of approximately \$744,000, which is close to the \$800,000 price agreed upon in the Verbal Agreement. Trial Tr. 621:21-622:14 (Mark Bokesch).

Much of Mr. Bokesch's business valuation calculations relied on the assumption that the Broad River Store kept only one month of inventory on hand. Trial Tr. 624:22-625:1 (Mark Bokesch). This assumption, at a minimum, directly refutes and undercuts Youmi Cho's testimony that Tok Kim purportedly stopped ordering inventory in mid-December. Specifically, if the Broad River Store only kept one month of inventory on hand

as assumed by Mr. Bokesch, then there would be no sales after the one-month period of December 16, 2020, through January 16, 2021. But, according to Youmi Cho and Mr. Bokesch, there were significant sales over the nearly two months of time spanning mid-January 2021 to early March 2021, something that could not happen if the Broad River Store really did carry one month of inventory on hand and Tok Kim did not restock the store. Moreover, Sang Cho, at trial, testified that the Broad River Store kept three months of inventory on hand, Trial Tr. 255:16-256:6 (Sang Cho), which by itself undercuts Mr. Bokesch's business valuation.

Mr. Bokesch's testimony about Youmi Cho's alleged damages is further undermined by its admitted lack of support or evidence. Youmi Cho, through Mr. Bokesch, opined that she is entitled to \$148,860.34 in alleged lost profits from December 16 through March 6, but admitted that figure does not include a cost of goods sold percentage for the inventory or labor costs. Trial Tr. 631:2-632:16 (Mark Bokesch). Mr. Bokesch testified he knew the costs of goods sold, based on Kim Enterprises' tax returns, was eighty percent (80%). Trial Tr. 631:12-15 (Mark Bokesch). Mr. Bokesch specifically testified his damages calculation is a "rough calculation". Trial Tr. 614:21-615:21 (Mark Bokesch). The Court does not place any weight on a "rough" lost profit calculation that omits a cost of goods sold number, especially when the cost of goods sold is eighty percent (80%).

67. The inconsistent months-on-hand inventory position advanced by Mr. Bokesch in the preceding paragraphs raises doubts as to the credibility of his business valuation and testimony. On the one hand, Mr. Bokesch valued the business assuming it keeps one-month of inventory in stock. On the other hand, Mr. Bokesch calculated that Youmi Cho lost profits by assuming she missed out on three months of inventory sales when his own client testified Tok Kim did not restock inventory during that timeframe. Both assumptions cannot coexist. If Tok Kim stopped purchasing inventory mid-December 2020, as alleged by Youmi Cho, and Kim Enterprises maintained only one month of inventory on hand, as assumed by Mr. Bokesch, sales could not have occurred after mid-January, as the alleged one month of inventory would have been sold. But, sales did occur during the timeframe of mid-January to March 07, 2021, disproving Youmi Cho's testimony and Mr. Bokesch's business valuation assumptions.

68. Similar post-sale testimony by Youmi Cho and Sang Cho about alleged inventory quality issues are irrelevant to whether Tok Kim, a willing seller, agreed to sell Youmi Cho, a willing buyer, the Broad River Store's assets for \$800,000. There is no dispute that Youmi Cho and Sang Cho knew the full extent of the quantity and quality of inventory in the Broad River Store prior to the store's purchase. Trial Tr. 252:19-254:3 (Sang Cho).

69. Youmi Cho and Sang Cho's testimony of numerous pictures showing that Youmi Cho ordered different quality products, and rearranged the store show room, have no bearing on the issue in this case: what price did Tok Kim offer, and Youmi Cho accept, for the assets of the Broad River Store? Youmi Cho's post-acquisition business decisions and merchandising strategy have no bearing on the answer to that question.

A. Damages

70. The Court concludes that Youmi Cho and K&C breached their contract with Kim Enterprises. Specifically, Youmi Cho and K&C agreed to pay Kim Enterprises \$800,000 for the assets of the Broad River Store, and they have only paid Kim Enterprises \$310,000 of the \$800,000 agreed upon purchase price. Thus, Youmi Cho and K&C owe Kim Enterprises \$490,000 for the balance due under the contract.

71. The Court concludes that Youmi Cho and K&C's breach of contract was accompanied by a fraudulent act. Specifically, Youmi Cho and K&C's concoction of and pushing of a false narrative to explain away their breach of the contract constitute fraudulent acts. Even if Youmi Cho's various mistruth's concerning the purchase price were made solely to support her E-2 Visa application, which allows her and her family to remain in this country, love for her family, and a desire they remain in the United States, does not condone or excuse a breach of contract accompanied by fraudulent acts. These fraudulent acts by Youmi Cho and K&C justify punitive damages in an amount of \$245,000, which is one half of the amount still owed of \$490,000. Thus, the Court concludes Kim Enterprises is entitled to \$735,000 (\$490,000 + \$245,000) in damages for this cause of action. Under an election of remedies, Kim Enterprises may select recovery under this cause of action in lieu of recovery for the other causes of action.

72. The Court concludes that awarding Kim Enterprises damages for the breach of contract cause of action precludes an award of damages for the equitable claim of

unjust enrichment. It is well-established under South Carolina law that where a valid express contract exists, no implied contract can co-exist. *Suber v. Pullin*, 1 S.C. 273 (S.C. 1870); *Swanson v. Stratos*, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002) ("If the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit."). Accordingly, "[r]elief under a theory of *quantum meruit* is not available if a party bases its action on the existence of a contract." *25 Calhoun CMB, LLC v. Concord Park/Charleston, LLC*, C/A No. 2:19-cv-2537-RMG, 2021 WL 1060099, at *3 (D.S.C. Mar. 19, 2021) (citation omitted).

73. The Court concludes that Sang Cho breached his fiduciary duties to Kim Enterprises. Tok Kim reposed a special confidence in his nephew, Sang Cho. Tok Kim gave Sang Cho extensive responsibilities at the Broad River Store, with the power to hire and fire employees, as well as manage inventory. Trial Tr. 466:22-467:1 (Vincent Fletcher). Sang Cho breached that fiduciary duty by engaging in conduct described within this Order that perpetuated Youmi Cho and K&C's breach of the contract and fraudulent actions. Sang Cho, a longtime employee of Kim Enterprises, is unable to leave employment and turn on his former employer in such a manner. The Court awards Kim Enterprises \$735,000 for Sang Cho's breach of his fiduciary duties, which is the amount awarded for Kim Enterprises' breach of contract accompanied by a fraudulent act cause of action against Youmi Cho and K&C. Under an election of remedies, Kim Enterprises may select recovery under this cause of action in lieu of recovery for the other causes of action.
74. The Court concludes Youmi Cho and K&C aided and abetted Sang Cho's breach of his fiduciary duties. Sang Cho and Youmi Cho worked in tandem in perpetuating the breach of contract and the multi-year effort to undermine that contract. The Court awards Kim Enterprises \$735,000 for Youmi Cho and K&C's aiding and abetting of Sang Cho's breach of his fiduciary duties. Under an election of remedies, Kim Enterprises may select recovery under this cause of action in lieu of recovery for the other causes of action.

75. The Court rejects Youmi Cho and K&C's breach of contract action that alleges Tok Kim and Kim Enterprises allegedly failed to (a) provide training to Youmi Cho, (b) provided unusable/unsaleable inventory, and (c) kept store profits through March 7, 2021. As set forth in this Order, the fact finder found that (a) Tok Kim and Patricia Kim not only trained Youmi Cho and Sang Cho prior to the Broad River Store being turned over to Youmi Cho, Trial Tr. 148:15-149:6 (Tok Kim); 149:17-21 (Tok Kim), but Sang Cho worked at the Broad River Store for nearly a decade prior to the acquisition and knew the ins and outs of that store better than anyone, Trial Tr. 336:22-337:3 (Sang Cho); (b) not only did Sang Cho know the status of the inventory in the Broad River Store at the time of purchase by Youmi Cho and K&C, but he informed Youmi Cho of its status prior to the sale, Trial Tr. 252:19-254:3 (Sang Cho), and there is no evidence in the record that Youmi Cho did not purchase the Broad River Store with open eyes as to the quantity and quality of all assets, including but not limited to product inventory; and (c) Tok Kim turned over the store to Youmi Cho as soon as she informed him that she obtained her business license. Before Tok Kim turned over the store to Youmi Cho, he paid all store expenses, including the cost of goods sold and salaries, and also retained the revenue. For all these reasons, Youmi Cho and K&C's breach of contract claim is rejected.
76. Because the Court concludes that Youmi Cho and K&C's breach of contract claim fails, Youmi Cho and K&C's breach of contract accompanied by a fraudulent act claim fails as a matter of law.
77. Because the Court concludes the four \$15,000 payments were part of the installment payments on the \$800,000 agreed upon purchase price, Youmi Cho and K&C's money had and received cause of action is rejected.
78. The Court rejects Youmi Cho and K&C's conversion claim for the same reason the breach of contract claim is rejected. Specifically, Youmi Cho and K&C's claim that Tok Kim converted store receipts through March 7, 2021, fails to account for (a) Youmi Cho not having a business license until March 7, 2021, and (b) Tok Kim paying all expenses and costs of goods sold along with receiving corresponding revenue during that timeframe.

III. ORDER

79. The Court finds for Kim Enterprises on each of the remaining causes of action: Breach of Contract against Youmi Cho and K&C, Breach of Contract Accompanied by a Fraudulent Act against Youmi Cho and K&C, Breach of Fiduciary Duty against Sang Cho, and Aiding and Abetting Breach of Fiduciary Duty against Youmi Cho and K&C.
80. The Court awards Kim Enterprises actual damages on each of the causes of action in the amount of \$490,000, which is difference between the purchase price of \$800,000 and the amount paid of \$310,000.
81. The Court awards Kim Enterprises pre-judgment interest at 8.75% on the actual damages for the period of September 15, 2021, the day Youmi Cho stopped payment on the fifth installment check, to the date of this Order. That amount is \$139,549.32.²
82. The Court awards Kim Enterprises punitive damages in the amount of \$245,000.
83. Defendants Youmi Cho, K&C, and Sang Cho are jointly and severally liability for the actual damages, pre-judgment interest, and punitive damages stated above. Plaintiff Kim Enterprises may only recover these damages once. For the avoidance of doubt, this means that the Judgment shall be legally satisfied when Plaintiff Kim Enterprises recovers a total of \$874,549.32 from any combination of the Youmi Cho, Sang Cho, and K&C Beauty.

IT IS SO ORDERED.

Joseph M. Strickland, Master
In Equity For Richland County

Columbia, S.C.

Date

² The Court arrives at this calculation using www.free-online-calculator-use.com/late-payment-interest-calculator.html, and inserting \$490,000 as the "Past due amount", 8.75% as the "Penalty annual interest rate", Sept. 15, 2021, as the "Payment Due Date", and Dec. 16, 2024, as the "Settlement Date".



Richland Common Pleas

Case Caption: Kim Enterprises Llc vs Youmi Cho , defendant, et al

Case Number: 2021CP4005596

Type: Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2025-02-06 14:09:32 page 19 of 19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Kim Enterprises, LLC,	)	Civil Action No. 2021-CP-40-
	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	(Non-Jury)
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned attorney at 1325 Park Street, Suite 300, Post Office Box 96, Columbia, South Carolina 29202, within thirty (30) days from the date of service hereof upon you, and in the event you fail to answer within the time specified herein, plaintiff will apply to the court for the relief demanded in the Complaint.

s/ H. Freeman Belser
H. Freeman Belser [SC Bar # 72403]
BELSER & BELSER, P.A.
Post Office Box 96
Columbia, SC 29202
(803) 929-0096
Email: freeman@belserpa.com

Counsel for Plaintiff

Columbia, South Carolina
November 11, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Kim Enterprises, LLC,) Civil Action No. 2021-CP-40-
))
Plaintiff,))
))
vs.) **COMPLAINT**
) **(Non-Jury)**
Youmi Cho and K&C Beauty, LLC,))
))
Defendants.))
_____)

Plaintiff, complaining of the Defendants, hereby alleges that:

1. Plaintiff Kim Enterprises, LLC is a limited liability company engaged in the hair and beauty product business in Richland County, South Carolina.
2. Defendant Youmi Cho ("Defendant Cho") is a resident of and engaged in the hair and beauty product business in Richland County, South Carolina.
3. Defendant K&C Beauty, LLC ("Defendant K&C") is a limited liability company engaged in the hair and beauty product business in Richland County, South Carolina.
4. This case concerns the sale and purchase of the assets of a hair and beauty supply store at 3315 Broad River Road, Suite 90, Columbia, South Carolina 29210 ("Business").
5. The Business was previously owned and operated by the Plaintiff.
6. In late 2020, Plaintiff and Defendants entered into a verbal agreement, under the terms of which Plaintiff agreed to convey the assets of the Business to Defendants for \$800,000, payable as follows: \$250,000 up front, followed by 36 monthly installments of \$15,000 beginning on May 15, 2021, and concluding with a final payment of \$10,000.
7. Pursuant to the verbal agreement between Plaintiff and Defendants, Buyer gave Seller 36 pre-signed, undated checks made payable to Seller in the amount of \$15,000.
8. Defendants assumed control of the Business on March 8, 2021 and remain in control of the Business.

9. For the first three months of the installment payment period, May, June, and July 2021, Plaintiff returned the pre-signed checks to Defendants in exchange for cash payments. For the month of August 2021, plaintiff deposited the pre-signed check. However, without notice or explanation, Defendants put a stop payment order on the check for September 2021.
10. Thereafter, Defendants requested that the Plaintiff return the remaining 32 pre-checks. Plaintiff refused and is still in possession of the pre-signed checks, but Defendants have instructed Plaintiff not to try to deposit them.
11. Plaintiff has made numerous attempts to contact Defendants about the default on the verbal agreement, but Defendants failed and refused to respond.

FIRST CAUSE OF ACTION

Breach of Contract

12. As set forth hereinabove, Plaintiff and Defendant were parties to a verbal agreement, under the terms of which Plaintiff agreed to convey the assets of the Business to Defendants for \$800,000, payable as follows: \$250,000 up front, followed by 36 monthly installments of \$15,000 beginning on May 15, 2021, and concluding with a final payment of \$10,000.
13. This verbal agreement is evidenced by partial performance, in that the \$250,000 down payment was made, as well as the first four installment payments.
14. This verbal agreement is further evidenced by the pre-signed checks that Defendants gave to Plaintiff.
15. Defendants have breached the verbal agreement, without justification, by putting a stop payment order on the check for September 2021, by refusing to authorize or to make any further payments, and by failing and refusing to respond to Plaintiff's attempts to contact Defendant about the default.
16. Defendants' actions constitute an anticipatory breach and/or repudiation of the verbal agreement, thus putting an end to the verbal contract for all purposes of performance. As a result, Plaintiff is entitled to treat the verbal contract as totally breached and to sue for damages for the entire amount due thereunder.
17. Plaintiff has been damaged by Defendants' breach and is entitled to actual damages in the amount of \$490,000, which is the amount remaining to be paid under the verbal agreement, plus pre-judgment interest on the sum certain at the statutory rate.

WHEREFORE, Plaintiff prays that the Court grant Plaintiff judgment against the Defendants for actual damages on the sum certain, interest at the statutory rate, and such further relief as the Court deems proper.

BELSER & BELSER, P.A.

s/ H. Freeman Belser
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Attorneys for Plaintiff

November 11, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Kim Enterprises, LLC,	)	Civil Action No. 2021-CP-40-05596
	)	
Plaintiff	)	
	)	
vs.	)	
	)	DEFENDANTS' ANSWER AND
Youmi Cho and K&C Beauty LLC,	)	COUNTERCLAIMS
	)	(Jury Trial Demanded)
	)	
Defendants	)	
	)	
and	)	
	)	
Youmi Cho and K&C Beauty LLC,	)	
	)	
Counterclaim Plaintiffs	)	
	)	
vs.	)	
	)	
Kim Enterprises, LLC, Tok Kim	)	
	)	
Counterclaim Defendants.	)	
	)	

Defendants Youmi Cho and K&C Beauty, LLC herein respond collectively as “Defendants” to the Complaint filed against them and assert counterclaims against Kim Enterprises, LLC and Tok Kim. All allegations made by the Plaintiff that are not expressly admitted, qualified, or explained are denied.

FOR A FIRST DEFENSE

1. The allegations of Paragraphs 1-5 are admitted.

2. The allegations of Paragraph 6 are denied.
3. Defendants admit only so much of Paragraph 7 as it alleges that Defendants gave Plaintiff 36 pre-signed, undated checks. Defendants deny that such checks were given pursuant to an agreement to purchase the beauty supply store at 3315 Broad River Road, Suite 90, and deny that such checks were given at the time the parties entered into the business asset purchase agreement. These checks were only given to Plaintiff under duress and extreme emotional pressure and a pursuant to a threat that Defendants had no other choice but to provide such checks to Plaintiff. Plaintiff and Tok Kim used his longer tenure as resident in the United States and longer business experience to pressure Defendants into providing such checks. All other allegations of Paragraph 7 are denied.
4. In response to Paragraph 8, Defendants admit that they are in control of the beauty supply business located at 3315 Broad River Road, Suite 90; however, they deny that they assumed control on March 8, 2021. Defendants assumed control of the business in December 2020 when the business asset purchase agreement was executed and purchase money paid to Plaintiff.
5. In response to Paragraph 9, Defendants admit that they placed a stop payment order on the checks given to Plaintiff. All other allegations of Paragraph 9 are denied and strict proof thereof is demanded.
6. Concerning the allegations of Paragraph 10, Defendants admit that they requested that Plaintiff return the checks and that Plaintiff has refused.
7. The allegations of Paragraph 11 are denied.
8. The allegations of Paragraphs 12-17 are denied.

**FOR A SECOND DEFENSE
(Merger and Parol Evidence)**

9. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
10. Plaintiff's claims are barred, in whole or in part, by application of the merger doctrine and the parol evidence rule.

**FOR A THIRD DEFENSE
(Duress)**

11. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
12. Plaintiff's claims are barred, in whole or in part, by the defense of duress.

**FOR A FOURTH DEFENSE
(Undue Influence)**

13. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
14. Plaintiff's claims are barred, in whole or in part, by the defense of undue influence.

**FOR A FIFTH DEFENSE
(Unconscionability)**

15. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
16. Plaintiff's claims are barred, in whole or in part, by the defense of unconscionability.

**FOR A SIXTH DEFENSE
(Failure to state a claim)**

17. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
18. Plaintiff's claims are barred, in whole or in part, because the complaint fails to state a claim for breach of contract.

**FOR A SEVENTH DEFENSE
(Lack of Consideration)**

19. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
20. Plaintiff's claim that the thirty-six checks formed a valid contract fails for lack of consideration.

**FOR AN EIGHTH DEFENSE
(Full Performance)**

- 21. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
- 22. Plaintiff's breach of contract claim fails because Defendants fully performed their obligations under the Purchase Agreement.

**AS A NINTH DEFENSE
AND BY WAY OF COUNTERCLAIMS**

- 23. K&C Beauty, LLC ("K&C Beauty") is an entity organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
- 24. Youmi Cho is a resident of Richland County, South Carolina.
- 25. Upon information and belief, Tok Kim is a resident of Richland County, South Carolina, and an owner of Kim Enterprises, LLC.
- 26. Kim Enterprises, LLC ("Kim Enterprises") is an entity organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
- 27. For the reasons set forth above and as alleged in more detail below, jurisdiction and venue are proper.

FACTUAL BACKGROUND

- 28. K&C Beauty was organized as a South Carolina limited liability company on or about November 20, 2020.
- 29. Youmi Cho is a member of K&C Beauty.

30. K&C Beauty was formed by Youmi Cho for the purpose of purchasing the “Kim Enterprises Beauty Supply” store located at 3315 Broad River Road, Columbia, South Carolina (“Beauty Store”) from Kim Enterprises and Tok Kim.
31. Upon information and belief, Kim Enterprises is owned by Tok Kim, who is also Youmi Cho’s uncle.
32. Kim Enterprises and K&C Beauty entered into an Business Asset Purchase Agreement effective November 24, 2020 (“Purchase Agreement”). Attached as **Exhibit 1**.
33. Pursuant to the Purchase Agreement, Kim Enterprises agreed to sell its business assets and goodwill to K&C Beauty for the purchase price of \$250,000. Ex. 1, ¶ 2.
34. Kim Enterprises and K&C Beauty agreed that the transaction was to close on or before December 15, 2020, and possession “shall be given to Buyer at closing date.” Ex. 1, ¶ 3(b).
35. The \$250,000 purchase price was allocated among Goodwill (\$50,000) and Tangible Assets (\$200,000). Ex. 1, ¶ 5.
36. Kim Enterprises gave a warrant and representation that the Purchase Agreement “constitutes a valid and binding Agreement of the Seller in accordance with its terms.” Ex. 1, ¶ 6(a).
37. Concerning the allocation of income and expenses, Kim Enterprises and K&C Beauty agreed that income and expenses up to the day before the closing date would be for the account of the Kim Enterprises, while all income and expenses following the closing date would be for the account of K&C Beauty. Ex. 1, ¶ 10.
38. Kim Enterprises agreed to remain involved in the operations of the Beauty Store solely to provide training to K&C Beauty for three months, or through March 2021. Ex. 1, ¶ 17(d).

39. The parties to the Purchase Agreement agreed that the agreement “may not be amended or modified in any respect, except by an instrument in writing executed by both Seller and Buyer.” Ex. 1, ¶ 21(b).
40. The Purchase Agreement was signed by Youmi Cho on behalf of K&C Beauty LLC and Tok Kim on behalf of Kim Enterprises LLC. Ex 1, at 8. K&C Beauty provided a \$250,000 cashier’s check dated December 1, 2020 to Tok Kim for the purchase of the Beauty Store. **Attached as Exhibit 2.** Tok Kim accepted the check as the purchase price for the Beauty Store.
41. Upon making payment to Kim Enterprises, K&C Beauty assumed responsibility for restocking the Beauty Store and operations.
42. Kim Enterprises and Tok Kim assigned their lease on the Beauty Store to K&C Beauty & Youmi Cho on December 9, 2020, and the Landlord executed a Consent to Assignment on January 12, 2021. Attached as **Exhibit 3.**
43. Kim Enterprises and Tok Kim did not immediately turn over operations to K&C Beauty as required by the Purchase Agreement. Instead, Kim Enterprises and Tok Kim continued running operations until March 2021 and retained revenues generated by the Beauty Store from December 1, 2020 through March 2021. Kim Enterprises and Tok Kim did not provide operations training as required by the Purchase Agreement. After March, cash sales were turned over the K&C Beauty, however, all such credit cards sales between March 8, 2020 and June 18, 2021, were directed to an account controlled by Kim Enterprises and/or Tok Kim and upon information and belief certain amounts were never remitted to K&C Beauty. Such receipts were not fully remitted to K&C Beauty and have never been fully paid to K&C Beauty.

44. Upon assuming control of operations, K&C Beauty discovered that much of the inventory was not saleable due to be more than ten years old. This amounted to a significant portion, up to half, of the inventory paid for. K&C Beauty incurred substantial expense in disposing of unsaleable products.
45. After performance of the Purchase Agreement, Tok Kim began demanding that K&C Beauty and Youmi Cho pay him an additional \$550,000. Kim Enterprises and Tok Kim also continued holding cash and credit card receipts belonging to K&C Beauty, and they failed to provide training as required by the Purchase Agreement. Tok Kim also applied pressure to family members of Ms. Cho for her to pay more than was agree upon. Upon information and belief, these acts was part of Kim Enterprises and Tok Kim plan and design to pressure K&C Beauty and Youmi Cho into paying more than was agreed to in the Purchase Agreement.
46. Following full performance of the Purchase Agreement, Tok Kim continued to pressure Youmi Cho to pay more for the Beauty Store than agreed to and coerced her into providing 36 checks in the amount of \$15,000 each, for instance by threatening to jeopardize her immigration status. Youmi Cho reluctantly provided these checks to Tok Kim under duress and undue influence.

**FOR A FIRST COUNTERCLAIM
(BREACH OF CONTRACT)**

47. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
48. Kim Enterprises and K&C Beauty entered into a Purchase Agreement effective November 24, 2020.
49. The Purchase Agreement provided, inter alia, that Kim Enterprises would transfer \$200,000 worth of inventory to K&C Beauty; Tok Kim would provide training to Youmi Cho; and

that K&C Beauty would assume operation and earn all such receipts from the date of purchase, which was December 1, 2020.

50. Kim Enterprises has breached the Purchase Agreement by providing inventory that was outdated, unsaleable, and of insufficient quality such that a substantial portion had to be disposed at K&C Beauty's expense.
51. Kim Enterprises further breached the Purchase Agreement by failing to provide training to K&C Beauty and Youmi Cho.
52. Kim Enterprises also breached the Purchase Agreement by keeping Beauty Store revenues from cash sales and credit cards from December 2020 through March 2021, and not remitting certain credit card receipts from March 2020 to June 2021. Such amounts belonged to K&C Beauty.
53. K&C Beauty and Youmi Cho are entitled to an award of actual and compensatory damages from Kim Enterprises, as well as pre-judgment interest.

**FOR A SECOND COUNTERCLAIM
(CONVERSION)**

54. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
55. Kim Enterprises and Tok Kim have retained possession and control of Beauty Store income from December 2020 to June 2021. All such receipts belonged to K&C Beauty pursuant to the Purchase Agreement. Kim Enterprises and Tok Kim remain in possession of such receipts to the exclusion of K&C Beauty.
56. Even where such receipts were by credit card, all such credit card receipts should have been remitted to K&C Beauty during the period of which it was establishing credit card services. Instead, Kim Enterprises & Tok Kim converted such income for their own use. K&C

Beauty never gave permission to Kim Enterprises or Tok Kim to permanently retain such credit card receipts.

- 57. Kim Enterprises' and Tok Kim's conversion of K&C Beauty's assets was reckless and with conscious indifference to the rights of K&C Beauty.
- 58. Kim Enterprises' and Tok Kim's conversion of K&C Beauty's assets injured K&C Beauty and appropriate damages should be awarded.

**FOR A THIRD COUNTERCLAIM
(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT)**

- 59. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
- 60. K&C Beauty and Kim Enterprises entered into a Purchase Agreement for \$250,000 for K&C Beauty to purchase the Beauty Store.
- 61. K&C Beauty paid Kim Enterprises \$250,000 on December 1, 2020, and Kim Enterprises accepted such payment as full performance of the Purchase Agreement.
- 62. Following payment of the purchase price, all Beauty Store receipts were to belong to K&C Beauty.
- 63. Following payment of the purchase price, Kim Enterprises was to provide training to K&C Beauty and Youmi Cho.
- 64. Kim Enterprises breached the Purchase Agreement by retaining sales and income after the Beauty Store had transferred ownership to K&C Beauty and by not providing training.
- 65. Kim Enterprises' and Tok Kim's withholding of sales and income, refusing to provide training, along with their pressure campaign on Youmi Cho to pay additional sums for the Beauty Store evidence a fraudulent intent and fraudulent act related to the breach of contract.

66. Kim Enterprises' and Tok Kim's actions were reckless, willful, or wanton and support an award of punitive damages.
67. K&C Beauty and Youmi Cho are entitled to an award of actual and compensatory damages from Kim Enterprises, as well as pre-judgment interest and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Counterclaim Plaintiffs respectfully pray for relief and judgment as follows:

- A. Declaring Kim Enterprises breached the Purchase Agreement and awarding damages.
- B. Declaring Kim Enterprises and Tok Kim converted K&C Beauty's assets and awarding damages, interest and punitive damages on the conversion claim.
- C. Declaring Kim Enterprises breached of the Purchase Agreement was accompanied by a fraudulent act and warrants an award of punitive damages.
- D. Award Counterclaim Plaintiffs their attorneys' fees, costs, and expenses incurred in bringing this action.
- E. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ David L. Paavola
David L. Paavola (Bar No. 100714)
Lewis Babcock L.L.P.
1513 Hampton Street (29201)
Post Office Box 11208
Columbia, South Carolina 29211
Telephone: (803) 771-8000
Facsimile: (803) 733-3534
Email: dlp@lewisbabcock.com

Counsel for Defendants K&C Beauty LLC and
Youmi Cho

Columbia, South Carolina
January 14, 2022

BUSINESS ASSET PURCHASE AGREEMENT

Agreement made and effective this 24th of November, 2020 by and between Kim Enterprises LLC ("Seller") and K&C Beauty LLC ("Buyer").

Recitals:

- A. Seller owns and operates "Kim Enterprises Beauty Supply", A beauty supply retail business ("Business"), and is the owner of all of its assets, including, but not limited to, its trade name, Intellectual property, copyrights, contract rights, transferable franchise, telephone numbers, email address and other miscellaneous assets used in connection with the operation of the Business.
- B. Buyer desires to purchase, and the Seller desires to sell the Business to Buyer on the terms and conditions described below.

Now, Therefore, in consideration of the mutual covenants and conditions exchanged herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Sale of Business Assets.** Seller agrees to sell, and Buyer agrees to purchase, all of Seller's right, title and ownership interest in and to all of the assets of the Business, including its titles, trade names, trademarks, copyrights (including all work for hire), and other intellectual property rights (including but not limited to website and domain name), goodwill, and customer lists, transferable licenses, telephone numbers, email addresses, inventory, real & personal property leases and all other assets and property used in connection with the Business.
 - a. **Excluded Assets.** Excluded from this sale and purchase are the Seller's accounts receivable or generated, and prepaid insurance prior to the closing.
 - b. **Work in Progress.** All work in progress shall be prorated to the date of closing.
2. **Purchase Price and Terms.** The purchase price for the Business Assets is Two Hundred Fifty Thousand No/100 Dollars (\$250,000.00) (the "Purchase Price"). The Purchase Price shall be payable on or before the Closing Date (defined below in paragraph a, below) in the following manner:
3. Buyer shall execute and deliver to Seller on or before December 15, 2020, cash payable to Seller in the principal amount of Two Hundred Fifty Thousand No/100 Dollars (\$250,000.00).
 - a. This Agreement shall become effective as a contract when signed by Buyer and Seller.
 - b. This transaction shall close on or before December 15, 2020 and possession shall be given to Buyer at closing date. Closing shall occur sooner if all conditions

precedent is satisfied. Time is of the essence. However, Buyer may extend the closing date by additional thirty (30) days for reasonable cause.

4. **Business Records.** Buyer or Buyer's counsel, accountant or other designated representative shall be given access to Seller's original books, records, Account Edge books, lease agreements and last two (2) year financials including depreciation 1020 forms, 1099 forms on all employees, and FICA returns, and such information shall be kept strictly confidential for a minimum of three (3) years. Seller represents that the books and records are those maintained in the ordinary course of business. Said records are used in the computation of Federal tax returns. If upon examination of said records Buyer discovers any conditions or information unsatisfactory to Buyer, Buyer may, upon written notice of said information, cancel or amend this Agreement. If this notice is not given before December 15, 2020 then the books and records shall be deemed to be acceptable to Buyer.

5. **Allocation of Purchase Price.**

- a. The Purchase Price shall be allocated at Closing in the following manner:

i. Good will	\$ 50,000.00
ii. Tangible Assets	<u>\$200,000.00</u>
Total:	\$250,000.00

- b. All assets as set forth in paragraph 1 and paragraph 4, above, are sold "as is" without warranty, except that they shall be in working order at the time of a walk-through inspection held One (1) days prior to closing or sooner.

5. Buyer agreed to hold seller harmless from any and all liability during the training and due diligent period

6. **Representations of Seller.** Seller hereby warrants, represents and covenants as follows:

- a. This Agreement constitutes a valid and binding Agreement of the Seller in accordance with its terms.
- b. Seller has good and marketable title to the Business and its assets sold and conveyed to Buyer. Seller has full right to sell the Business and its said assets to Buyer and has not entered into any other contract of sale or other transfer or encumbrance relating to the sale of the Business or any of its assets.
- c. The assets sold hereunder shall be transferred by a Bill of Sale, with full warranties of title, together with such other assignments, bills of sale, or instruments of conveyance, certificates, acknowledgments, and other documents as reasonably may be requested by the Buyer to consummate this Agreement and the transactions contemplated hereby, including, if required, any necessary consent of third parties.
- d. Seller has conducted the Business in compliance with applicable laws, rules and regulations of the municipal, borough, state and federal governments and has paid all license or other fees required to be paid to engage in the Business.

- e. There are no claims, liens, encumbrances, or security interests affecting or encumbering the Business or its assets sold and conveyed to Buyer, and Seller is not a party to, nor threatened with, any suit, action, arbitration, administrative or other proceeding in any way relating to the Business or any of its assets sold hereunder.
 - f. All federal, state, borough, and municipal tax returns and reports (including without limitation all income tax, social security, payroll, unemployment compensation, sales and use, excise, privilege, property, ad valorem, franchise, license, and school) required to be filed by the Seller as of the Closing Date have been filed with the appropriate governmental agencies by Seller.
 - g. There are no accounts payable, contract claims, warranty claims, franchise fees or any other liabilities of the Business of any kind requiring performance by Buyer.
- 7. Representations of Buyer.** Buyer warrants and represents as follows:
- a. This Agreement constitutes a valid and binding Agreement of the Buyer in accordance with its terms.
 - b. Buyer agreed to hold harmless to seller if buyer gets injury during the due diligent period and training.
- 8. Representations and Warranties True at Closing.** All representations and warranties of the parties set forth in this Agreement are true and correct as of the Closing Date, as if made on that date, and shall survive the closing of this transaction. If, prior to the Closing Date, either party shall discover that there exists or has occurred any condition which would make untrue any representation or warranty herein made by such party, the party so discovering shall provide prompt notice of the existence or occurrence of such condition to the other party; provided, however, that giving of such notice shall not relieve the party discovering the existence or occurrence of such condition of its obligations hereunder.
- 9. Closing.** Closing of this transaction shall take place no later than December 15, 2020 unless extended by licensees (the "Closing Date"). Closing would take place at
- 10. Accounting Adjustments.**
The operation of the Business and related income and expenses up to the close of business on the day before the Closing Date shall be for the account of the Seller and thereafter for the account of the Buyer. Settlement of any items of expense or income which become apparent only after the Closing Date shall be made by the parties, in good faith, on an on-going basis after the Closing Date. Accounts Payable and accounts receivable shall be reconciled to the date of closing.
- 11. Closing Costs and Transaction Expenses.**

- a. Each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and any other contemplated transaction documents, including all fees and expenses of agents, representatives, counsel, and accountants.
- b. Buyer will pay one-half and Sellers will pay one-half of any recording, escrow or filing fees required to close this transaction.
- c. Seller shall pay pro rata any business related taxes for the tax year of 2020 (or any previous) tax year and up to the closing date and Buyer shall pay all such taxes prorated for the tax year of 2020, and thereafter.
- d. Monthly rent, as well as telephone and internet service shall be pro-rated between buyer and seller to the date of closing.

12. Indemnification.

- a. **Seller's Indemnity.** Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, demands, actions, damages, debts, obligations or liabilities and reasonable attorneys' fees and court costs related thereto, incurred, arising out of, and/or related to the conduct or operations of the Business and/or the ownership of its assets prior to the Closing Date.
- b. **Buyer's Indemnity.** Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, demands, actions, damages, debts, obligations or liabilities and reasonable attorneys' fees and court costs related thereto, incurred, arising out of, and/or related to the operations of the Business and/or the ownership of its assets after the Closing Date.

13. **Notices.** All notices, requests, demands and other communications required or permitted hereunder shall be in writing, and shall be deemed duly given if delivered personally or sent by registered mail (with adequate postage prepaid) to the address set forth below with respect of each party or at such other address as such party designates in writing:

Seller:

Tok C. Kim
84 Cannonade Court
Irmo, South Carolina 29063

Buyer:

Youmi Cho
247 Nobility Dr.
Columbus, South Carolina 29210

14. **Time is of the Essence.** Time is of the essence of this transaction.

15. **Conditions Precedent.** The following matters concerning conditions precedent apply to this Agreement:

- a. All obligations of either party are expressly conditioned upon and subject to the other party's performance, observance and completion of each and every term and condition required to be performed, observed or completed by said party in this Agreement.
- b. All obligations of either party are expressly conditioned upon the absence of any action or proceeding under the federal bankruptcy laws or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof, which shall be instituted or threatened by the other party prior to the Closing Date.

16. Disclosure of Representation. The parties consent to, acknowledge, and mutually represent as follows:

- a. That this Agreement, and its attached exhibits and other documents prepared for the purpose of closing this transaction, are the result of arm's-length negotiations between the parties hereto.
- b. That each party hereto has been advised to seek independent legal and tax counsel and has been represented by such independent and legal tax counsel to the fullest extent desired by each party.
- c. That the parties and their respective legal and tax counsel have each had an opportunity to review this instrument, and its attached exhibits and other documents prepared for the purpose of closing this transaction, and are fully analyzed of the tax and legal consequences of closing this transaction in accordance with the terms and conditions herein agreed upon.
- d. By reason of the foregoing, any rule of construction that an instrument should be construed strictly against the draftsman thereof shall not apply in any construction of this Agreement, nor of any instrument attached as an exhibit hereto, or otherwise executed by the parties in connection with a closing of this transaction.

17. Other Instruments; Cooperation.

- a. **Instruments.** The parties each agrees to execute and deliver such further and additional documentation as may be necessary or appropriate to carry out the transactions contemplated by this Agreement, and any such documentation shall be in a form and of content mutually approved by the parties.
- b. **Cooperation.** The parties shall each use their best efforts to cause the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof. Seller and Buyer specifically agree to fully cooperate in taking all reasonable actions necessary to obtain all consents from any federal, state or local governmental entities, to obtain all consents, approvals and

authorizations from other persons and to affect all filings, applications, registrations and notifications that the parties hereto deem necessary or desirable to consummate the transactions contemplated hereby.

- c. **Access to Premises and Information.** At reasonable times prior to the Closing Date, the Seller will provide the Buyer and his representatives with reasonable access during business hours to the assets, titles, contracts, and records of the Seller relating to the Business and furnish such additional information concerning the Business as the Buyer from time to time may reasonably request, provided that Buyer shall have executed a Confidentiality Agreement in the form provided by Seller.
 - d. **Post-Closing Assistance.** Seller agrees to provide training to the Buyer after the closing for a period of 3 months.
 - e. **Employees.** Seller shall conduct the business in its ordinary course until closing. Seller warrants there are no employment contracts in effect and that all debts arising from the operation of the business shall be paid or provided for at closing.
18. **Mediation/Arbitration.** In the event of any dispute, claim or question arising under this Agreement, or related hereto, the matter shall first be submitted by the parties to non-binding mediation by mediation selected upon mutual agreement. If the parties either cannot agree upon a mediator or after selection of a mediator or after selection of a mediator cannot resolve their dispute with the assistance of the mediator, then the parties shall submit the matter to the American Arbitration Association (the "AAA") for arbitration in accordance with the rules of the AAA. The arbitration shall be conducted by a single arbitrator selected upon mutual agreement of the parties. This agreement to arbitrate shall in all respects be specifically enforceable by the courts of Alaska.
19. **Risk of Loss.** The risk of loss, damage, or destruction to any of the equipment, or other business personal property to be conveyed to the Buyer under this Agreement shall be borne by the Seller until the Closing Date, and thereafter by Buyer. In the event of such loss, damage, or destruction, the Seller, to the extent reasonable, shall replace the lost property or repair or cause to repair the damaged property to its condition prior to the damage. If replacement, repairs, or restorations are not completed prior to the Closing Date, then the purchase price shall be adjusted by an amount agreed upon by the Buyer and the Seller that will be required to complete the replacement, repair, or restoration following the Closing Date. If the Buyer and the Seller are unable to agree, then the Buyer, at its sole option and notwithstanding any other provision of this Agreement, upon notice to the Seller, may rescind this Agreement and declare it to be of no further force and effect, in which event there shall be no Closing of this Agreement and all the terms and provisions of this Agreement shall be deemed null and void.
20. **Termination.**
- a. This Agreement may be terminated prior to the Closing Date by written notice

given prior to the Closing Date: (i) by either Buyer or Seller if a material Breach of any provision of this Agreement has been committed by the other party and such Breach has not been waived; or (ii) by mutual consent of Buyer and Seller.

- b. Each party's right of termination under this section is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not constitute an election of remedies. If this Agreement is terminated pursuant to this paragraph, all further obligations of the parties under this Agreement will terminate; provided, however, that if this Agreement is terminated by a party because of the material breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

21. Miscellaneous.

- a. This Agreement shall be binding upon the Seller, their agents, transferees, heirs and assigns and Buyer, their agents, transferees, heirs and assigns, and other successors of each of them. Except as otherwise agreed herein, Buyer shall not assign his interest herein without the express written consent of Seller, which consent may be unreasonably withheld in Seller's sole and absolute discretion.
- b. This Agreement may not be amended or modified in any respect, except by an instrument in writing executed by both Seller and Buyer.
- c. This Agreement shall be construed in accordance with, and governed by, the laws of Alaska. Any action, suit or proceeding arising out of or relating to this Agreement shall be submitted to mediation/arbitration in Anchorage, Alaska, as provided herein, but if any action upon this Agreement shall be initiated in any court, it shall be initiated in the courts of Alaska, Third Judicial District, and each of the parties to this Agreement hereby irrevocably submits to the jurisdiction of any of such courts for the purpose of any such action, suit or proceeding.
- d. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Words used in this Agreement which import one gender shall apply to any gender when appropriate, and any words which import the singular or plural shall be applied to the other when appropriate.
- f. If any provision of this Agreement is prohibited or invalid under law in some part or under some circumstances, such provision shall be inoperative and all other provisions herein shall otherwise remain in full force and effect.

- g. All parties agree to hold all terms and conditions of this purchase and all information regarding the transfer of the business as confidential.

Entire Agreement. The parties hereto represent, acknowledge, and agree that in entering into this Agreement, or any other document executed in connection with a closing of this transaction, they have not relied upon any promises, representations, warranties, or statements of any kind or nature whatsoever, made by any party hereto, officer, director, or agent of said party or by any other person on behalf of said party, which is not expressly as set forth in this Agreement and the other documents executed in connection with a closing of this transaction. This Agreement and the other documents executed in connection with a closing of this transaction constitute the entire agreement between the parties hereto with respect to the subject matter.

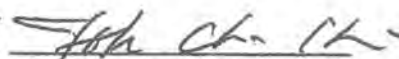
In witness whereof, the parties (and personal guarantor) have executed this Agreement on the date first above written.



K&C Beauty LLC, Buyer
By: Youmi Cho, as authorized
Representative of Buyer
Position: President



Youmi Cho, Individually

✓ 

Kim Enterprises LLC, Seller
By: Tok C. Kim, as authorized
Representative of Seller
Position: President and Owner

BILL OF SALE

Kim Enterprises LLC, d/b/a Kim Enterprises Beauty Supply, a South Carolina corporation, hereinafter called "Seller," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by K&C Beauty LLC., a South Carolina corporation ("Buyer"), sells to Buyer substantially all of the assets, properties, rights and business of the Seller relating to or used or employed in connection with the Seller's business (the "Business") of Kim Enterprises Beauty Supply, a beauty supply retail store, subject to certain liabilities, upon the terms and conditions of this Agreement.

The exact detailed terms of the agreement are outlined in the Business Asset Purchase Agreement executed by both the Seller and the Buyer and to the extent those terms are more detailed or different from those in this Bill of Sale, the terms in the Business Asset Purchase Agreement are the master terms of this transaction. Further, Youmi Cho is personally responsible for the obligations, covenants and agreements of the Buyer as set forth in detail in the Business Asset Purchase Agreement executed by the parties.

Seller does, for itself, its administrators and assigns, covenant and agree with the Buyer and its assigns, that Seller has the present right to sell its interest in the above described property (as outlined in detail in the Business Asset Purchase Agreement). The Seller does hereby warrant the sale of said property to Buyer and its assigns against all and every person or persons whomsoever lawfully asserts a claim against said property.

IN WITNESS WHEREOF, the Seller and Buyer have hereunto set their hands and seals This 24th day of November, 2020.


 K&C Beauty LLC, Buyer
 By: Youmi Cho, as authorized
 Representative of Buyer
 Position: President


 Youmi Cho, Individually


 Kim Enterprises LLC, Seller
 By: Tok C. Kim, as authorized
 Representative of Seller
 Position: President and Owner

LANDLORD'S CONSENT TO ASSIGNMENT

3315 BROAD RIVER ROAD HOLDINGS, LLC, a Maryland limited liability company ("Landlord") ("Landlord"), and TOK CHIN KIM, an individual, d/b/a Kim Enterprises ("Tenant"), are parties to that certain Lease dated July 25, 2002, as amended by First Amendment to Lease dated August 25, 2005, Second Amendment to Lease dated January, 2006, Third Amendment to Lease dated August 1, 2010, Fourth Amendment to Lease dated March 16, 2015 and Fifth Amendment to Lease dated September 20, 2019 (collectively, the "Lease"), relating to Space 85 containing approximately 6,000 rentable square (the "Premises"), in the shopping center commonly known as Widewater Square, having a street address of 3315 Broad River Road, Columbia, South Carolina 29210 (the "Shopping Center"), all as more particularly described in the Lease. Tenant desires to assign the Lease to K&C BEAUTY LLC, a South Carolina limited liability company and YOUNI CHO, an individual, jointly and severally (referred to herein collectively as, the "Assignees" or individually as, "Assignee"), as more particularly described in the Assignment of Lease dated December 9, 2020 (the "Assignment"). Landlord hereby consents to the Assignment on the express condition that:

1. Assignees hereby expressly assume and agree to perform all of the covenants, duties and obligations of Tenant under the Lease with respect to the Premises, and each Assignee shall be jointly and severally liable therefor along with Tenant.
2. The Premises shall not be used for a usage different from the usage provided in the Lease.
3. Tenant will remain directly and primarily liable for the performance of all of the covenants, duties and obligations of Tenant under the Lease (including, without limitation, the obligation to pay all rental and other sums when and as provided to be paid), and Landlord shall be permitted to enforce the provisions of the Lease as they relate to the Premises against Tenant and/or Assignees (jointly or severally) and/or any future assignee, subtenant, concessionaire, licensee or other transferee without demand upon or proceeding in any way against any other person.
4. Landlord's consent to the assignment of the Premises to Assignees shall not be deemed a consent to any other or subsequent transaction.
5. Nothing contained in this letter agreement shall:
 - a. operate as a consent to or approval of or ratification by Landlord of any of the provisions of the Assignment or as a representation or warranty by Landlord, and Landlord shall not be bound or estopped in any way by the provisions of the Assignment; or
 - b. except as set forth in Section 7 below, be construed to modify, waive or affect (i) any of the provisions, covenants or conditions contained in the Lease, (ii) any of Tenant's obligations under the Lease, or (iii) any rights or remedies of Landlord under the Lease, or otherwise enlarge or increase Landlord's obligations or liabilities, or Tenant's rights, under the Lease or otherwise; or
 - c. be construed to waive any present or future breach or default on the part of Tenant under the Lease.

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EXHIBIT 3

6. In case of any conflict between the provisions of this Consent and the provisions of the Assignment, the provisions of this Consent shall govern.
7. The Lease is hereby amended as follows:
 - (a) to provide the following as Landlord's address for all purposes under the Lease:

c/o CWCapital Asset Management LLC
900 19th Street, NW, 8th Floor
Washington, DC 20006
Attention: Jeremy Zinn
 - (b) to provide that the liability of Landlord (and its partners, shareholders or members) to Assignees or Tenant (or any person or entity claiming by, through or under Assignees or Tenant) for any default by Landlord under the terms of the Lease (as amended by this Agreement) or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Shopping Center shall be limited to Assignees' or Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Shopping Center and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency.
8. Tenant hereby assigns to Assignees the Security Deposit under the Lease, which amount will continue to be held by Landlord as Assignees' Security Deposit under the Lease.
9. Tenant and Assignees each certify that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant and Assignees hereby agree to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
10. Landlord shall not be responsible for the payment of any brokerage commission or similar fee payable in connection with the assignment of the Lease, and Tenant and Assignees hereby agree to indemnify and hold Landlord harmless from and against any cost, liability or expense (including attorneys' fees and costs) related to such a claim.
11. This Consent may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed to be originals and together shall constitute one and the same instrument. The parties hereto consent and agree that this Consent may be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic

R-000055

record shall be valid and as effective to bind the parties so signing as a paper copy bearing such parties' handwritten signatures. The parties further consent and agree that (1) to the extent a party signs this Consent using electronic signature technology, by clicking "SIGN", such party is signing this Consent electronically, and (2) the electronic signatures appearing on this Consent shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

[Signature pages follow]

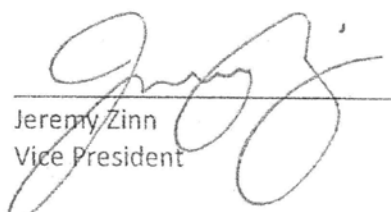
Executed as a sealed instrument this 12th day of January, 2021.

LANDLORD:

3315 BROAD RIVER ROAD HOLDINGS, LLC.,
a Maryland limited partnership

By: Deutsche Bank Trust Company Americas, as
Trustee, on behalf of the registered Holders of GS
Mortgage Securities Corporation II, Commercial
Mortgage Pass-Through Certificates, Series 2014-
GC22 (the "Trust"), sole member/manager

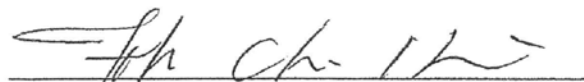
By: CWC Capital Asset Management LLC,
solely in its capacity as Special Servicer to the Trust

By: 
Name: Jeremy Zinn
Title: Vice President

[Signatures continue on following page]

TENANT AND ASSIGNEES HEREBY AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS
CONSENT TO ASSIGNMENT BY THEIR SIGNATURES BELOW:

TENANT:



TOK CHIN KIM, d/b/a Kim Enterprises

Date: 1/18/21

ASSIGNEES:

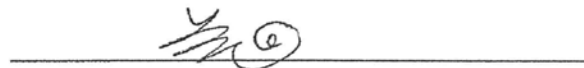
K&C BEAUTY LLC,
a South Carolina limited liability company

By: K&C Beauty LLC.

Name: Youmi cho

Title: president

Date: 1/18/21



YOUMI CHO

Date: 1/18/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Civil Action No. 2021-CP-40-05596
	)	
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	SUMMONS
	)	(JURY)
Youmi Cho, K&C Beauty, LLC, and	)	
Sang Cho,	)	
	)	
Defendants.	)	
_____	)	
	)	
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Third Party Plaintiffs,	)	
	)	
v.	)	
	)	
Tok Kim,	)	
	)	
Third Party Defendant.	)	

TO DEFENDANT SANG CHO:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned attorney at 1325 Park Street, Suite 300, Post Office Box 96, Columbia, South Carolina 29202, within thirty (30) days from the date of service hereof upon you, and in the event you fail to answer within the time specified herein, plaintiff will apply to the court for the relief demanded in the Complaint.

BELSER LAW FIRM, PA

s/ Creston W. Brown
H. Freeman Belser [SC Bar 72403]
Creston W. Brown [SC Bar 104086]
1325 Park Street, Suite 300 (29201)
Post Office Box 96
Columbia, SC 29202
(803) 929-0096
freeman@belserpa.com
creston@belserpa.com

Attorneys for Plaintiff Kim Enterprises

September 12, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Civil Action No. 2021-CP-40-05596
	)	
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	AMENDED COMPLAINT
Youmi Cho, K&C Beauty, LLC, and	)	JURY TRIAL DEMANDED
Sang Cho,	)	
	)	
Defendants.	)	
_____	)	
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Third Party Plaintiffs,	)	
	)	
v.	)	
	)	
Tok Kim,	)	
	)	
Third Party Defendant.	)	

Plaintiff, with leave of Court pursuant to Rule 15, SCRCP, complaining of Defendants, hereby alleges that:

1. Plaintiff Kim Enterprises, LLC ("Kim Enterprises") is a limited liability company engaged in the hair and beauty product business in Richland County, South Carolina. Tok Kim owns Kim Enterprises.
2. Defendant Youmi Cho is a resident of, and engaged in the hair and beauty product business in, Richland County, South Carolina. Youmi Cho is the niece of Tok Kim. Youmi Cho's mother is Tok Kim's sister.
3. Defendant K&C Beauty, LLC ("K&C Beauty") is a limited liability company engaged in the hair and beauty product business in Richland County, South Carolina. Youmi Cho owns K&C Beauty, LLC.
4. Defendant Sang Cho is a resident of Richland County, South Carolina, is the brother of Youmi Cho, and is currently employed by K&C Beauty. Sang Cho is Youmi Cho's brother and Tok Kim's nephew. Sang Cho previously worked for Kim Enterprises.

5. This case concerns the sale and purchase of the assets of a hair and beauty supply store at 3315 Broad River Road, Suite 90, Columbia, South Carolina 29210 (the "Business").
6. This case also concerns Defendants' actions to try and renegotiate, after the fact, the purchase price of the Business by, among other things, using a contract created as part of a fraudulent E-2 Immigration Visa application.
7. The Business was previously owned and operated by Tok Kim.

The Verbal Agreement to Sell the Business

8. On or around 2019, Youmi Cho entered the United States from South Korea on a F-1 Academic Visa.
9. For various reasons, Youmi Cho did not desire to continue her schooling in the U.S., yet she did not want to leave the U.S. and return to South Korea at the expiration of her F-1 Academic Visa.
10. In late 2020, Youmi Cho approached her uncle, Tok Kim, and asked to purchase the Business. Youmi Cho planned to obtain an E-2 Investor Visa as part of her purchase of the Business, which would allow her to remain in the U.S.
11. Youmi Cho had familiarity with the Business through conversations and interactions with her brother, Sang Cho. By way of brief background, Sang Cho had been employed at the Business since January 1, 2013. Kim Enterprises, in or around 2017, promoted Sang Cho as the manager of the Business. Sang Cho had a great familiarity with the Business, especially its inventory and operations.
12. Youmi Cho also visited the Business numerous times and had familiarity with the products it sold, the inventory therein, and its operations.
13. In or around late 2020, Kim Enterprises informed Youmi Cho the purchase price for the Business was \$800,000. Youmi Cho and K&C Beauty, the limited liability company she organized to acquire the assets of the Business, agreed to purchase the Business at that price.
14. Shortly thereafter, Youmi Cho and Sang Cho visited Tok Kim at his residence. The purpose of the visit was to try and renegotiate the previously agreed upon purchase price of the Business.
15. Youmi Cho, Sang Cho, and Tok Kim met in Tok Kim's kitchen, at which time Sang Cho informed Tok Kim the \$800,000 purchase price, in his opinion, was too high and Youmi Cho and K&C Beauty should purchase it for \$500,000, not \$800,000.

16. Tok Kim rejected Sang Cho's assertion that Youmi Cho and K&C Beauty should purchase the Business for \$500,000, and he told both Sang Cho and Youmi Cho the price for the business was \$800,000, take it or leave it.
17. Tok Kim left no doubt to both Youmi Cho and Sang Cho that the \$800,000 purchase price was non-negotiable. Tok Kim was under no financial pressure and did not need to sell the Business.
18. Shortly thereafter, Youmi Cho and K&C Beauty informed Tok Kim they agreed to the \$800,000 purchase price (the "Agreement").
19. Kim Enterprises and Youmi Cho and K&C Beauty agreed the \$800,000 was to be paid as follows: \$250,000 up front, followed by thirty-six (36) monthly installments of \$15,000 beginning on May 15, 2021, and concluding with a final payment of \$10,000.
20. Pursuant to the Agreement between Kim Enterprises and Youmi Cho and K&C Beauty, Youmi Cho and K&C Beauty gave Kim Enterprises thirty-six (36) pre-signed, undated checks made payable to Tok Kim in the amount of \$15,000. Kim Enterprises, on the 15th of each month, starting in May 2021, exchanged each check for cash with Youmi Cho and K&C Beauty.
21. Regarding the \$250,000 down payment, in December 2020, Youmi Cho and K&C Beauty, pursuant to the Agreement, wrote Kim Enterprises a \$250,000 check that was deposited into its bank account.
22. For the first three months of the installment payment period, May, June, and July 2021, Kim Enterprises returned the pre-signed checks to Youmi Cho and K&C Beauty in exchange for cash payments.
23. For the month of August 2021, Kim Enterprises deposited the pre-signed check. Thus, by mid-August 2021, Youmi Cho and K&C Beauty had made four of the thirty-six (36) \$15,000 payments to Kim Enterprises according to the Agreement. Stated differently, by mid-August 2021, Youmi Cho and K&C Beauty had paid a collective \$310,000 towards the \$800,000 purchase price and still owed \$490,000.
24. However, without notice or explanation, Youmi Cho and K&C Beauty put a stop payment order on the check for September 2021.
25. Thereafter, Youmi Cho and K&C Beauty requested Kim Enterprises return the remaining thirty-two (32) pre-signed, undated checks. Kim Enterprises refused and is still in possession of the thirty-two (32) pre-signed checks, but Youmi Cho and K&C Beauty have instructed their bank to disallow any attempts to deposit them.

**Discovery of the Immigration Fraud
and the Corresponding Written Fraudulent Purchase Agreement**

26. After Youmi Cho and K&C Beauty placed a stop payment on the September \$15,000 check, Youmi Cho and K&C Beauty informed Kim Enterprises they didn't owe Kim Enterprises any money because they all "agreed" Youmi Cho and K&C Beauty would purchase the Business for \$250,000, not \$800,000.
27. When Kim Enterprises heard this statement, it was shocked.
28. Kim Enterprises' shock turned into disbelief when Youmi Cho and K&C Beauty stated they had a written contract memorializing this purported arrangement.
29. To be clear, prior to the September 2021 stop payment issued on the fifth \$15,000 installment payment, there was never any discussion the purchase price of the Business was anything less than \$800,000. This was so, obviously, because the purchase price was \$800,000.
30. And, as noted above, for the months of May, June, July, and August, Youmi Cho and K&C Beauty made monthly payments to Kim Enterprises of \$15,000 pursuant to the Agreement.
31. Youmi Cho and K&C Beauty presented Kim Enterprises with an eight-page document titled "Business Asset Purchase Agreement" (the "Fraudulent Purchase Agreement").
32. The Fraudulent Purchase Agreement ostensibly memorialized the sale of the Broad River Store assets, by Kim Enterprises to K&C Beauty, for \$250,000. The document is purportedly signed by Tok Kim.
33. The Fraudulent Purchase Agreement was drafted by Andy Kim, the lawyer who assisted Youmi Cho in obtaining her E-2 Investor Visa. To be clear, Andy Kim, upon information and belief, did not knowingly participate in Youmi Cho's immigration fraud as set forth below in greater detail. Andy Kim, upon information and belief, like Tok Kim, is an innocent bystander wrapped up in Youmi Cho's continued deceit.
34. Despite repeated requests from Kim Enterprises, Youmi Cho and K&C Beauty have been unable to produce the "original" Fraudulent Purchase Agreement.

**How did the Fraudulent Purchase Agreement Come to be?
The 50%+ Requirement for an E-2 Investor Visa**

35. The E-2 Investor Visa allows a foreign individual to live in the U.S. in exchange for investing certain sums of money in the U.S. economy.

36. The E-2 Investor Visa applicant must make at least a fifty-percent investment in a U.S. business to qualify.
37. Thus, for example, if an E-2 Investor Visa applicant had only \$250,000 in cash, she would only be able to purchase a business valued at no greater than \$500,000. Stated differently, if an E-2 Investor Visa applicant agreed to purchase a business for \$800,000, to be approved for an E-2 Investor Visa, she would have to put down at least \$400,000. Under this hypothetical scenario regarding the purchase of a business for \$800,000, if the E-2 Investor Visa applicant had only \$250,000 in cash, absent committing immigration fraud, she would not be able to obtain an E-2 Investor Visa.
38. The reason behind the fifty-percent rule is simple. The Department of Homeland Security ("DHS") wants to ensure the E-2 Investor Visa applicant is financially committed to the successful operation of a business and the U.S. economy.
39. DHS does not desire to extend E-2 Investor Visa status to individuals not committed to stimulating the economy through significant business investment.
40. The E-2 Investor Visa applicant is required to submit certain information to DHS as part of her application. Relevant to this case, the E-2 Investor Visa applicant submits to DHS information on the business she is buying, such as its (a) current Gross Annual Income, (b) Net Annual Income, and (c) Current Number of Employees in the U.S.
41. The E-2 Investor Visa applicant also submits to DHS the dollar value of her investment, and the ownership percentage she will acquire as a result of the investment. This information is used to, among other things, ensure the fifty-percent minimum investment threshold is met.
42. And, to verify the business sale and/or investment is legitimate, the E-2 Investor Visa applicant submits to DHS a copy of the contract of sale/business asset purchase agreement, as well as a copy showing the payment/transfer of funds pursuant to the contract of sale/business asset purchase agreement. The aforementioned information and supporting documents, for obvious reasons, are used to show DHS that the transaction is not a sham.
43. Youmi Cho, as part of her E-2 Investor Visa application process, falsely informed Andy Kim that the \$250,000 payment to Kim Enterprises was for 100% of the Business. Thus, Andy Kim drafted the Fraudulent Purchase Agreement, that included a \$250,000 purchase price, for submission to DHS.
44. If Youmi Cho *truthfully* told Andy Kim the \$250,000 payment to Kim Enterprises was a downpayment towards an \$800,000 purchase price for the Business, Andy Kim would have refused to assist Youmi Cho in obtaining an E-2 Investor Visa.

45. It is undisputed that Andy Kim never spoke to Tok Kim about the Fraudulent Purchase Agreement, nor does Andy Kim have any knowledge that Tok Kim ever saw this Fraudulent Purchase Agreement, prior to Youmi Cho and K&C Beauty presenting it to Kim Enterprises after they placed a stop payment on the fifth \$15,000 installment payment.

Sang Cho's Text Messages Confirming the Agreement

46. Sang Cho's smartphone is full of text messages regarding Youmi Cho and K&C Beauty's agreement to purchase the Business from Kim Enterprises for \$800,000, payable by a \$250,000 down payment and monthly installments afterwards.
47. In particular, Sang Cho wrote, in certain text messages, the following about the sale of the Broad River Store:
- a. The sale was a "**Verbal** agreement of \$250,000 of **down payment** that was paid in December[.]" Emphasis added.
 - b. Sang Cho's dad said he and Youmi are at "fault because [they] put stopped payment on checks[.]"

Buying Sang Cho's Loyalty

48. Sang Cho, in an effort to protect his sister and employer, refuses to tell the truth about his knowledge surrounding the following subjects:
- a. The meeting at Tok Kim's residence.
 - b. His job duties while employed at Kim Enterprises.
 - c. The text messages on his smartphone.
49. In fact, Sang Cho testified, under oath and subject to penalty of perjury, that the plain language of his lengthy and descriptive text messages concerning the sale of the Business means something entirely different.
50. Sang Cho's position is the result of, among other things, Youmi Cho's purchase of his loyalty by buying him a new \$72,456.50 Chevy Tahoe (the "Tahoe").
51. Sang Cho's posture is also a result of his closeness to his sister, Youmi Cho.
52. Also, Sang Cho has never reached anywhere near the financial success and resources of his sister and is nearly totally dependent on her financially supporting him.
53. Without Youmi Cho's financial resources, Sang Cho would be financially devastated.

The Continued Misrepresentations

54. In addition to Youmi Cho and K&C Beauty attempting to use the Fraudulent Purchase Agreement as a tool to renegotiate the purchase price of the Business, Youmi Cho and K&C Beauty have made additional unsupported claims against Kim Enterprises and Tok Kim.
55. For example, Youmi Cho and K&C Beauty maintain Kim Enterprises and Tok Kim did not turn over operations to K&C Beauty on the dates set forth in the Fraudulent Purchase Agreement (December 2020). Notwithstanding Tok Kim and Kim Enterprises never saw the Fraudulent Purchase Agreement during Youmi Cho's E-2 Investor Visa application process, Kim Enterprises, as a matter of law, could not turn over the Business to Youmi Cho and K&C Beauty until Youmi Cho received her E-2 Investor Visa, because Youmi Cho needed her E-2 Investor Visa to obtain a Richland County Business License ("RCBL") for K&C Beauty.
56. K&C Beauty did not obtain a RCBL until March 7, 2021, at which time Kim Enterprises immediately turned over complete control of the Broad River Store to Youmi Cho and K&C Beauty the following business day.
57. Thus, Kim Enterprises turned over operations of the store on the first day legally possible.
58. Youmi Cho and K&C Beauty also maintain Tok Kim and Kim Enterprises withheld all credit card receipts from her and K&C Beauty through mid-June 2021. This is another falsehood.
59. As an initial matter, K&C Beauty was unable to obtain its own credit card processing account until Youmi Cho received her social security number.
60. For reasons unknown at this time, Youmi Cho did not obtain her social security number until mid-June 2021.
61. Kim Enterprises, in an effort to help Tok Kim's niece, Youmi Cho, allowed the Business to use Kim Enterprises' credit card account through June 2021, and at the end of each month starting in March 2021, Tok Kim would meet with Youmi Cho and provide her cash totaling the net amount charged (less fees and expenses).
62. The total dollar value of the cash received by Youmi Cho and K&C Beauty was significant.
63. Youmi Cho and K&C Beauty also maintain Kim Enterprises failed to "train" her on how to run the business.

- 64. This allegation is also meritless. As an initial matter, Youmi Cho's brother, Sang Cho, ran nearly all aspects of the Business for nearly a decade prior to Youmi Cho's agreement to purchase it.
- 65. Sang Cho transitioned from being Kim Enterprises employee to a K&C Beauty employee seamlessly.
- 66. Also, Kim Enterprises attempted to show Youmi Cho how to process payroll, but in the middle of a training session, she abruptly left the session and said she was bored.

The Latest Misrepresentation:
The Thirty-Six Checks Were Payments for Other Stores

- 67. When Youmi Cho and K&C Beauty stopped payment on the September \$15,000 check and presented the Fraudulent Purchase Agreement to Kim Enterprises, they were faced with a problem: how would they explain away the thirty-six checks?
- 68. For over a year and a half, from September 2021 until March 2023, Youmi Cho and K&C Beauty claimed the thirty-six checks were given to Kim Enterprises under duress and extreme emotional pressure and pursuant to a threat that Youmi Cho and K&C Beauty had no other choice but to provide the checks to Kim Enterprises.
- 69. Recently, however, Youmi Cho and K&C Beauty, from out of nowhere, *now claim*, without any evidence whatsoever, that the thirty-six checks were a good faith payment towards purchasing Kim Enterprises' other stores.
- 70. Youmi Cho and K&C Beauty concocted this falsehood, upon information and belief, because Youmi Cho and K&C Beauty recently discovered that Sang Cho's smartphone contained numerous text messages reiterating the purchase price of the Business was \$800,000.
- 71. This new claim is a further continuation of fraudulent actions and assertions by Youmi Cho and K&C Beauty to try and void their responsibilities under the Agreement.

FIRST CAUSE OF ACTION
Breach of Contract as to Youmi Cho and K&C Beauty

- 72. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
- 73. As set forth hereinabove, Kim Enterprises and Youmi Cho and K&C Beauty were parties the verbal Agreement, under the terms of which Kim Enterprises agreed to convey the assets of the Business to Youmi Cho and K&C Beauty for \$800,000, payable as follows: \$250,000 up front, followed by thirty-six (36) monthly

installments of \$15,000 beginning on May 15, 2021, and concluding with a final payment of \$10,000.

74. This Agreement is evidenced by partial performance, in that the \$250,000 down payment was made, as well as the first four installment payments of \$15,000.
75. This Agreement is further evidenced by the thirty-six (36) pre-signed checks that Youmi Cho and K&C Beauty gave to Kim Enterprises.
76. Youmi Cho and K&C Beauty have breached the Agreement, without justification, by putting a stop payment order on the check for September 2021, by refusing to authorize or to make any further payments, and by failing and refusing to respond to Kim Enterprises' attempts to contact Youmi Cho and K&C Beauty about the default.
77. Youmi Cho and K&C Beauty's actions constitute an anticipatory breach and/or repudiation of the Agreement, thus putting an end to the verbal contract for all purposes of performance. As a result, Kim Enterprises is entitled to treat the Agreement as totally breached and to sue for damages for the entire amount due thereunder.
78. Kim Enterprises has been damaged by Youmi Cho and K&C Beauty's breach and is entitled to actual damages in the amount of \$490,000, which is the amount remaining to be paid under the Agreement, plus pre-judgment interest on the sum certain at the statutory rate.

SECOND CAUSE OF ACTION
Breach of Contract Accompanied by Fraudulent Act
as to Youmi Cho and K&C Beauty

79. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
80. Kim Enterprises and Youmi Cho and K&C Beauty were parties to the verbal Agreement, under the terms of which Kim Enterprises agreed to convey the assets of the Business to Youmi Cho and K&C Beauty for \$800,000, payable as follows: \$250,000 up front, followed by thirty-six (36) monthly installments of \$15,000 beginning on May 15, 2021, and concluding with a final payment of \$10,000.
81. Youmi Cho and K&C Beauty have breached the Agreement, without justification, by putting a stop payment order on the check for September 2021, by refusing to authorize or to make any further payments, and by failing and refusing to respond to Kim Enterprises' attempts to contact Youmi Cho and K&C Beauty about the default.

82. Youmi Cho and K&C Beauty's acts, as set forth in great detail above, evidence a fraudulent intent and fraudulent act(s) related to the breach of contract.
83. Youmi Cho and K&C Beauty's actions were reckless, willful, and/or wanton and support and award of punitive damages.
84. Kim Enterprises is entitled to an award of actual and compensatory damages from Youmi Cho and K&C Beauty, as well as pre-judgment interest and punitive damages.

THIRD CAUSE OF ACTION
Fraud as to Youmi Cho and K&C Beauty

85. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
86. Youmi Cho and K&C Beauty made false representations, specifically that they would pay Kim Enterprises \$800,000 for the Business, payable as follows: \$250,000 up front, followed by thirty-six (36) monthly installments of \$15,000 beginning on May 15, 2021, and concluding with a final payment of \$10,000.
87. Youmi Cho and K&C Beauty made these representations to induce Kim Enterprises to turn over the Business to them.
88. Kim Enterprises did not know that Youmi Cho and K&C Beauty's representations were false and reasonably relied on those representations, evidenced by Kim Enterprises turning over control of the Business to Youmi Cho and K&C Beauty after only partial payment.
89. As a direct and proximate result of Youmi Cho and K&C Beauty's fraudulent acts, Kim Enterprises has suffered damages.
90. Kim Enterprises is entitled to damages, including all actual damages, punitive damages, and an award of reasonable attorney fees and would also be entitled to have the sale of the Business set aside.

FOURTH CAUSE OF ACTION
Conversion as to Youmi Cho and K&C Beauty

91. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
92. Youmi Cho and K&C Beauty have retained possession of the Business after they stopped making payments pursuant to the Agreement. Youmi Cho and K&C Beauty remain in possession of the Business to the exclusion of Kim Enterprises' property and/or possessory rights.

93. Youmi Cho and K&C Beauty do not have permission to retain possession of the Business without making the necessary payments.
94. Youmi Cho and K&C Beauty's conversion of the Business was reckless and with conscious indifference to the property and/or possessory rights of Kim Enterprises.
95. Youmi Cho and K&C Beauty's conversion of the Business has injured, and continues to injure, Kim Enterprises and appropriate damages should be awarded to Kim Enterprises.
96. Through the fraudulent actions of Youmi Cho and K&C Beauty as set forth herein, Youmi Cho and K&C Beauty have benefited financially in that they have paid only \$310,000 towards the \$800,000 purchase price for the Business, and they aim to not pay a penny more. In fact, upon information and belief, Youmi Cho and K&C Beauty believe they are owed money by Kim Enterprises.
97. Allowing Youmi Cho and K&C Beauty to retain the Business without paying, at a minimum, the remaining \$490,000 owed, would be unjust and inequitable.
98. Kim Enterprises is entitled to recover, and Youmi Cho and K&C Beauty should disgorge, all said moneys or other benefits unjustly received by in an amount to be determined.

FIFTH CAUSE OF ACTION
Unjust Enrichment as to Youmi Cho and K&C Beauty

99. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
100. Kim Enterprises conveyed the Business to Youmi Cho and K&C Beauty on the condition Youmi Cho and K&C Beauty would pay for the Business according to the terms of the Agreement.
101. Youmi Cho and K&C Beauty received, accepted, and retained the Business from Kim Enterprises.
102. Youmi Cho and K&C Beauty financially benefited from the Business.
103. In that Youmi Cho and K&C Beauty have stopped paying for the Business, they are acting in contravention to Kim Enterprises' possessory interest in the Business.
104. Youmi Cho and K&C Beauty are in unlawful possession of the Business.
105. Allowing Youmi Cho and K&C Beauty to retain the benefits they received from Kim Enterprises, either directly or indirectly, would be unjust and inequitable.

106. Kim Enterprises is entitled to recover, and Youmi Cho and K&C Beauty should disgorge, all said moneys and other benefits unjustly received by Youmi Cho and K&C Beauty.

SIXTH CAUSE OF ACTION
Breach of Fiduciary Duty as to Sang Cho

107. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
108. Kim Enterprises, by employing Sang Cho as the manager of the Broad River Store for numerous years and entrusting him to manage the Broad River Store and its operations, placed a special trust and confidence within him, and as a result, Sang Cho owed Kim Enterprises fiduciary duties of good faith, loyalty, and full disclosure. These fiduciary duties continued after Sang Cho left Kim Enterprises' employment.
109. Sang Cho breached his ongoing fiduciary duties of good faith, loyalty, and full disclosure to Kim Enterprises by, among other things: Making false statements, under oath and subject to penalty of perjury, as to the operations of Kim Enterprises for the purpose of assisting Youmi Cho and K&C Beauty's fraudulent actions to undermine the Agreement and convert the Business from Kim Enterprises.
110. Kim Enterprises has been damaged as a result of Sang Cho's breaches of fiduciary duties and is entitled to actual and punitive damages in an amount to be determined by a jury.

SEVENTH CAUSE OF ACTION
Aiding and Abetting Breach of Fiduciary Duties as to Youmi Cho and K&C Beauty

111. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
112. Kim Enterprises, by employing Sang Cho as the manager of the Broad River Store for numerous years and entrusting him to manage the Broad River Store and its operations, placed a special trust and confidence within him, and as a result, Sang Cho owed Kim Enterprises fiduciary duties of good faith, loyalty, and full disclosure. These fiduciary duties continued after Sang Cho left Kim Enterprises' employment.
113. Youmi Cho and K&C Beauty had actual knowledge of Sang Cho's employment with Kim Enterprises and the fiduciary duties he owed to Kim Enterprises during his employment and after he left its employ to work for K&C Beauty.
114. Youmi Cho and K&C Beauty aided and abetted Sang Cho's breach of his fiduciary duties by, among other things, buying his loyalty through money and other financial

gifts to induce his false statements, which were made under oath and subject to penalties for perjury, as to the operations of Kim Enterprises for the purpose of assisting Youmi Cho and K&C Beauty's fraudulent actions pertaining to the use of the Fraudulent Purchase Agreement, and other efforts, to undermine the Agreement.

115. Kim Enterprises has been damaged as a result of Youmi Cho and K&C Beauty's aiding and abetting Sang Cho's breach of fiduciary duties to Kim Enterprises.
116. Kim Enterprises is entitled to actual and punitive damages from Youmi Cho and K&C Beauty in an amount to be determined.

EIGHTH CAUSE OF ACTION
Civil Conspiracy as to Youmi Cho and Sang Cho

117. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
118. Youmi Cho and Sang Cho, in their roles as siblings and close confidants, entered into an agreement and/or common scheme to perpetuate Youmi Cho and K&C Beauty's fraudulent actions pertaining to Youmi Cho's attempts and efforts to state the sales price of the business was \$250,000 and not \$800,000.
119. Kim Enterprises has been damaged by the agreement and/or common scheme of Youmi Cho and Sang Cho as described above.
120. Kim Enterprises is entitled to actual and punitive damages from Youmi Cho and Sang Cho in an amount to be determined.

NINTH CAUSE OF ACTION
Tortious Interference with Contractual Relations as to Sang Cho

121. Kim Enterprises realleges each and every allegation set forth above as if repeated verbatim herein.
122. Kim Enterprises was a party to the Agreement with Youmi Cho and K&C Beauty.
123. Sang Cho had knowledge of the Agreement.
124. Sang Cho intentionally interfered with and procured the breach of the Agreement, by, among other things, making statements, some of which were under oath and subject to the penalty of perjury, that were false and designed to perpetuate the falsehood of Youmi Cho and K&C Beauty that Kim Enterprises agreed to sell the Business to Youmi Cho and K&C Beauty for \$250,000.

125. Sang Cho had no legal justification for interfering with and producing the breach of the Agreement.
126. The conduct of Sang Cho in interfering with the Agreement was committed with an improper purpose and by improper methods.
127. As a direct and proximate result of the tortious interference of Sang Cho, Kim Enterprises has suffered and will continue to suffer actual damages, and Kim Enterprises is entitled to recover actual and punitive damages in an amount to be determined.

WHEREFORE, Kim Enterprises prays for the relief requested in this Complaint and such further relief as the Court deems appropriate.

BELSER LAW FIRM, PA

s/ Creston W. Brown
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Attorneys for Plaintiff Kim Enterprises

September 12, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Kim Enterprises, LLC,	)	Civil Action No. 2021-CP-40-05596
	)	
Plaintiff	)	
	)	
vs.	)	
	)	DEFENDANTS' ANSWER TO FIRST
Youmi Cho, K&C Beauty LLC, and	)	AMENDED COMPLAINT AND
Sang Cho,	)	COUNTERCLAIMS
	)	(Jury Trial Demanded)
	)	
Defendants	)	
	)	
and	)	
	)	
Youmi Cho and K&C Beauty LLC,	)	
	)	
Counterclaim Plaintiffs	)	
	)	
vs.	)	
	)	
Kim Enterprises, LLC, Tok Kim	)	
	)	
Counterclaim Defendants.	)	
	)	
	)	

Defendants Youmi Cho, K&C Beauty, LLC ("K&C Beauty"), and Sang Cho herein respond collectively as "Defendants" to the Amended Complaint filed against them and Youmi and K&C Beauty assert counterclaims against Kim Enterprises, LLC and Tok Kim. All allegations made by the Plaintiff that are not expressly admitted, qualified, or explained are denied.

FOR A FIRST DEFENSE

1. The allegations of Paragraphs 1-5 are admitted.

2. The allegations of Paragraph 6 are denied.
3. The allegations of Paragraph 7 are admitted only to the extent that Tok Kim is alleged to have managed and operated the business owned by Kim Enterprises, LLC.
4. Youmi Cho and K&C Beauty deny the allegations of Paragraphs 8-10 as written, demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraphs 8-10.
5. Defendants deny the allegations of Paragraphs 11-19 as written, demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith.
6. Youmi Cho and K&C Beauty admit only so much of Paragraph 20 as it alleges that Youmi Cho gave Plaintiff 36 pre-signed, undated checks. Youmi Cho and K&C Beauty deny that such checks were given pursuant to an agreement to purchase the beauty supply store at 3315 Broad River Road, Suite 90 (the "Beauty Store"), and deny that such checks were given at the time the parties entered into the business asset purchase agreement. These checks were only given to Plaintiff under duress and extreme emotional pressure and a pursuant to a threat that Youmi Cho and K&C Beauty had no other choice but to provide such checks to Plaintiff and in response to Tok Kim claiming that it was a good faith gesture to conduct business in the United States and as a showing of good faith for the future transfer of Plaintiff's other beauty supply stores. Plaintiff and Tok Kim used his longer tenure as resident in the United States and longer business experience to pressure Youmi Cho and K&C Beauty into providing such checks. All other allegations of Paragraph 20 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 20.

7. Youmi Cho and K&C Beauty admit only so much of Paragraph 21 as states that Youmi Cho and K&C Beauty wrote a \$250,000.00 check to Plaintiff for purchase of the Beauty Store and that Plaintiff deposited such check. All other allegations of Paragraph 21 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 21.
8. Youmi Cho and K&C Beauty admit only so much of Paragraph 22 as states that Kim Enterprises and Tok Kim returned three pre-signed checks to Youmi Cho and K&C Beauty in exchange for cash. All other allegations of Paragraph 22 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 22.
9. Youmi Cho and K&C Beauty admit only so much of Paragraph 23 as states that Kim Enterprises and Tok Kim deposited a pre-signed check on or about August of 2021. All other allegations of Paragraph 23 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 23.
10. Youmi Cho and K&C Beauty admit only so much of Paragraphs 24 and 25 as states that Youmi Cho and K&C Beauty put a stop payment on the pre-signed checks on or about September of 2021 and demanded that all remaining checks be returned but Tok Kim refused. All other allegations of Paragraphs 24 and 25 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraphs 24 and 25.
11. Youmi Cho and K&C Beauty admit only so much of Paragraph 26 as states that Youmi Cho and K&C Beauty placed a stop payment on the pre-signed checks on or about September of 2021 and that Youmi Cho and K&C Beauty agreed to purchase the Business for \$250,000.00. All other allegations of Paragraph 26 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 26.

12. Defendants lack sufficient information to admit or deny the allegations of Paragraphs 27 and 28.
13. Youmi Cho and K&C Beauty deny the allegations of Paragraph 29. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 29.
14. Youmi Cho and K&C Beauty deny the allegations of Paragraph 30 as written, demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 30.
15. Youmi Cho and K&C Beauty admit only so much of Paragraphs 31 and 32 as state that Youmi Cho and K&C Beauty entered into a Business Asset Purchase Agreement (“Purchase Agreement”) with Kim Enterprises and Tok Kim for the sale of the Beauty Store for \$250,000.00 and that Tok Kim signed the Purchase Agreement on behalf of Kim Enterprises. All other allegations of Paragraphs 31 and 32 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraphs 31 and 32.
16. Youmi Cho and K&C Beauty admit only so much of Paragraph 33 as states that the Purchase Agreement was provided by Andy Kim, the lawyer who assisted Youmi Cho with her immigration paperwork. All other allegations of Paragraph 33 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 33.
17. Youmi Cho and K&C Beauty admit only so much of Paragraph 34 as states that Youmi Cho and K&C Beauty do not currently have the original signed copy of the Purchase Agreement in their possession, custody, or control. All other allegations of Paragraph 34 are denied. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 34.

18. Paragraphs 35-42 call for legal conclusions and therefore, no response is required. To the extent that a response is required, Defendants deny the allegations of Paragraphs 35-42 and demand proof thereof.
19. Youmi Cho denies the allegations of Paragraphs 43 and 44. Paragraphs 43 and 44 are not directed at K&C Beauty and Sang Cho so no response is required. To the extent a response is required, K&C Beauty and Sang Cho deny the same.
20. Youmi Cho and K&C Beauty admit only so much of Paragraph 45 as states that Youmi Cho and K&C Beauty placed a stop payment on the pre-paid checks on or about September of 2021. Defendants lack sufficient information to admit or deny the allegations regarding Andy Kim's communication with Tok Kim or Andy Kim's personal knowledge. All other allegations of Paragraph 45 are denied and Defendants demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith.
21. Defendants deny the allegations of Paragraphs 46-47, including all subparagraphs, as written, demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith.
22. Defendants deny the allegations of Paragraphs 48-53, including all subparagraphs, demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith.
23. The allegations of Paragraphs 54-55 are denied.
24. Youmi Cho and K&C Beauty deny the allegations of Paragraphs 56-63 as written, demand specific proof thereof, crave reference to discovery that has already been conducted in this

- case, and deny any allegations inconsistent therewith. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraphs 56-63.
25. Defendants admit only so much of Paragraph 64 as states that Sang Cho worked at the Beauty Store before Youmi Cho and K&C Beauty purchased the business. All other allegations of Paragraph 64 are denied and Defendants demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith.
 26. Defendants admit only so much of Paragraph 65 as states that Sang Cho transitioned from being an employee of Kim Enterprises to an employee of K&C Beauty. All other allegations of Paragraph 65 are denied.
 27. Youmi Cho and K&C Beauty deny the allegations of Paragraph 66. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraph 66.
 28. Youmi Cho and K&C Beauty deny the allegations of Paragraphs 67-71 as written, demand specific proof thereof, crave reference to discovery that has already been conducted in this case, and deny any allegations inconsistent therewith. Defendant Sang Cho lacks sufficient information to admit or deny the allegations of Paragraphs 67-71.
 29. Paragraph 72 is an administrative Paragraph to which no response is required.
 30. The allegations of Paragraphs 73-78 are denied.
 31. Paragraph 79 is an administrative Paragraph to which no response is required.
 32. The allegations of Paragraphs 80-84 are denied.
 33. Paragraph 85 is an administrative Paragraph to which no response is required.
 34. The allegations of Paragraphs 86-90 are denied.
 35. Paragraph 91 is an administrative Paragraph to which no response is required.

- 36. The allegations of Paragraphs 92-98 are denied.
- 37. Paragraph 99 is an administrative Paragraph to which no response is required.
- 38. The allegations of Paragraphs 100-106 are denied.
- 39. Paragraph 107 is an administrative Paragraph to which no response is required.
- 40. The allegations of Paragraphs 108-110 are denied.
- 41. Paragraph 111 is an administrative Paragraph to which no response is required.
- 42. The allegations of Paragraphs 112-116 are denied.
- 43. Paragraph 117 is an administrative Paragraph to which no response is required.
- 44. The allegations of Paragraphs 118-120 are denied.
- 45. Paragraph 121 is an administrative Paragraph to which no response is required.
- 46. The allegations of Paragraphs 122-127 are denied.

**FOR A SECOND DEFENSE
(Merger and Parol Evidence)**

- 47. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
- 48. Plaintiff's claims are barred, in whole or in part, by application of the merger doctrine and the parol evidence rule.

**FOR A THIRD DEFENSE
(Duress)**

- 49. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
- 50. Plaintiff's claims are barred, in whole or in part, by the defense of duress.

**FOR A FOURTH DEFENSE
(Undue Influence)**

- 51. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
- 52. Plaintiff's claims are barred, in whole or in part, by the defense of undue influence.

**FOR A FIFTH DEFENSE
(Unconscionability)**

53. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
54. Plaintiff's claims are barred, in whole or in part, by the defense of unconscionability.

**FOR A SIXTH DEFENSE
(Failure to state a claim)**

55. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
56. Plaintiff's claims are barred, in whole or in part, because the complaint fails to state a claim or cause of action against Defendants.

**FOR A SEVENTH DEFENSE
(Lack of Consideration)**

57. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
58. Plaintiff's claim that the thirty-six checks formed a valid contract fails for lack of consideration.

**FOR AN EIGHTH DEFENSE
(Full Performance)**

59. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
60. Plaintiff's claims fail because Defendants fully performed their obligations under the Purchase Agreement.

**FOR AN NINTH DEFENSE
(Statute of Frauds)**

61. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
62. Plaintiff's claims are barred by the Statute of Frauds.

**FOR AN TENTH DEFENSE
(Legal Duty)**

63. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.

64. Sang Cho owed no legal duty as a matter of law to the Plaintiff.

**FOR AN ELEVENTH DEFENSE
(Proximate Cause)**

65. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.

66. Plaintiff's claims are barred due to the lack of proximate cause between Plaintiff's alleged damages and the alleged actions of Defendants.

**FOR A TWELFTH DEFENSE
(Unclean Hands)**

67. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.

68. The equitable relief requested by Plaintiff should be denied because Plaintiff does not come to court with clean hands.

**FOR A THIRTEENTH DEFENSE
(Waiver)**

69. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.

70. Plaintiff's claims are barred by the doctrine of Waiver.

**FOR A FOURTEENTH DEFENSE
(Reliance on Additional Defenses)**

71. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.

72. Defendants hereby give notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend their Answer to assert any such defenses.

**AS A FIFTEENTH DEFENSE
AND BY WAY OF COUNTERCLAIMS**

73. K&C Beauty, LLC ("K&C Beauty") is an entity organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

- 74. Youmi Cho is a resident of Richland County, South Carolina.
- 75. Upon information and belief, Tok Kim is a resident of Richland County, South Carolina, and an owner of Kim Enterprises, LLC.
- 76. Kim Enterprises, LLC (“Kim Enterprises”) is an entity organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
- 77. For the reasons set forth above and as alleged in more detail below, jurisdiction and venue are proper.

FACTUAL BACKGROUND

- 78. K&C Beauty was organized as a South Carolina limited liability company on or about November 20, 2020.
- 79. Youmi Cho is a member of K&C Beauty.
- 80. K&C Beauty was formed by Youmi Cho for the purpose of purchasing the “Kim Enterprises Beauty Supply” store located at 3315 Broad River Road, Columbia, South Carolina (“Beauty Store”) from Kim Enterprises and Tok Kim.
- 81. Upon information and belief, Kim Enterprises is owned by Tok Kim, who is also Youmi Cho’s uncle.
- 82. Kim Enterprises and K&C Beauty entered into a Business Asset Purchase Agreement effective November 24, 2020 (“Purchase Agreement”). Attached as **Exhibit 1**.
- 83. Pursuant to the Purchase Agreement, Kim Enterprises agreed to sell its business assets and goodwill to K&C Beauty for the purchase price of \$250,000. Ex. 1, ¶ 2.
- 84. Kim Enterprises and K&C Beauty agreed that the transaction was to close on or before December 15, 2020, and possession “shall be given to Buyer at closing date.” Ex. 1, ¶ 3(b).

85. The \$250,000 purchase price was allocated among Goodwill (\$50,000) and Tangible Assets (\$200,000). Ex. 1, ¶ 5.
86. Kim Enterprises gave a warrant and representation that the Purchase Agreement “constitutes a valid and binding Agreement of the Seller in accordance with its terms.” Ex. 1, ¶ 6(a).
87. Concerning the allocation of income and expenses, Kim Enterprises and K&C Beauty agreed that income and expenses up to the day before the closing date would be for the account of the Kim Enterprises, while all income and expenses following the closing date would be for the account of K&C Beauty. Ex. 1, ¶ 10.
88. Kim Enterprises agreed to remain involved in the operations of the Beauty Store solely to provide training to K&C Beauty for three months, or through March 2021. Ex. 1, ¶ 17(d).
89. The parties to the Purchase Agreement agreed that the agreement “may not be amended or modified in any respect, except by an instrument in writing executed by both Seller and Buyer.” Ex. 1, ¶ 21(b).
90. The Purchase Agreement was signed by Youmi Cho on behalf of K&C Beauty LLC and Tok Kim on behalf of Kim Enterprises LLC. Ex 1, at 8. K&C Beauty provided a \$250,000 cashier’s check dated December 1, 2020 to Tok Kim for the purchase of the Beauty Store. **Attached as Exhibit 2.** Tok Kim accepted the check as the purchase price for the Beauty Store.
91. Upon making payment to Kim Enterprises, K&C Beauty assumed responsibility for restocking the Beauty Store and operations.
92. Kim Enterprises and Tok Kim assigned their lease on the Beauty Store to K&C Beauty & Youmi Cho on December 9, 2020, and the Landlord executed a Consent to Assignment on January 12, 2021. Attached as **Exhibit 3.**

93. Kim Enterprises and Tok Kim did not immediately turn over operations to K&C Beauty as required by the Purchase Agreement. Instead, Kim Enterprises and Tok Kim continued running operations until March 2021 and retained revenues and profits generated by the Beauty Store from December 2020 through March 7, 2021, but did not restock inventory. Kim Enterprises and Tok Kim did not provide operations training as required by the Purchase Agreement.
94. Upon assuming control of operations, K&C Beauty discovered that much of the inventory was not saleable due to being more than ten years old. This amounted to a significant portion, up to half, of the inventory paid for. K&C Beauty incurred substantial expense in disposing of unsaleable products.
95. After performance of the Purchase Agreement, Tok Kim began demanding that K&C Beauty and Youmi Cho pay him an additional \$550,000 under the guise of needing a good-faith business gesture to conduct business in the United States and as a showing of good faith for the future transfer of Plaintiff's other beauty supply stores. Kim Enterprises and Tok Kim also continued holding cash and credit card receipts belonging to K&C Beauty, and they failed to provide training as required by the Purchase Agreement. Tok Kim also applied pressure to family members of Ms. Cho for her to pay more than was agree upon. Upon information and belief, these acts were part of Kim Enterprises's and Tok Kim's plan and design to pressure K&C Beauty and Youmi Cho into paying more than was agreed to in the Purchase Agreement for the Beauty Store and were not a genuine offer as related to future transfer of the other beauty supply stores.
96. Following full performance of the Purchase Agreement, Tok Kim continued to pressure Youmi Cho to pay more for the Beauty Store than agreed to and coerced her into providing

36 checks in the amount of \$15,000 each as a supposed good faith business gesture and in hopes of a future transaction for Tok Kim's other stores. Tok Kim coerced such actions from Youmi Cho by, for instance, threatening to jeopardize her immigration status. Youmi Cho reluctantly provided these checks to Tok Kim under duress and undue influence.

97. Tok Kim exchanged three of these checks for cash from Youmi Cho and K&C Beauty. Tok Kim cashed a fourth check. All totaled, Tok Kim and Kim Enterprises received \$60,000 from four checks written by Youmi Cho. Neither Tok Kim nor Kim Enterprises gave anything of value to Youmi Cho or K&C Beauty in exchange for these checks.

**FOR A FIRST COUNTERCLAIM
(BREACH OF CONTRACT)**

98. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
99. Kim Enterprises and K&C Beauty entered into a Purchase Agreement effective November 24, 2020.
100. The Purchase Agreement provided, inter alia, that Kim Enterprises would transfer \$200,000 worth of inventory to K&C Beauty; Tok Kim would provide training to Youmi Cho; and that K&C Beauty would assume operation and earn all such receipts from the date of purchase, which was December 1, 2020.
101. Kim Enterprises has breached the Purchase Agreement by providing inventory that was outdated, unsaleable, and of insufficient quality such that a substantial portion had to be disposed of at K&C Beauty's expense.
102. Kim Enterprises further breached the Purchase Agreement by failing to provide training to K&C Beauty and Youmi Cho.

103. Kim Enterprises also breached the Purchase Agreement by keeping Beauty Store revenues and profits from December 2020 through March 7, 2021. Such profits belonged to K&C Beauty.

104. K&C Beauty and Youmi Cho are entitled to an award of actual and compensatory damages from Kim Enterprises, as well as pre-judgment interest.

**FOR A SECOND COUNTERCLAIM
(CONVERSION)**

105. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.

106. Kim Enterprises and Tok Kim have retained possession and control of Beauty Store income and profits from December 2020 to March 7, 2021. All such receipts belonged to K&C Beauty pursuant to the Purchase Agreement. Kim Enterprises and Tok Kim remain in possession of such receipts to the exclusion of K&C Beauty.

107. Even where such receipts were by credit card, all such credit card receipts should have been remitted to K&C Beauty during the period of which it was establishing credit card services. Instead, Kim Enterprises & Tok Kim converted such income for their own use. K&C Beauty never gave permission to Kim Enterprises or Tok Kim to permanently retain such credit card receipts.

108. Kim Enterprises' and Tok Kim's conversion of K&C Beauty's assets was reckless and with conscious indifference to the rights of K&C Beauty.

109. Kim Enterprises' and Tok Kim's conversion of K&C Beauty's assets injured K&C Beauty and appropriate damages should be awarded.

**FOR A THIRD COUNTERCLAIM
(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT)**

110. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.

111. K&C Beauty and Kim Enterprises entered into a Purchase Agreement for \$250,000 for K&C Beauty to purchase the Beauty Store.
112. K&C Beauty paid Kim Enterprises \$250,000 on or about December 1, 2020, and Kim Enterprises accepted such payment as full performance of the Purchase Agreement.
113. Following payment of the purchase price, all Beauty Store receipts were to belong to K&C Beauty.
114. Following payment of the purchase price, Kim Enterprises was to provide training to K&C Beauty and Youmi Cho.
115. Kim Enterprises breached the Purchase Agreement by retaining sales and income after the Beauty Store had transferred ownership to K&C Beauty and by not providing training.
116. Kim Enterprises' and Tok Kim's withholding of sales and income, refusing to provide training, along with their pressure campaign on Youmi Cho to pay additional sums for the Beauty Store evidence a fraudulent intent and fraudulent act related to the breach of contract.
117. Kim Enterprises' and Tok Kim's actions were reckless, willful, or wanton and support an award of punitive damages.
118. K&C Beauty and Youmi Cho are entitled to an award of actual and compensatory damages from Kim Enterprises, as well as pre-judgment interest and punitive damages.

**FOR A FOURTH COUNTERCLAIM
(MONEY HAD AND RECEIVED)**

119. Defendants reallege each and every allegation set forth above as if repeated verbatim herein.
120. After the sale of the Beauty Store, Kim Enterprises and Tok Kim informed Youmi Cho that she needed to provide thirty-six pre-signed checks to Tok Kim as a showing of good faith to do business in the United States and as good faith for future transfer of Tok Kim's other stores to Youmi Cho.

121. Tok Kim exerted great pressure on Youmi Cho and coerced her into providing him these thirty-six pre-signed checks.
122. Tok Kim presented three of these checks back to Youmi Cho for cash, which Ms. Cho gave Tok Kim, and Tok Kim cashed a fourth check.
123. All totaled, Tok Kim took possession of \$60,000 of Youmi Cho's money.
124. Tok Kim gave no consideration for this money and Youmi Cho received nothing of value for this \$60,000 given to Tok Kim and Kim Enterprises.
125. This \$60,000 in equity and good conscience belongs to Youmi Cho and should not, in equity and good conscience, be retained by Tok Kim and Kim Enterprises.
126. K&C Beauty and Youmi Cho are entitled to receive these funds back from Tok Kim and Kim Enterprises.
127. K&C Beauty and Youmi Cho are entitled to receive pre-judgment interest on these amounts.

PRAYER FOR RELIEF

WHEREFORE, the Counterclaim Plaintiffs respectfully pray for relief and judgment as follows:

- A. Declaring Kim Enterprises breached the Purchase Agreement and awarding damages.
- B. Declaring Kim Enterprises and Tok Kim converted K&C Beauty's assets and awarding damages, interest and punitive damages on the conversion claim.
- C. Declaring Kim Enterprises breached of the Purchase Agreement was accompanied by a fraudulent act and warrants an award of punitive damages.

- D. Declaring Tok Kim and Kim Enterprises holds K&C Beauty and Youmi Cho's money and in equity and good conscience should return this money and awarding pre-judgment interest on these funds.
- E. Award Counterclaim Plaintiffs their attorneys' fees, costs, and expenses incurred in bringing this action.
- F. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ David L. Paavola

David L. Paavola (Bar No. 100714)

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Counsel for Defendants K&C Beauty LLC, Youmi Cho, and Sang Cho

Columbia, South Carolina
October 2, 2023

BUSINESS ASSET PURCHASE AGREEMENT

Agreement made and effective this 24th of November, 2020 by and between Kim Enterprises LLC ("Seller") and K&C Beauty LLC ("Buyer").

Recitals:

- A. Seller owns and operates "Kim Enterprises Beauty Supply", A beauty supply retail business ("Business"), and is the owner of all of its assets, including, but not limited to, its trade name, Intellectual property, copyrights, contract rights, transferable franchise, telephone numbers, email address and other miscellaneous assets used in connection with the operation of the Business.
- B. Buyer desires to purchase, and the Seller desires to sell the Business to Buyer on the terms and conditions described below.

Now, Therefore, in consideration of the mutual covenants and conditions exchanged herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Sale of Business Assets.** Seller agrees to sell, and Buyer agrees to purchase, all of Seller's right, title and ownership interest in and to all of the assets of the Business, including its titles, trade names, trademarks, copyrights (including all work for hire), and other intellectual property rights (including but not limited to website and domain name), goodwill, and customer lists, transferable licenses, telephone numbers, email addresses, inventory, real & personal property leases and all other assets and property used in connection with the Business.
 - a. **Excluded Assets.** Excluded from this sale and purchase are the Seller's accounts receivable or generated, and prepaid insurance prior to the closing.
 - b. **Work in Progress.** All work in progress shall be prorated to the date of closing.
2. **Purchase Price and Terms.** The purchase price for the Business Assets is Two Hundred Fifty Thousand No/100 Dollars (\$250,000.00) (the "Purchase Price"). The Purchase Price shall be payable on or before the Closing Date (defined below in paragraph a, below) In the following manner:
3. Buyer shall execute and deliver to Seller on or before December 15, 2020, cash payable to Seller in the principal amount of Two Hundred Fifty Thousand No/100 Dollars (\$250,000.00).
 - a. This Agreement shall become effective as a contract when signed by Buyer and Seller.
 - b. This transaction shall close on or before December 15, 2020 and possession shall be given to Buyer at closing date. Closing shall occur sooner if all conditions

precedent is satisfied. Time is of the essence. However, Buyer may extend the closing date by additional thirty (30) days for reasonable cause.

4. **Business Records.** Buyer or Buyer's counsel, accountant or other designated representative shall be given access to Seller's original books, records, Account Edge books, lease agreements and last two (2) year financials including depreciation 1020 forms, 1099 forms on all employees, and FICA returns, and such information shall be kept strictly confidential for a minimum of three (3) years. Seller represents that the books and records are those maintained in the ordinary course of business. Said records are used in the computation of Federal tax returns. If upon examination of said records Buyer discovers any conditions or information unsatisfactory to Buyer, Buyer may, upon written notice of said information, cancel or amend this Agreement. If this notice is not given before December 15, 2020 then the books and records shall be deemed to be acceptable to Buyer.

5. **Allocation of Purchase Price.**

- a. The Purchase Price shall be allocated at Closing in the following manner:

i. Good will	\$ 50,000.00
ii. Tangible Assets	<u>\$200,000.00</u>
Total:	\$250,000.00

- b. All assets as set forth in paragraph 1 and paragraph 4, above, are sold "as is" without warranty, except that they shall be in working order at the time of a walk-through inspection held One (1) days prior to closing or sooner.

5. Buyer agreed to hold seller harmless from any and all liability during the training and due diligent period

6. **Representations of Seller.** Seller hereby warrants, represents and covenants as follows:

- a. This Agreement constitutes a valid and binding Agreement of the Seller in accordance with its terms.
- b. Seller has good and marketable title to the Business and its assets sold and conveyed to Buyer. Seller has full right to sell the Business and its said assets to Buyer and has not entered into any other contract of sale or other transfer or encumbrance relating to the sale of the Business or any of its assets.
- c. The assets sold hereunder shall be transferred by a Bill of Sale, with full warranties of title, together with such other assignments, bills of sale, or instruments of conveyance, certificates, acknowledgments, and other documents as reasonably may be requested by the Buyer to consummate this Agreement and the transactions contemplated hereby, including, if required, any necessary consent of third parties.
- d. Seller has conducted the Business in compliance with applicable laws, rules and regulations of the municipal, borough, state and federal governments and has paid all license or other fees required to be paid to engage in the Business.

- e. There are no claims, liens, encumbrances, or security interests affecting or encumbering the Business or its assets sold and conveyed to Buyer, and Seller is not a party to, nor threatened with, any suit, action, arbitration, administrative or other proceeding in any way relating to the Business or any of its assets sold hereunder.
 - f. All federal, state, borough, and municipal tax returns and reports (including without limitation all income tax, social security, payroll, unemployment compensation, sales and use, excise, privilege, property, ad valorem, franchise, license, and school) required to be filed by the Seller as of the Closing Date have been filed with the appropriate governmental agencies by Seller.
 - g. There are no accounts payable, contract claims, warranty claims, franchise fees or any other liabilities of the Business of any kind requiring performance by Buyer.
- 7. Representations of Buyer.** Buyer warrants and represents as follows:
- a. This Agreement constitutes a valid and binding Agreement of the Buyer in accordance with its terms.
 - b. Buyer agreed to hold harmless to seller if buyer gets injury during the due diligent period and training.
- 8. Representations and Warranties True at Closing.** All representations and warranties of the parties set forth in this Agreement are true and correct as of the Closing Date, as if made on that date, and shall survive the closing of this transaction. If, prior to the Closing Date, either party shall discover that there exists or has occurred any condition which would make untrue any representation or warranty herein made by such party, the party so discovering shall provide prompt notice of the existence or occurrence of such condition to the other party; provided, however, that giving of such notice shall not relieve the party discovering the existence or occurrence of such condition of its obligations hereunder.
- 9. Closing.** Closing of this transaction shall take place no later than December 15, 2020 unless extended by licensees (the "Closing Date"). Closing would take place at
- 10. Accounting Adjustments.**
The operation of the Business and related income and expenses up to the close of business on the day before the Closing Date shall be for the account of the Seller and thereafter for the account of the Buyer. Settlement of any items of expense or income which become apparent only after the Closing Date shall be made by the parties, in good faith, on an on-going basis after the Closing Date. Accounts Payable and accounts receivable shall be reconciled to the date of closing.
- 11. Closing Costs and Transaction Expenses.**

- a. Each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and any other contemplated transaction documents, including all fees and expenses of agents, representatives, counsel, and accountants.
- b. Buyer will pay one-half and Sellers will pay one-half of any recording, escrow or filing fees required to close this transaction.
- c. Seller shall pay pro rata any business related taxes for the tax year of 2020 (or any previous) tax year and up to the closing date and Buyer shall pay all such taxes prorated for the tax year of 2020, and thereafter.
- d. Monthly rent, as well as telephone and internet service shall be pro-rated between buyer and seller to the date of closing.

12. Indemnification.

- a. **Seller's Indemnity.** Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, demands, actions, damages, debts, obligations or liabilities and reasonable attorneys' fees and court costs related thereto, incurred, arising out of, and/or related to the conduct or operations of the Business and/or the ownership of its assets prior to the Closing Date.
- b. **Buyer's Indemnity.** Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, demands, actions, damages, debts, obligations or liabilities and reasonable attorneys' fees and court costs related thereto, incurred, arising out of, and/or related to the operations of the Business and/or the ownership of its assets after the Closing Date.

13. **Notices.** All notices, requests, demands and other communications required or permitted hereunder shall be in writing, and shall be deemed duly given if delivered personally or sent by registered mail (with adequate postage prepaid) to the address set forth below with respect of each party or at such other address as such party designates in writing:

Seller:

Tok C. Kim
84 Cannonade Court
Irmo, South Carolina 29063

Buyer:

Youmi Cho
247 Nobility Dr.
Columbus, South Carolina 29210

14. **Time is of the Essence.** Time is of the essence of this transaction.

15. **Conditions Precedent.** The following matters concerning conditions precedent apply to this Agreement:

- a. All obligations of either party are expressly conditioned upon and subject to the other party's performance, observance and completion of each and every term and condition required to be performed, observed or completed by said party in this Agreement.
- b. All obligations of either party are expressly conditioned upon the absence of any action or proceeding under the federal bankruptcy laws or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof, which shall be instituted or threatened by the other party prior to the Closing Date.

16. Disclosure of Representation. The parties consent to, acknowledge, and mutually represent as follows:

- a. That this Agreement, and its attached exhibits and other documents prepared for the purpose of closing this transaction, are the result of arm's-length negotiations between the parties hereto.
- b. That each party hereto has been advised to seek independent legal and tax counsel and has been represented by such independent and legal tax counsel to the fullest extent desired by each party.
- c. That the parties and their respective legal and tax counsel have each had an opportunity to review this instrument, and its attached exhibits and other documents prepared for the purpose of closing this transaction, and are fully analyzed of the tax and legal consequences of closing this transaction in accordance with the terms and conditions herein agreed upon.
- d. By reason of the foregoing, any rule of construction that an instrument should be construed strictly against the draftsman thereof shall not apply in any construction of this Agreement, nor of any instrument attached as an exhibit hereto, or otherwise executed by the parties in connection with a closing of this transaction.

17. Other Instruments; Cooperation.

- a. **Instruments.** The parties each agrees to execute and deliver such further and additional documentation as may be necessary or appropriate to carry out the transactions contemplated by this Agreement, and any such documentation shall be in a form and of content mutually approved by the parties.
- b. **Cooperation.** The parties shall each use their best efforts to cause the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof. Seller and Buyer specifically agree to fully cooperate in taking all reasonable actions necessary to obtain all consents from any federal, state or local governmental entities, to obtain all consents, approvals and

authorizations from other persons and to affect all filings, applications, registrations and notifications that the parties hereto deem necessary or desirable to consummate the transactions contemplated hereby.

- c. **Access to Premises and Information.** At reasonable times prior to the Closing Date, the Seller will provide the Buyer and his representatives with reasonable access during business hours to the assets, titles, contracts, and records of the Seller relating to the Business and furnish such additional information concerning the Business as the Buyer from time to time may reasonably request, provided that Buyer shall have executed a Confidentiality Agreement in the form provided by Seller.
 - d. **Post-Closing Assistance.** Seller agrees to provide training to the Buyer after the closing for a period of 3 months.
 - e. **Employees.** Seller shall conduct the business in its ordinary course until closing. Seller warrants there are no employment contracts in effect and that all debts arising from the operation of the business shall be paid or provided for at closing.
18. **Mediation/Arbitration.** In the event of any dispute, claim or question arising under this Agreement, or related hereto, the matter shall first be submitted by the parties to non-binding mediation by mediation selected upon mutual agreement. If the parties either cannot agree upon a mediator or after selection of a mediator or after selection of a mediator cannot resolve their dispute with the assistance of the mediator, then the parties shall submit the matter to the American Arbitration Association (the "AAA") for arbitration in accordance with the rules of the AAA. The arbitration shall be conducted by a single arbitrator selected upon mutual agreement of the parties. This agreement to arbitrate shall in all respects be specifically enforceable by the courts of Alaska.
19. **Risk of Loss.** The risk of loss, damage, or destruction to any of the equipment, or other business personal property to be conveyed to the Buyer under this Agreement shall be borne by the Seller until the Closing Date, and thereafter by Buyer. In the event of such loss, damage, or destruction, the Seller, to the extent reasonable, shall replace the lost property or repair or cause to repair the damaged property to its condition prior to the damage. If replacement, repairs, or restorations are not completed prior to the Closing Date, then the purchase price shall be adjusted by an amount agreed upon by the Buyer and the Seller that will be required to complete the replacement, repair, or restoration following the Closing Date. If the Buyer and the Seller are unable to agree, then the Buyer, at its sole option and notwithstanding any other provision of this Agreement, upon notice to the Seller, may rescind this Agreement and declare it to be of no further force and effect, in which event there shall be no Closing of this Agreement and all the terms and provisions of this Agreement shall be deemed null and void.
20. **Termination.**
- a. This Agreement may be terminated prior to the Closing Date by written notice

given prior to the Closing Date: (i) by either Buyer or Seller if a material Breach of any provision of this Agreement has been committed by the other party and such Breach has not been waived; or (ii) by mutual consent of Buyer and Seller.

- b. Each party's right of termination under this section is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not constitute an election of remedies. If this Agreement is terminated pursuant to this paragraph, all further obligations of the parties under this Agreement will terminate; provided, however, that if this Agreement is terminated by a party because of the material breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

21. Miscellaneous.

- a. This Agreement shall be binding upon the Seller, their agents, transferees, heirs and assigns and Buyer, their agents, transferees, heirs and assigns, and other successors of each of them. Except as otherwise agreed herein, Buyer shall not assign his interest herein without the express written consent of Seller, which consent may be unreasonably withheld in Seller's sole and absolute discretion.
- b. This Agreement may not be amended or modified in any respect, except by an instrument in writing executed by both Seller and Buyer.
- c. This Agreement shall be construed in accordance with, and governed by, the laws of Alaska. Any action, suit or proceeding arising out of or relating to this Agreement shall be submitted to mediation/arbitration in Anchorage, Alaska, as provided herein, but if any action upon this Agreement shall be initiated in any court, it shall be initiated in the courts of Alaska, Third Judicial District, and each of the parties to this Agreement hereby irrevocably submits to the jurisdiction of any of such courts for the purpose of any such action, suit or proceeding.
- d. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Words used in this Agreement which import one gender shall apply to any gender when appropriate, and any words which import the singular or plural shall be applied to the other when appropriate.
- f. If any provision of this Agreement is prohibited or invalid under law in some part or under some circumstances, such provision shall be inoperative and all other provisions herein shall otherwise remain in full force and effect.

- g. All parties agree to hold all terms and conditions of this purchase and all information regarding the transfer of the business as confidential.

Entire Agreement. The parties hereto represent, acknowledge, and agree that in entering into this Agreement, or any other document executed in connection with a closing of this transaction, they have not relied upon any promises, representations, warranties, or statements of any kind or nature whatsoever, made by any party hereto, officer, director, or agent of said party or by any other person on behalf of said party, which is not expressly as set forth in this Agreement and the other documents executed in connection with a closing of this transaction. This Agreement and the other documents executed in connection with a closing of this transaction constitute the entire agreement between the parties hereto with respect to the subject matter.

In witness whereof, the parties (and personal guarantor) have executed this Agreement on the date first above written.



K&C Beauty LLC, Buyer
By: Youmi Cho, as authorized
Representative of Buyer
Position: President



Youmi Cho, Individually

✓ 

Kim Enterprises LLC, Seller
By: Tok C. Kim, as authorized
Representative of Seller
Position: President and Owner

BILL OF SALE

Kim Enterprises LLC, d/b/a Kim Enterprises Beauty Supply, a South Carolina corporation, hereinafter called "Seller," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by K&C Beauty LLC., a South Carolina corporation ("Buyer"), sells to Buyer substantially all of the assets, properties, rights and business of the Seller relating to or used or employed in connection with the Seller's business (the "Business") of Kim Enterprises Beauty Supply, a beauty supply retail store, subject to certain liabilities, upon the terms and conditions of this Agreement.

The exact detailed terms of the agreement are outlined in the Business Asset Purchase Agreement executed by both the Seller and the Buyer and to the extent those terms are more detailed or different from those in this Bill of Sale, the terms in the Business Asset Purchase Agreement are the master terms of this transaction. Further, Youmi Cho is personally responsible for the obligations, covenants and agreements of the Buyer as set forth in detail in the Business Asset Purchase Agreement executed by the parties.

Seller does, for itself, its administrators and assigns, covenant and agree with the Buyer and its assigns, that Seller has the present right to sell its interest in the above described property (as outlined in detail in the Business Asset Purchase Agreement). The Seller does hereby warrant the sale of said property to Buyer and its assigns against all and every person or persons whomsoever lawfully asserts a claim against said property.

IN WITNESS WHEREOF, the Seller and Buyer have hereunto set their hands and seals This 24th day of November, 2020.


 K&C Beauty LLC, Buyer
 By: Youmi Cho, as authorized
 Representative of Buyer
 Position: President


 Youmi Cho, Individually


 Kim Enterprises LLC, Seller
 By: Tok C. Kim, as authorized
 Representative of Seller
 Position: President and Owner

LANDLORD'S CONSENT TO ASSIGNMENT

3315 BROAD RIVER ROAD HOLDINGS, LLC, a Maryland limited liability company ("Landlord") ("Landlord"), and TOK CHIN KIM, an individual, d/b/a Kim Enterprises ("Tenant"), are parties to that certain Lease dated July 25, 2002, as amended by First Amendment to Lease dated August 25, 2005, Second Amendment to Lease dated January, 2006, Third Amendment to Lease dated August 1, 2010, Fourth Amendment to Lease dated March 16, 2015 and Fifth Amendment to Lease dated September 20, 2019 (collectively, the "Lease"), relating to Space 85 containing approximately 6,000 rentable square (the "Premises"), in the shopping center commonly known as Widewater Square, having a street address of 3315 Broad River Road, Columbia, South Carolina 29210 (the "Shopping Center"), all as more particularly described in the Lease. Tenant desires to assign the Lease to K&C BEAUTY LLC, a South Carolina limited liability company and YOUNI CHO, an individual, jointly and severally (referred to herein collectively as, the "Assignees" or individually as, "Assignee"), as more particularly described in the Assignment of Lease dated December 9, 2020 (the "Assignment"). Landlord hereby consents to the Assignment on the express condition that:

1. Assignees hereby expressly assume and agree to perform all of the covenants, duties and obligations of Tenant under the Lease with respect to the Premises, and each Assignee shall be jointly and severally liable therefor along with Tenant.
2. The Premises shall not be used for a usage different from the usage provided in the Lease.
3. Tenant will remain directly and primarily liable for the performance of all of the covenants, duties and obligations of Tenant under the Lease (including, without limitation, the obligation to pay all rental and other sums when and as provided to be paid), and Landlord shall be permitted to enforce the provisions of the Lease as they relate to the Premises against Tenant and/or Assignees (jointly or severally) and/or any future assignee, subtenant, concessionaire, licensee or other transferee without demand upon or proceeding in any way against any other person.
4. Landlord's consent to the assignment of the Premises to Assignees shall not be deemed a consent to any other or subsequent transaction.
5. Nothing contained in this letter agreement shall:
 - a. operate as a consent to or approval of or ratification by Landlord of any of the provisions of the Assignment or as a representation or warranty by Landlord, and Landlord shall not be bound or estopped in any way by the provisions of the Assignment; or
 - b. except as set forth in Section 7 below, be construed to modify, waive or affect (i) any of the provisions, covenants or conditions contained in the Lease, (ii) any of Tenant's obligations under the Lease, or (iii) any rights or remedies of Landlord under the Lease, or otherwise enlarge or increase Landlord's obligations or liabilities, or Tenant's rights, under the Lease or otherwise; or
 - c. be construed to waive any present or future breach or default on the part of Tenant under the Lease.

R-000102

EXHIBIT 3

6. In case of any conflict between the provisions of this Consent and the provisions of the Assignment, the provisions of this Consent shall govern.
7. The Lease is hereby amended as follows:
 - (a) to provide the following as Landlord's address for all purposes under the Lease:

c/o CWCapital Asset Management LLC
900 19th Street, NW, 8th Floor
Washington, DC 20006
Attention: Jeremy Zinn
 - (b) to provide that the liability of Landlord (and its partners, shareholders or members) to Assignees or Tenant (or any person or entity claiming by, through or under Assignees or Tenant) for any default by Landlord under the terms of the Lease (as amended by this Agreement) or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Shopping Center shall be limited to Assignees' or Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Shopping Center and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency.
8. Tenant hereby assigns to Assignees the Security Deposit under the Lease, which amount will continue to be held by Landlord as Assignees' Security Deposit under the Lease.
9. Tenant and Assignees each certify that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant and Assignees hereby agree to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
10. Landlord shall not be responsible for the payment of any brokerage commission or similar fee payable in connection with the assignment of the Lease, and Tenant and Assignees hereby agree to indemnify and hold Landlord harmless from and against any cost, liability or expense (including attorneys' fees and costs) related to such a claim.
11. This Consent may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed to be originals and together shall constitute one and the same instrument. The parties hereto consent and agree that this Consent may be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic

R-000103

record shall be valid and as effective to bind the parties so signing as a paper copy bearing such parties' handwritten signatures. The parties further consent and agree that (1) to the extent a party signs this Consent using electronic signature technology, by clicking "SIGN", such party is signing this Consent electronically, and (2) the electronic signatures appearing on this Consent shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

[Signature pages follow]

Executed as a sealed instrument this 12th day of January, 2021.

LANDLORD:

3315 BROAD RIVER ROAD HOLDINGS, LLC.,
a Maryland limited partnership

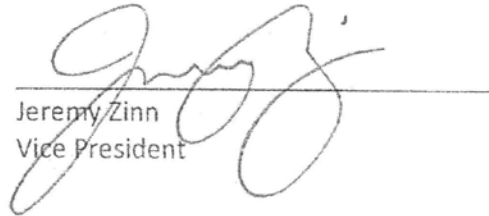
By: Deutsche Bank Trust Company Americas, as
Trustee, on behalf of the registered Holders of GS
Mortgage Securities Corporation II, Commercial
Mortgage Pass-Through Certificates, Series 2014-
GC22 (the "Trust"), sole member/manager

By: CWC Capital Asset Management LLC,
solely in its capacity as Special Servicer to the Trust

By: _____

Name: Jeremy Zinn

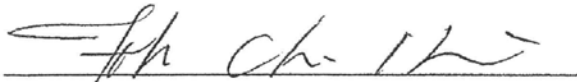
Title: Vice President



[Signatures continue on following page]

TENANT AND ASSIGNEES HEREBY AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS
CONSENT TO ASSIGNMENT BY THEIR SIGNATURES BELOW:

TENANT:



TOK CHIN KIM, d/b/a Kim Enterprises

Date: 12/18/21

ASSIGNEES:

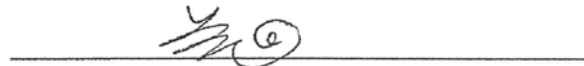
K&C BEAUTY LLC,
a South Carolina limited liability company

By: K&C Beauty LLC.

Name: Youmi cho

Title: president

Date: 1/18/21



YOUMI CHO

Date: 1/18/21

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) Civil Action No. 2021-CP-40-05596

Kim Enterprises, LLC,)
))
Plaintiff,)
))
v.)

Youmi Cho and K&C Beauty, LLC, and)
Sang Cho,)
))
Defendants.)

**DEFENDANTS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Youmi Cho and K&C Beauty, LLC,)
))
Third-Party Plaintiffs,)
))
v.)

Kim Enterprises, LLC, and Tok Kim,)
))
Third-Party)
Defendants.)

TO: FREEMAN BELSER, ESQ., AND CRESTON BROWN, ESQ., ATTORNEYS FOR PLAINTIFF

You will please take notice that on the 10th day after service hereof, or as soon thereafter as counsel can be heard before the Presiding Judge at the Richland County Courthouse, Defendants Youmi Cho, K&C Beauty, LLC, and Sang Cho (collectively "Defendants") will move before the Court for an Order granting partial summary judgment. This motion is made pursuant to Rule 56, SCRCF.

The grounds for this motion are:

1. Plaintiff's breach of contract causes of action are based on an alleged oral contract that according to sworn testimony of Plaintiff and Tok Kim was to be performed over the course of three years. Assuming that such an oral contract existed, for the limited

- purposes of this motion, there is no disputed issue of material fact that Plaintiff does not have a signed writing establishing the essential terms of this alleged oral contract and cannot overcome the statute of frauds. S.C. Code Ann. § 32-3-10(5).
2. Summary judgment should be granted on Plaintiff's breach of fiduciary duty causes of action because Sang Cho has never been a fiduciary for Kim Enterprises. *Big Red Box, LLC v. Square, Inc.*, No. 3:18-758-SAL-SVH, 2020 U.S. Dist. LEXIS 16008 (Jan. 22, 2020).
 3. Discovery has shown that Sang Cho did not tortiously interfere with the contract between Kim Enterprises and K&C Beauty and summary judgment should be granted.

In conclusion, there is no genuine issue of fact and Defendants are entitled to judgment as a matter of law.

This motion is based upon the pleadings, any affidavits, any record evidence, deposition testimony, discovery responses, and other summary judgment evidence as well as the applicable common law and statutory law.

Defendants reserve the right to submit a memorandum of law and other materials in support of its Motion for Partial Summary Judgment prior to the motion hearing.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/David L. Paavola

David L. Paavola (Bar No. 100714)

Ashley Thibault (Bar No. 103522)

Kenison, Dudley & Crawford, LLC

1122-B Barnwell Street

Columbia, South Carolina 29201

(864) 242-4899

paavola@conlaw.com

thibault@conlaw.com

Counsel for Defendants K&C Beauty LLC, Youmi Cho, and Sang Cho

Columbia, South Carolina
March 29, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2021-CP-40-05596
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Youmi Cho and K&C Beauty, LLC, and	)	
Sang Cho,	)	
	)	DEFENDANTS' MEMORANDUM IN
	)	SUPPORT OF THEIR MOTION FOR
Defendants.	)	PARTIAL SUMMARY JUDGMENT
	)	
	)	
	)	
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Kim Enterprises, LLC, and Tok Kim,	)	
	)	
Third-Party	)	
Defendants.	)	

Defendants Youmi Cho, K&C Beauty, LLC, and Sang Cho file this Memorandum in Support of their Motion for Partial Summary Judgment on Plaintiff's claims for Breach of Contract, Breach of Contract Accompanied by Fraudulent Act, Breach of Fiduciary Duty, Aiding and Abetting Breach of Fiduciary Duties, and Tortious Interference with Contractual Relations.

There is no genuine issue of material fact that Plaintiff did not comply with the statute of frauds, Sang Cho is not a fiduciary, and Plaintiff has failed to allege any actions taken by Sang Cho that would amount to tortious interference. For these reasons, as set forth more fully herein, Defendants are entitled to judgment as a matter of law on these causes of action.

BACKGROUND

This case involves a dispute over the sale price for a beauty supply store in Columbia, SC that Kim Enterprises, LLC sold to K&C Beauty, LLC in December 2020. Kim Enterprises owns and operates several beauty supply stores in the Columbia area, and it is owned and operated by Tok Kim. In December 2020, Youmi Cho (Tok Kim's niece) purchased a beauty supply store from Kim Enterprises located at 3315 Broad River Road, Columbia (the "Beauty Store"). Sang Cho, Youmi Cho's brother and Tok Kim's nephew, worked at the Beauty Store prior to, and after, the sale to K&C Beauty.

In December 2020, Kim Enterprises and K&C Beauty entered into an agreement to transfer ownership of the Beauty Store. Kim Enterprises alleges that it sold the Beauty Store under an oral agreement for \$800,000 to be paid by a \$250,000 down payment, thirty-six monthly installments of \$15,000 (totaling \$540,000), and a final payment of \$10,000. (Am. Complaint ¶ 19). Youmi Cho disputes these facts, contending that the purchase price was \$250,000, as evidenced by a signed Business Asset Purchase Agreement, a Bill of Sale, and a \$250,000 check cashed by Tok Kim in December 2020. (Attached as **Exhibits 1-3**). Youmi Cho contends that the thirty-six checks provided to Tok Kim were part of a separate and subsequent arrangement related to the purchase of other beauty stores, after full performance of the purchase agreement, when Tok Kim began demanding that K&C Beauty and Youmi Cho give him the thirty-six checks under the guise of needing a good-faith business gesture to conduct business in the United States and as a showing of good faith for the future transfer of Plaintiff's other beauty supply stores. Tok Kim said he would cover store rent with these checks but never did. Tok Kim exchanged three of these checks for cash from Youmi Cho and K&C Beauty and Tok Kim cashed a fourth

check. (Am. Compl. ¶¶ 22-23). All totaled, Tok Kim and Kim Enterprises received \$60,000 from four checks written by Youmi Cho. Neither Tok Kim nor Kim Enterprises gave anything of value to Youmi Cho or K&C Beauty in exchange for these checks. After realizing she was being taken advantage of, Youmi Cho stopped payment on the remaining checks on or about September 2021. (Am. Compl. ¶ 26).

In November 2021, Kim Enterprises filed a complaint against Youmi Cho and K&C Beauty alleging a single cause of action of breach of contract over the disputed sale price of the Beauty Store. Youmi Cho and K&C Beauty asserted counterclaims for breach of contract against Kim Enterprises and Tok Kim. In September 2023, after almost two years of litigation, Kim Enterprises amended its complaint to add eight new causes of action, including claims against Tok Kim's nephew Sang Cho, as follows:

1. Breach of Contract as to Youmi Cho and K&C Beauty
2. Breach of Contract Accompanied by Fraudulent Act as to Youmi Cho and K&C Beauty;
3. Fraud as to Youmi Cho and K&C Beauty;
4. Conversion as to Youmi Cho and K&C Beauty;
5. Unjust Enrichment as to Youmi Cho and K&C Beauty;
6. Breach of Fiduciary Duty as to Sang Cho;
7. Aiding and Abetting Breach of Fiduciary Duty as to Youmi Cho and K&C Beauty;
8. Civil Conspiracy as to Youmi Cho and Sang Cho; and,
9. Tortious interference with Contractual Relations as to Sang Cho.

(Am. Compl. ¶¶ 72-127).

Discovery has revealed no genuine issue of material fact that Plaintiff did not comply with the statute of frauds, Sang Cho is not a fiduciary, and Plaintiff has failed to allege any actions or to provide any evidence of actions taken by Sang Cho that would amount to tortious interference. For these reasons, Defendants are entitled to judgment as a matter of law on these causes of action.

LEGAL STANDARD

Summary judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c). “Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 833 (2001).

“Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” *Baughman v. At&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by ‘showing’ -- that is, pointing out to the [trial] court -- that there is an absence of evidence to support the nonmoving party's case.’ *Id.* (quoting *Celotex*, 477 U.S. at 325).

“Once moving party carries its initial burden, opposing party must, under Rule 56(e), ‘do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (emphasis in original)). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom are viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004).

ARGUMENT

I. Youmi Cho and K&C Beauty Should be Granted Summary Judgment on Plaintiff's Breach of Contract Causes of Action Because There is no Written Agreement Evidencing Plaintiff's Alleged Oral Contract.

Plaintiff alleges that it entered into a verbal contract to sell the Beauty Store and receive payment over a three-year period. There is no dispute of fact that there is no writing evidencing the essential terms of this alleged oral agreement. As such, the statute of frauds bars Plaintiff's breach of contract causes of action.

Plaintiff sued Youmi Cho and K&C Beauty for Breach of Contract and Breach of Contract Accompanied by Fraudulent Act. (Am. Compl. ¶¶ 72-84). Kim Enterprises alleges that it had an oral agreement with Youmi Cho and K&C Beauty to sell the Beauty Store for \$800,000.00 which was to be paid with \$250,000 up front, followed by thirty-six (36) monthly installments of \$15,000 beginning on March 15, 2021, and concluding with a final payment of \$10,000. (Am. Compl. ¶¶ 18-19; Dep. Kim Enterprises 22:20-23:12 (Mar. 15, 2023), excerpts attached as **Exhibit 4**; Dep. Tok Kim 25:16-21, 26:11-15, 104:14-24 (Mar. 17, 2023), excerpts attached as **Exhibit 5**).

The statute of frauds applies to "any agreement that is not to be performed within the space of one year from the making thereof[.]" S.C. Code Ann. § 32-3-10(5). "[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." *Collins*

Music Co. v. Cook, 281 S.C. 580, 583, 316 S.E.2d 418, 420 (Ct. App. 1984). “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.” *Springob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014) (citations and internal quotation marks omitted).

The agreement alleged by Kim Enterprises is subject to the statute of frauds because it cannot be completed within one year. In order for the agreement alleged by Kim Enterprises to satisfy the statute of frauds, there must be a writing signed by the party against whom enforcement is sought, K&C Beauty, and the writing must establish the essential terms of the contract without resort to parol evidence. Kim Enterprises has not provided a writing that satisfies the statute of frauds.

Therefore, the oral agreement alleged by Kim Enterprises is not enforceable pursuant to the statute of frauds as a matter of law. As such, there is no issue of genuine fact regarding Plaintiff’s breach of contract claims against Youmi Cho and K&C Beauty and summary judgment in Defendants’ favor should be granted on these causes of action.

II. Summary Judgment Should be Granted on Plaintiff’s Breach of Fiduciary Duty Causes of Action.

Summary judgment should be granted in Defendants’ favor on Plaintiff’s breach of fiduciary duty causes of action because Sang Cho has never been a fiduciary of Kim Enterprises. Sang Cho was employed at the Beauty Store when it was owned by Kim Enterprises. Kim Enterprises asserts that because of this employment relationship, Sang Cho was a fiduciary to the business. However, the law is clear that the employer-employee relationship is not a fiduciary relationship merely by the fact of employment and there are no additional facts that would

transform Sang Cho's employment into a fiduciary relationship. Accordingly, judgment in favor of Defendants should be entered as a matter of law on Plaintiff's cause of action against Sang Cho for Breach of Fiduciary Duty and cause of action against Youmi Cho for Aiding and Abetting Breach of Fiduciary Duty.

To state a claim for breach of fiduciary duty, a party must allege: (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. *Legree v. Hammett Clinic, LLC*, No. 3:19-cv-0871-MGL-TER, 2019 U.S. Dist. LEXIS 229273, at *6 (D.S.C. Aug. 29, 2019) (citation omitted). "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Id.* (quoting *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992)). The existence of a fiduciary duty is a question of law for the court. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008).

In the employment context, "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." *Legree*, 2019 U.S. Dist. LEXIS 229273 at *7 (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)). "An employer-employee relationship is not a fiduciary relationship. . . ." because "[a] fiduciary relationship cannot be established by the unilateral action of one party." *Big Red Box LLC v. Square Inc.*, Civil Action No.: 3:18-cv-00758-SAL-SVH, 2020 U.S. Dist. LEXIS 16008, at *16 (D.S.C. Jan. 22, 2020) (quoting *Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582,

607 (D.S.C. 1998) (internal quotation marks omitted)). There is no South Carolina authority that “would elevate the normal employer-employee relationship into a fiduciary relationship,” or “providing that all employees are agents of their employers and owe their employers fiduciary duties.” *Legree*, 2019 U.S. Dist. LEXIS 229273, at *7 (quoting *Coves Darden*, 2016 S.C. App. Unpub. LEXIS 475, at *5).

South Carolina courts have only recognized a breach of fiduciary duty in the employer-employee context in three limited circumstances: “when an employee directly competes with his employer, when the employee misappropriates the employer’s profits, property, or business opportunities, or when the employee breaches the employer’s confidences.” *Legree*, 2019 U.S. Dist. LEXIS 229273, at *8 (citing *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 515-16 (4th Cir. 1999)). There are no allegations in this lawsuit against Sang Cho falling within any of these limited categories.

In one of the only reported cases where a manager was found to be a fiduciary, *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987), the car wash manager was married to the daughter of the spouse-owners, the owners put “special faith and confidence in Norris in the starting up of the car wash business,” he was responsible for purchasing equipment and doing whatever was necessary to open the car wash business, he handled business negotiations, and he was accused of conspiring with the equipment provider to overinflate equipment invoices to convert excess funds from the owners. *Id.* at 600, 358 S.E.2d at 152. There are no similar allegations here.

Sang Cho began working for Kim Enterprises in 2011 and started at the Beauty Store in 2013. (Sang Cho Dep. 7:12-25 (Mar. 15, 2023), excerpts attached as **Exhibit 6**. Mr. Cho had

some responsibility for reordering products and managing the store, but pricing was set by Mr. Kim. (Sang Cho Dep. 10:15-20), excerpts attached as **Exhibit 6**. At some point Sang Cho became identified as the manager of the Beauty Store but he was never consulted about this change in job title and only learned about it after the fact, and it did not result in any change in job duties. (Sang Cho Dep. 36:12-22, 61:10-62:9), excerpts attached as **Exhibit 6**. Plaintiff has not accused Mr. Cho of any bad acts arising out of his employment. There are no allegations that Sang Cho directly competed with Plaintiff, committed acts of misappropriation or breached Plaintiff's confidences. Therefore, as a matter of law, Sang Cho did not owe Plaintiff a fiduciary duty, and even if he did, there are no facts supporting a breach of a fiduciary duty arising out of his employment. As such, Plaintiff's claim for Breach of Fiduciary Duty against Sang fails.

For this same reason, Plaintiff's claim against Youmi Cho for Aiding and Abetting Breach of Fiduciary Duty fails. This second cause of action requires a breach of fiduciary duty and Youmi Cho's knowing participation in that breach. *Big Red Box LLC*, 2020 U.S. Dist. LEXIS 16008, at *16. Where Sang Cho owed no fiduciary duty to Kim Enterprises and there was no breach of any fiduciary duty, even if one did exist, there can be no aiding and abetting cause of action. *Id.* at *16, *20 (dismissing claim for aiding and abetting breach of fiduciary duty where employee had no fiduciary relationship to his employer). Therefore, Plaintiff's claim for aiding and abetting breach of fiduciary duty fails as a matter of law.

III. Plaintiff's Tortious Interference with Contractual Relations Claim Against Sang Fails as a Matter of Law.

Plaintiff's claim against Sang Cho for Tortious Interference with Contractual Relations fails as a matter of law. To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract; (3)

intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Eldeco, Inc. v. Charleston County Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007).

Assuming, only for the limited purposes of this argument, that the terms of the agreement between Kim Enterprises and K&C Beauty were as set forth by Plaintiff—\$250,000 upfront and then \$15,000/month for three years (Am. Compl. ¶ 19), and then assuming that K&C Beauty breached the contract as alleged by Plaintiff by placing a stop payment on the \$15,000 checks and refusing to pay any more to Kim Enterprises, Defendant Sang Cho can only be liable for tortious interference with contractual relations if Plaintiff proves that Sang Cho: (1) knew of the existence of the contract and its terms, and (2) intentionally procured K&C Beauty to breach the contract terms by placing a stop payment on the remaining checks and procured K&C Beauty to refuse to pay Kim Enterprises any additional money. The facts are undisputed that Sang Cho was not familiar with the final terms of the agreement between Kim Enterprises and K&C Beauty and that he did not procure any alleged breach by K&C Beauty.

Neither Plaintiff's allegations nor deposition testimony demonstrate any genuine issues of material fact that Sang Cho had no role in stopping payment on the checks that Kim Enterprises alleges breached the contract. In its complaint, Plaintiff alleges that it was Youmi Cho and K&C Beauty that put a stop payment on the checks in Kim Enterprises' possession. (Am. Compl. ¶¶ 24-25). Plaintiff also alleges that Youmi Cho and K&C Beauty "informed Kim Enterprises they didn't owe Kim Enterprises any money" (Am. Compl. ¶ 26). The only factual assertion in the complaint concerning Sang Cho's alleged interference with contact is the cause of action section which relies on statements made by Sang Cho during his deposition in this case as

evidencing the procurement of K&C Beauty's breach of contract. (Am. Compl. ¶ 124). It is axiomatic that actions taken after the alleged breach cannot be considered as procuring the breach.

Deposition testimony aligns with Plaintiff's allegations that Youmi Cho and K&C Beauty initiated the stop payment and not Sang Cho. Sang Cho testified that he was not aware of the final terms of the agreement reached between Kim Enterprises and K&C Beauty. (Sang Cho Dep. 13:10-14:25), excerpts attached as **Exhibit 6**. He has no knowledge as to why the checks were written to Kim Enterprises. (Sang Cho Dep. 18:19-20, 31:15-18, 81:22-82:5), excerpts attached as **Exhibit 6**. His knowledge of the checks came solely from being asked by his sister Youmi Cho to assist her in placing a stop payment on checks. (Sang Cho Dep. 18:16-24), excerpts attached as **Exhibit 6**. Similarly, Tok Kim testified that Sang Cho was not present during his final negotiations with Youmi Cho, (Tok Kim Dep. 105:13-24), excerpts attached as **Exhibit 5**, and that it was Youmi and not Sang who initiated the stop payment after being upset with him for asking that payments go to his children if he were to die before full payment was made, (Tok Kim Dep. 107:15-25, 110:1-4), excerpts attached as **Exhibit 5**. Youmi Cho similarly testified that her brother was not part of the final agreement, (Youmi Cho Dep. 29:17-30:8), excerpts attached as **Exhibit 7**, he was not present when she signed the checks (Youmi Cho Dep. 43:1-6), excerpts attached as **Exhibit 7**, and that she made the decision to place a stop payment on the checks, (Youmi Cho Dep. 40:20-41:2), excerpts attached as **Exhibit 7**.

There is no genuine issue of material fact that Sang Cho was not present when the final contract terms were agreed to, he was not involved in writing the checks Youmi Cho gave to Tok Kim, and he did not initiate the stop payment for these checks at his own urging or suggestion but

solely as an aid to his sister. As such, Sang Cho is entitled to summary judgment on this cause of action for tortious interference with contract.

CONCLUSION

Plaintiff's alleged oral contract was to be performed over three years, meaning that it was required by the statute of frauds to be supported by a writing evidencing its essential terms. Plaintiff admits that there is no written contract. For this reason, summary judgment should be granted on Plaintiff's two breach of contract causes of action.

There are no facts supporting Plaintiff's contention that Sang Cho was a fiduciary for Kim Enterprises. Sang Cho did not owe Plaintiff a fiduciary duty, and even if he did, there are no facts supporting a breach of a fiduciary duty arising out of his employment. As such, Plaintiff's claim for Breach of Fiduciary Duty against Sang fails. For this same reason, Plaintiff's claim against Youmi Cho for Aiding and Abetting Breach of Fiduciary Duty fails.

Finally, there are no facts showing that Sang Cho took any actions to procure a breach of the alleged oral contract. Sang Cho only assisted Youmi Cho in placing a stop payment on checks he did not direct or procure these actions. Accordingly, Sang Cho is entitled to summary judgment on this cause of action for tortious interference with contract.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/David L. Paavola

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Ashley Thibault (Bar No. 103522)

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*Counsel for Defendants K&C Beauty LLC, Youmi
Cho, and Sang Cho*

Columbia, South Carolina
October 14, 2024

BUSINESS ASSET PURCHASE AGREEMENT

Agreement made and effective this 24th of November, 2020 by and between Kim Enterprises LLC ("Seller") and K&C Beauty LLC ("Buyer").

Recitals:

- A. Seller owns and operates "Kim Enterprises Beauty Supply", A beauty supply retail business ("Business"), and is the owner of all of its assets, including, but not limited to, its trade name, Intellectual property, copyrights, contract rights, transferable franchise, telephone numbers, email address and other miscellaneous assets used in connection with the operation of the Business.
- B. Buyer desires to purchase, and the Seller desires to sell the Business to Buyer on the terms and conditions described below.

Now, Therefore, in consideration of the mutual covenants and conditions exchanged herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1. **Sale of Business Assets.** Seller agrees to sell, and Buyer agrees to purchase, all of Seller's right, title and ownership interest in and to all of the assets of the Business, including its titles, trade names, trademarks, copyrights (including all work for hire), and other intellectual property rights (including but not limited to website and domain name), goodwill, and customer lists, transferable licenses, telephone numbers, email addresses, inventory, real & personal property leases and all other assets and property used in connection with the Business.
 - a. **Excluded Assets.** Excluded from this sale and purchase are the Seller's accounts receivable or generated, and prepaid insurance prior to the closing.
 - b. **Work in Progress.** All work in progress shall be prorated to the date of closing.
- 2. **Purchase Price and Terms.** The purchase price for the Business Assets is Two Hundred Fifty Thousand No/100 Dollars (\$250,000.00) (the "Purchase Price"). The Purchase Price shall be payable on or before the Closing Date (defined below in paragraph a, below) In the following manner:
- 3. Buyer shall execute and deliver to Seller on or before December 15, 2020, cash payable to Seller in the principal amount of Two Hundred Fifty Thousand No/100 Dollars (\$250,000.00).
 - a. This Agreement shall become effective as a contract when signed by Buyer and Seller.
 - b. This transaction shall close on or before December 15, 2020 and possession shall be given to Buyer at closing date. Closing shall occur sooner if all conditions

precedent is satisfied. Time is of the essence. However, Buyer may extend the closing date by additional thirty (30) days for reasonable cause.

4. **Business Records.** Buyer or Buyer's counsel, accountant or other designated representative shall be given access to Seller's original books, records, Account Edge books, lease agreements and last two (2) year financials including depreciation 1020 forms, 1099 forms on all employees, and FICA returns, and such information shall be kept strictly confidential for a minimum of three (3) years. Seller represents that the books and records are those maintained in the ordinary course of business. Said records are used in the computation of Federal tax returns. If upon examination of said records Buyer discovers any conditions or information unsatisfactory to Buyer, Buyer may, upon written notice of said information, cancel or amend this Agreement. If this notice is not given before December 15, 2020 then the books and records shall be deemed to be acceptable to Buyer.
5. **Allocation of Purchase Price.**
 - a. The Purchase Price shall be allocated at Closing in the following manner:

i. Good will	\$ 50,000.00
ii. Tangible Assets	<u>\$200,000.00</u>
	Total: \$250,000.00
 - b. All assets as set forth in paragraph 1 and paragraph 4, above, are sold "as is" without warranty, except that they shall be in working order at the time of a walk-through inspection held One (1) days prior to closing or sooner.
5. Buyer agreed to hold seller harmless from any and all liability during the training and due diligent period
6. **Representations of Seller.** Seller hereby warrants, represents and covenants as follows:
 - a. This Agreement constitutes a valid and binding Agreement of the Seller in accordance with its terms.
 - b. Seller has good and marketable title to the Business and its assets sold and conveyed to Buyer. Seller has full right to sell the Business and its said assets to Buyer and has not entered into any other contract of sale or other transfer or encumbrance relating to the sale of the Business or any of its assets.
 - c. The assets sold hereunder shall be transferred by a Bill of Sale, with full warranties of title, together with such other assignments, bills of sale, or instruments of conveyance, certificates, acknowledgments, and other documents as reasonably may be requested by the Buyer to consummate this Agreement and the transactions contemplated hereby, including, if required, any necessary consent of third parties.
 - d. Seller has conducted the Business in compliance with applicable laws, rules and regulations of the municipal, borough, state and federal governments and has paid all license or other fees required to be paid to engage in the Business.

- e. There are no claims, liens, encumbrances, or security interests affecting or encumbering the Business or its assets sold and conveyed to Buyer, and Seller is not a party to, nor threatened with, any suit, action, arbitration, administrative or other proceeding in any way relating to the Business or any of its assets sold hereunder.
 - f. All federal, state, borough, and municipal tax returns and reports (including without limitation all income tax, social security, payroll, unemployment compensation, sales and use, excise, privilege, property, ad valorem, franchise, license, and school) required to be filed by the Seller as of the Closing Date have been filed with the appropriate governmental agencies by Seller.
 - g. There are no accounts payable, contract claims, warranty claims, franchise fees or any other liabilities of the Business of any kind requiring performance by Buyer.
7. **Representations of Buyer.** Buyer warrants and represents as follows:
- a. This Agreement constitutes a valid and binding Agreement of the Buyer in accordance with its terms.
 - b. Buyer agreed to hold harmless to seller if buyer gets injury during the due diligent period and training.
8. **Representations and Warranties True at Closing.** All representations and warranties of the parties set forth in this Agreement are true and correct as of the Closing Date, as if made on that date, and shall survive the closing of this transaction. If, prior to the Closing Date, either party shall discover that there exists or has occurred any condition which would make untrue any representation or warranty herein made by such party, the party so discovering shall provide prompt notice of the existence or occurrence of such condition to the other party; provided, however, that giving of such notice shall not relieve the party discovering the existence or occurrence of such condition of its obligations hereunder.
9. **Closing.** Closing of this transaction shall take place no later than December 15, 2020 unless extended by licensees (the "Closing Date"). Closing would take place at
10. **Accounting Adjustments.**
The operation of the Business and related income and expenses up to the close of business on the day before the Closing Date shall be for the account of the Seller and thereafter for the account of the Buyer. Settlement of any items of expense or income which become apparent only after the Closing Date shall be made by the parties, in good faith, on an on-going basis after the Closing Date. Accounts Payable and accounts receivable shall be reconciled to the date of closing.
11. **Closing Costs and Transaction Expenses.**

- a. Each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and any other contemplated transaction documents, including all fees and expenses of agents, representatives, counsel, and accountants.
- b. Buyer will pay one-half and Sellers will pay one-half of any recording, escrow or filing fees required to close this transaction.
- c. Seller shall pay pro rata any business related taxes for the tax year of 2020 (or any previous) tax year and up to the closing date and Buyer shall pay all such taxes prorated for the tax year of 2020, and thereafter.
- d. Monthly rent, as well as telephone and internet service shall be pro-rated between buyer and seller to the date of closing.

12. Indemnification.

- a. **Seller's Indemnity.** Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, demands, actions, damages, debts, obligations or liabilities and reasonable attorneys' fees and court costs related thereto, incurred, arising out of, and/or related to the conduct or operations of the Business and/or the ownership of its assets prior to the Closing Date.
- b. **Buyer's Indemnity.** Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, demands, actions, damages, debts, obligations or liabilities and reasonable attorneys' fees and court costs related thereto, incurred, arising out of, and/or related to the operations of the Business and/or the ownership of its assets after the Closing Date.

13. **Notices.** All notices, requests, demands and other communications required or permitted hereunder shall be in writing, and shall be deemed duly given if delivered personally or sent by registered mail (with adequate postage prepaid) to the address set forth below with respect of each party or at such other address as such party designates in writing:

Seller:

Tok C. Kim
84 Cannonade Court
Irmo, South Carolina 29063

Buyer:

Youmi Cho
247 Nobility Dr.
Columbus, South Carolina 29210

14. **Time is of the Essence.** Time is of the essence of this transaction.

15. **Conditions Precedent.** The following matters concerning conditions precedent apply to this Agreement:

- a. All obligations of either party are expressly conditioned upon and subject to the other party's performance, observance and completion of each and every term and condition required to be performed, observed or completed by said party in this Agreement.
- b. All obligations of either party are expressly conditioned upon the absence of any action or proceeding under the federal bankruptcy laws or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof, which shall be instituted or threatened by the other party prior to the Closing Date.

16. Disclosure of Representation. The parties consent to, acknowledge, and mutually represent as follows:

- a. That this Agreement, and its attached exhibits and other documents prepared for the purpose of closing this transaction, are the result of arm's-length negotiations between the parties hereto.
- b. That each party hereto has been advised to seek independent legal and tax counsel and has been represented by such independent and legal tax counsel to the fullest extent desired by each party.
- c. That the parties and their respective legal and tax counsel have each had an opportunity to review this instrument, and its attached exhibits and other documents prepared for the purpose of closing this transaction, and are fully analyzed of the tax and legal consequences of closing this transaction in accordance with the terms and conditions herein agreed upon.
- d. By reason of the foregoing, any rule of construction that an instrument should be construed strictly against the draftsman thereof shall not apply in any construction of this Agreement, nor of any instrument attached as an exhibit hereto, or otherwise executed by the parties in connection with a closing of this transaction.

17. Other Instruments; Cooperation.

- a. **Instruments.** The parties each agrees to execute and deliver such further and additional documentation as may be necessary or appropriate to carry out the transactions contemplated by this Agreement, and any such documentation shall be in a form and of content mutually approved by the parties.
- b. **Cooperation.** The parties shall each use their best efforts to cause the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof. Seller and Buyer specifically agree to fully cooperate in taking all reasonable actions necessary to obtain all consents from any federal, state or local governmental entities, to obtain all consents, approvals and

authorizations from other persons and to affect all filings, applications, registrations and notifications that the parties hereto deem necessary or desirable to consummate the transactions contemplated hereby.

- c. **Access to Premises and Information.** At reasonable times prior to the Closing Date, the Seller will provide the Buyer and his representatives with reasonable access during business hours to the assets, titles, contracts, and records of the Seller relating to the Business and furnish such additional information concerning the Business as the Buyer from time to time may reasonably request, provided that Buyer shall have executed a Confidentiality Agreement in the form provided by Seller.
 - d. **Post-Closing Assistance.** Seller agrees to provide training to the Buyer after the closing for a period of 3 months.
 - e. **Employees.** Seller shall conduct the business in its ordinary course until closing. Seller warrants there are no employment contracts in effect and that all debts arising from the operation of the business shall be paid or provided for at closing.
18. **Mediation/Arbitration.** In the event of any dispute, claim or question arising under this Agreement, or related hereto, the matter shall first be submitted by the parties to non-binding mediation by mediation selected upon mutual agreement. If the parties either cannot agree upon a mediator or after selection of a mediator or after selection of a mediator cannot resolve their dispute with the assistance of the mediator, then the parties shall submit the matter to the American Arbitration Association (the "AAA") for arbitration in accordance with the rules of the AAA. The arbitration shall be conducted by a single arbitrator selected upon mutual agreement of the parties. This agreement to arbitrate shall in all respects be specifically enforceable by the courts of Alaska.
19. **Risk of Loss.** The risk of loss, damage, or destruction to any of the equipment, or other business personal property to be conveyed to the Buyer under this Agreement shall be borne by the Seller until the Closing Date, and thereafter by Buyer. In the event of such loss, damage, or destruction, the Seller, to the extent reasonable, shall replace the lost property or repair or cause to repair the damaged property to its condition prior to the damage. If replacement, repairs, or restorations are not completed prior to the Closing Date, then the purchase price shall be adjusted by an amount agreed upon by the Buyer and the Seller that will be required to complete the replacement, repair, or restoration following the Closing Date. If the Buyer and the Seller are unable to agree, then the Buyer, at its sole option and notwithstanding any other provision of this Agreement, upon notice to the Seller, may rescind this Agreement and declare it to be of no further force and effect, in which event there shall be no Closing of this Agreement and all the terms and provisions of this Agreement shall be deemed null and void.
20. **Termination.**
- a. This Agreement may be terminated prior to the Closing Date by written notice

given prior to the Closing Date: (i) by either Buyer or Seller if a material Breach of any provision of this Agreement has been committed by the other party and such Breach has not been waived; or (ii) by mutual consent of Buyer and Seller.

- b. Each party's right of termination under this section is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not constitute an election of remedies. If this Agreement is terminated pursuant to this paragraph, all further obligations of the parties under this Agreement will terminate; provided, however, that if this Agreement is terminated by a party because of the material breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

21. Miscellaneous.

- a. This Agreement shall be binding upon the Seller, their agents, transferees, heirs and assigns and Buyer, their agents, transferees, heirs and assigns, and other successors of each of them. Except as otherwise agreed herein, Buyer shall not assign his interest herein without the express written consent of Seller, which consent may be unreasonably withheld in Seller's sole and absolute discretion.
- b. This Agreement may not be amended or modified in any respect, except by an instrument in writing executed by both Seller and Buyer.
- c. This Agreement shall be construed in accordance with, and governed by, the laws of Alaska. Any action, suit or proceeding arising out of or relating to this Agreement shall be submitted to mediation/arbitration in Anchorage, Alaska, as provided herein, but if any action upon this Agreement shall be initiated in any court, it shall be initiated in the courts of Alaska, Third Judicial District, and each of the parties to this Agreement hereby irrevocably submits to the jurisdiction of any of such courts for the purpose of any such action, suit or proceeding.
- d. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Words used in this Agreement which import one gender shall apply to any gender when appropriate, and any words which import the singular or plural shall be applied to the other when appropriate.
- f. If any provision of this Agreement is prohibited or invalid under law in some part or under some circumstances, such provision shall be inoperative and all other provisions herein shall otherwise remain in full force and effect.

- g. All parties agree to hold all terms and conditions of this purchase and all information regarding the transfer of the business as confidential.

Entire Agreement. The parties hereto represent, acknowledge, and agree that in entering into this Agreement, or any other document executed in connection with a closing of this transaction, they have not relied upon any promises, representations, warranties, or statements of any kind or nature whatsoever, made by any party hereto, officer, director, or agent of said party or by any other person on behalf of said party, which is not expressly as set forth in this Agreement and the other documents executed in connection with a closing of this transaction. This Agreement and the other documents executed in connection with a closing of this transaction constitute the entire agreement between the parties hereto with respect to the subject matter.

In witness whereof, the parties (and personal guarantor) have executed this Agreement on the date first above written.



K&C Beauty LLC, Buyer
By: Youmi Cho, as authorized
Representative of Buyer
Position: President



Youmi Cho, Individually

✓ 

Kim Enterprises LLC, Seller
By: Tok C. Kim, as authorized
Representative of Seller
Position: President and Owner

EXHIBIT 2

ELECTRONICALLY FILED - 2024 Oct 14 8:21 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005596

BILL OF SALE

Kim Enterprises LLC, d/b/a Kim Enterprises Beauty Supply, a South Carolina corporation, hereinafter called "Seller," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by K&C Beauty LLC., a South Carolina corporation ("Buyer"), sells to Buyer substantially all of the assets, properties, rights and business of the Seller relating to or used or employed in connection with the Seller's business (the "Business") of Kim Enterprises Beauty Supply, a beauty supply retail store, subject to certain liabilities, upon the terms and conditions of this Agreement.

The exact detailed terms of the agreement are outlined in the Business Asset Purchase Agreement executed by both the Seller and the Buyer and to the extent those terms are more detailed or different from those in this Bill of Sale, the terms in the Business Asset Purchase Agreement are the master terms of this transaction. Further, Youmi Cho is personally responsible for the obligations, covenants and agreements of the Buyer as set forth in detail in the Business Asset Purchase Agreement executed by the parties.

Seller does, for itself, its administrators and assigns, covenant and agree with the Buyer and its assigns, that Seller has the present right to sell its interest in the above described property (as outlined in detail in the Business Asset Purchase Agreement). The Seller does hereby warrant the sale of said property to Buyer and its assigns against all and every person or persons whomsoever lawfully asserts a claim against said property.

IN WITNESS WHEREOF, the Seller and Buyer have hereunto set their hands and seals This 24th day of November, 2020.



K&C Beauty LLC, Buyer
By: Youmi Cho, as authorized
Representative of Buyer
Position: President



Youmi Cho, Individually



Kim Enterprises LLC, Seller
By: Tok C. Kim, as authorized
Representative of Seller
Position: President and Owner

EXHIBIT 3

ELECTRONICALLY FILED - 2024 Oct 14 8:21 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005596

WELLS FARGO

Check Details

Item #	Bank	Account #	Check #	Amount
1	WELLS FARGO BK NA			\$250,000.00

PRINTED ON LINE BANK PAPER. HOLD TO LIGHT TO VIEW FOR ADDITIONAL SECURITY FEATURES OFF BACK

0000286 11-24
Office AD # 121007

CASHIER'S CHECK

Remitter: YOUNG CHO
Operator ID: ac001366 ac0001239

December 1, 2020

PAY TO THE ORDER OF **TOK KIM**

Two Hundred Fifty Thousand and 00/100 - US Dollars

\$250,000.00

VOID IF OVERLINE \$ 250,000.00

WELLS FARGO BANK, N.A.
101 DUTCH SQUARE BLVD
COLUMBIA, SC 29201
FOR INQUIRIES CALL (803) 344-5129

Ruthie Parker
Authorized Signature

Travis Bolan
Authorized Signature

Security Features Included.  Details on Check.

[illegible]

For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images.

You can see full or partial fronts and backs of the images by using the link at the top of the window.

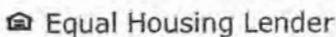


EXHIBIT 4

30(b)(6) Kim Enterprises, LLC given by: Patricia Kim

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

KIM ENTERPRISES, LLC,

Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOUMI CHO AND K&C BEAUTY, LLC,

Defendants.

_____/

YOUMI CHO AND K&C BEAUTY, LLC

Third Party Plaintiffs,

vs.

TOK KIM,

Third Party Defendant.

30(B)(6) DEPOSITION OF KIM ENTERPRISES, LLC
GIVEN BY: PATRICIA KIM

DATE TAKEN: Wednesday, March 15, 2023

TIME START: 9:05 a.m.

TIME END: 12:20 p.m.

LOCATION: Belser & Belser, P.A.
1325 Park Street, Suite 300
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

R-000132

1 A. Yes. I have seen it before, but it's been
2 a while.

3 Q. Okay. Let me just ask you a few questions
4 about the complaint.

5 A. Okay.

6 Q. The first paragraph identifies Kim
7 Enterprises as a limited liability company; that's
8 correct, isn't it?

9 A. Yes.

10 Q. The fourth paragraph identifies the store
11 that is in dispute, which we have called the beauty
12 store on Broad River Road, right?

13 A. Yes.

14 Q. Okay. And then let me ask you about -- let
15 me ask you this: How long, if you recall, when did
16 Kim Enterprises open up the beauty store on Broad
17 River?

18 A. Broad River was 1993, I believe.

19 Q. Let me ask you about paragraph 6.

20 Paragraph 6 states that in late 2020,
21 plaintiff, being Kim Enterprises, and defendants,
22 being my clients, entered into a verbal agreement
23 under which the plaintiff agreed to convey the assets
24 of the business to defendants for \$800,000 payable as
25 follows: \$250,000 up front followed by 36

1 installments of \$15,000 beginning on May 15, 2021,
2 and concluding with the final payment of \$10,000.

3 Did I read that correctly?

4 A. Yes.

5 Q. Is this -- sitting here today, is this what
6 Kim Enterprises still claims is the basis of --

7 A. Yes.

8 Q. Let me finish my questions.

9 A. Sorry.

10 Q. -- basis of the agreement between Kim
11 Enterprises and K&C Beauty?

12 A. Yes.

13 Q. The first little bit -- I'm sorry. The
14 first three words of paragraph 6, "Late 2020," I want
15 to make sure we're clear on the date. So is it Kim
16 Enterprises' understanding that the transfer of the
17 beauty store occurred in late 2020?

18 A. I think -- okay. Are you talking about
19 when they actually took over the store?

20 Q. Yes, I'm asking you about when the
21 purchase --

22 A. March.

23 Q. When did the purchase of the store take
24 place?

25 A. It was in December, I believe.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

KIM ENTERPRISES, LLC,
Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOUMI CHO AND K&C BEAUTY, LLC,
Defendants.

_____/

YOUMI CHO AND K&C BEAUTY, LLC
Third Party Plaintiffs,

vs.

C.A. No.: 2021-CP-40-05596

TOK KIM,
Third Party Defendant.

DEPOSITION OF TOK KIM

DATE TAKEN: Friday, March 17, 2023

TIME START: 9:09 a.m.

TIME END: 3:40 p.m.

LOCATION: Belser & Belser, P.A.
1325 Park Street, Suite 300
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

1 ever married an individual so they could live and get
2 citizenship in the United States?

3 MR. BROWN: Object to the form.

4 THE WITNESS: No.

5 BY MR. PAAVOLA:

6 Q. Have you ever heard of anybody else doing
7 that so they could stay in the United States?

8 MR. BROWN: Object to the form.

9 THE WITNESS: No.

10 BY MR. PAAVOLA:

11 Q. You never heard of that? Never heard of
12 anybody else ever doing that?

13 MR. BROWN: Object to the form.

14 THE WITNESS: No.

15 BY MR. PAAVOLA:

16 Q. Back on your complaint and looking at
17 paragraph 6 again, this describes your -- the alleged
18 agreement between Kim Enterprises and K&C Beauty.
19 And it talks about it being a verbal agreement. Is
20 that your understanding? It was a verbal agreement?

21 A. Yes.

22 Q. Okay. It's not put in writing?

23 A. Yes.

24 Q. And then this paragraph states that the
25 agreement was for K&C Beauty to pay \$800,000 for the

1 beauty store. Is that what it says?

2 A. Yes.

3 Q. And then that was to be broken up by
4 \$250,000 up front followed by 36 installments of
5 \$15,000 beginning in May of 2021 and concluding with
6 one final payment of \$10,000?

7 A. Yes.

8 Q. Is that your understanding of the agreement
9 as we sit here today?

10 A. Yes.

11 Q. Okay. So the -- under your understanding
12 of the agreement there was to be an upfront payment,
13 is what it says here, followed by one payment each
14 month for three years; is that right?

15 A. Yes.

16 Q. All right. Paragraph 8 says that the
17 Defendants, K&C Beauty, Youmi Cho, assumed control of
18 the business on March 8, 2021. Do you see that?

19 A. Yes.

20 Q. And what does it mean to have assumed
21 control of the business?

22 A. I don't exactly know what that means
23 either.

24 Q. Okay. Do you have a -- do you -- sitting
25 here today, is it your testimony that March 8, 2021,

1 Q. Okay. At this third meeting, correct me if
2 I'm wrong, your understanding of the terms of the
3 deal was purchase price for \$800,000, correct?

4 A. Yes.

5 Q. And at least some portion of that would be
6 paid with 36 checks over three years?

7 A. Originally, the agreement was to do so with
8 checks of \$25,000 each, but she was the one that
9 changed it to 15,000.

10 Q. At this third meeting?

11 A. No. It wasn't decided at this meeting.
12 She just chose to write \$1,500 checks -- or \$15,000
13 checks at a later time at my house.

14 Q. At this third meeting, what was the
15 understanding of how the \$800,000 would be paid?

16 A. It was agreed upon to pay over time with
17 checks since she would need to stock and buy --
18 purchase product over the course of March and April.
19 We agreed to start with check payments on May 15th.

20 Q. Okay. And how long were the check payments
21 supposed to last?

22 A. One check a month.

23 Q. For how long?

24 A. Three years.

25 Q. Did Youmi Cho ever tell you she only had a

1 certain amount of money, \$300,000 or less, at that
2 time?

3 A. No.

4 Q. Okay. So you believe that -- well, did you
5 have any understanding at that third meeting as to
6 any money that would be paid up front?

7 A. So she told me that she would be able to
8 give me cash, check, for \$250,000 initially. And
9 that the remaining \$50,000, she would be able to give
10 me in cash. However, it was Sang that suggested that
11 because we needed to restock, we needed funds for
12 that.

13 Q. Are you saying that Sang came back into the
14 conversation in the room with this third meeting?

15 A. No, it was just Youmi.

16 Q. Okay. So at this third meeting, just you
17 and Youmi, she said she would give you \$250,000 up
18 front and then the other 50,000 in cash later?

19 A. So, no, she was supposed to give me the
20 \$250,000 check along with the \$50,000 in cash
21 immediately at that spot. However, she told me that
22 Sang had told her that we needed the \$50,000 for
23 restocking funds, and so I didn't really have plans
24 on receiving the \$50,000 after she told me that.

25 Q. So your testimony is that Youmi Cho came to

1 you ask Youmi Cho to get a purchase agreement
2 drafted?

3 A. I suggested that we just write a personal
4 contract amongst each other, which she refused.

5 Q. Okay. Did you ever ask Youmi Cho to take
6 care of having a personal contract drafted for the
7 two of you?

8 A. So I spoke to her mother regarding this,
9 regarding the contract, and that the terms that I
10 wanted on the contract was that if I was to decease,
11 that the payments would still need to be made
12 regularly to my son. To which she -- once she found
13 out about this term on the contract, she went
14 ballistic.

15 Q. Are you saying "she," who are you referring
16 to when you say "She went ballistic"?

17 A. Youmi did.

18 Q. Okay. Did you have any other conversations
19 about the contract after that time?

20 A. No, after that, that's when our
21 relationship became strained.

22 Q. Is that before or after you received the
23 check for \$250,000?

24 A. After. This was after she put a stop
25 payment to the checks.

1 Q. Okay. So you just identified two different
2 conversations with Andy Woon Kim; is that correct?

3 A. No. One conversation after she had put a
4 stop payment to the checks.

5 Q. He just said you contacted Andy Kim. He
6 told you you should get a contract in place. Then
7 you said you contacted him again after the stop
8 payment; isn't that what you just testified?

9 A. No, Youmi told me that. No, it was Youmi
10 that told me all of this. It was her immigration
11 lawyer that told her that you need to have a contract
12 put in place or else he's going to steal money away
13 from you. And so it was her -- at his suggestions to
14 her that she told me.

15 Q. Okay. So when you talked to Andy Kim, he
16 said, "I told you so," right?

17 A. And so it was Youmi that told me, "I told
18 you so. See, this is why I need to have a contract."

19 Q. Okay. So you've changed your testimony.
20 Before, you said Andy Kim told you, "I told you so.
21 You should get a contract in place." And now you're
22 saying it wasn't Andy Kim, it was Youmi Cho?

23 A. So I did not have any conversations with
24 the attorney regarding this contract. It was all
25 through Youmi that I was told. It was Youmi that

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

KIM ENTERPRISES, LLC,

Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOUMI CHO AND K&C BEAUTY, LLC,

Defendants.

_____/

YOUMI CHO AND K&C BEAUTY, LLC

Third Party Plaintiffs,

vs.

TOK KIM,

Third Party Defendant.

DEPOSITION OF SANG CHO

DATE TAKEN: Wednesday, March 15, 2023

TIME START: 2:00 p.m.

TIME END: 4:04 p.m.

LOCATION: Belser & Belser, P.A.
1325 Park Street, Suite 300
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

1 went to Mr. Kim's store and asked if I could get a
2 job, and he offered me a job.

3 Q. So have you been involved in the beauty
4 supply business since 2011?

5 A. Yes.

6 Q. And so your first job was working for
7 Mr. Kim?

8 A. No. First job was for the jewelry store,
9 but it was family business. I was just there just
10 pretty much as a helper.

11 Q. And I meant since 2011.

12 A. 2011, yes, sir, beauty supply.

13 Q. And was that the Broad River store?

14 A. I started at Two Notch location. Two Notch
15 store.

16 Q. How long did you work at the Two Notch
17 store?

18 A. I think about one year, I think, because
19 Mr. Kim asked me to go to Broad River locations.

20 Q. So do -- have you been basically at the
21 Broad River location since 2012?

22 A. I think I started 2013, January 1st.

23 Q. Okay.

24 A. I think it was 2013. 2011, September.
25 Yeah, 2013.

1 Q. So just picking a point in time in 2017,
2 for example, who was responsible for ordering
3 products at the Broad River store?

4 A. Some of them is me, some of them is just a
5 salesman. Because Mr. Kim let salesmen order
6 whatever is, like, missing, or we already sold
7 products, they come and order. But some of them, I
8 order myself.

9 Q. And just to explain for the record, in my
10 own knowledge, when you say "salesmen," I interpret
11 that as are those, I guess, employees of the
12 distributors that come in and maybe say, Oh, you're
13 too low on this hair product?

14 A. Yes.

15 Q. Okay. And who is in charge of the pricing
16 of the different products?

17 A. Pricing was already set. Mr. Kim pretty
18 much gave me how much to charge on like hair care
19 products. Hair mostly has always been two times,
20 double.

21 Q. So, for example, if you ordered something
22 and it had a small price increase, would you just
23 double that amount and that would be the new price?

24 MR. PAAVOLA: Object to the form.

25 THE WITNESS: Not a double, but price

1 counsel, you know, the different documents I'll be
2 asking about this week. So I put together that list
3 there, and I'd like to look at them.

4 A. Yes, sir.

5 Q. You'll notice in the bottom left-hand
6 corner it has a number, Sang Cho Deposition Number,
7 and on the other side there might be some other
8 numbers.

9 A. Yes, sir.

10 Q. So before I go into these text messages and
11 look at these documents, I would like to ask: Did
12 Youmi Cho and Mr. Kim agree that Youmi would buy the
13 Broad River store for \$800,000?

14 MR. PAAVOLA: Object to the form.

15 THE WITNESS: I don't remember that part
16 about agreeing.

17 BY MR. BROWN:

18 Q. So it's your testimony under oath that you
19 do not know if Youmi Cho and Mr. Kim agreed to sell
20 the store for \$800,000?

21 A. I wasn't in the final decisions when they
22 made.

23 Q. And, again, not trying to be super
24 technical, but I'm not asking were you there. I'm
25 asking based on your knowledge, are you aware or have

1 any knowledge that Youmi Cho and Mr. Kim agreed to
2 sell the store for \$800,000?

3 MR. PAAVOLA: Object to the form.

4 THE WITNESS: I don't know about agreeing.
5 My sister didn't agree first because I told her
6 it was too much. I say maybe 500,000, that's
7 doable, but not 800,000.

8 BY MR. BROWN:

9 Q. And was that in the kitchen at the Kims'
10 house?

11 A. Yes.

12 Q. So you do remember ...

13 A. Mr. Kim said -- first he said 800,000, and
14 I said that's too much. Then I started bringing it
15 up about other business that he sold to somebody,
16 which is Mr. Lee. And I said that store was sold for
17 cheap. Then he started getting a little upset. Then
18 he said 800,000, but he will pay for the rent.
19 That's all the part that I heard. And I told my
20 sister, I said, "Maybe 500,000."

21 Then Mr. Kim started raising his voice,
22 then I walked outside and I start -- I smoked
23 outside. I didn't come back in for a little while.

24 Q. So when the deal eventually closed at some
25 point in the future, did you have any knowledge of

1 you under oath there these same questions. So please
2 do what you can to try to remember because I'm going
3 to ask them here and at trial.

4 MR. PAAVOLA: Object to the testimony of
5 counsel to this question.

6 BY MR. BROWN:

7 Q. So do you recall what Suzi meant by that
8 text?

9 A. I'm not sure.

10 Q. Okay. I would like to flip two pages up,
11 Sang Cho 22 and then Defendant 124. I'd like to look
12 at your text message at the bottom where it says,
13 "Dad read paper and said it's our fault because we
14 put stop payment on the checks."

15 What does that mean?

16 A. My sister asked me to call the bank and
17 make a stop payment because Mr. Kim kind of
18 threatened her, calling her late at night sometimes.
19 Sometimes he's calling just yelling at my sister
20 about depositing all the checks. So my sister was
21 afraid because she didn't know if checks get all
22 deposited. We didn't have any money in the bank, so
23 she didn't know how to do it, what to do, so she
24 asked me to call the bank and make a stop payment.

25 Q. So explain to me these checks. What

1 Let's look at Sang 22, which is also Defendant 124.

2 Can you read your blue text message to yourself, and

3 I'll ask you a question.

4 A. (Nods head.)

5 Q. And, again, I think we talked about this

6 before, I don't have a live copy of the transcript,

7 but when you talked about your dad saying, "It's your

8 fault because we put stop payment on checks," what

9 checks were those?

10 A. Checks my sister asked me to stop cancel --

11 I mean, stop payment on.

12 Q. A check for what?

13 A. I'm not sure. I just -- just called the

14 bank and just made all the stop payments.

15 Q. So you have no recollection of what those

16 checks were for?

17 MR. PAAVOLA: Object to the form.

18 THE WITNESS: No, sir.

19 BY MR. BROWN:

20 Q. Okay. So you have no knowledge that

21 Youmi Cho was under any duress or extreme emotional

22 pressure to write any checks?

23 MR. PAAVOLA: Object to the form.

24 THE WITNESS: I'm not sure.

25 BY MR. BROWN:

1 A. March to June, I don't know if she owned
2 the store or not because she didn't have a business
3 license.

4 Q. So what did she do in the store during
5 March to June?

6 A. Help me stock.

7 Q. Was she an employee of the store?

8 A. I have no idea she was employee or not.

9 Q. So prior to the store selling, can you
10 remind me what was your title at the store?

11 A. When?

12 Q. Before the -- during 2020, what was your
13 title? When it was owned by Kim Enterprises, what
14 was your title at the store?

15 A. I guess I was manager, but nobody told me I
16 was manager. Nobody -- I didn't operate or they
17 didn't offer me to become a manager. They just put
18 me under manager.

19 Q. Did you manage the store?

20 A. I pretty much did.

21 Q. So you did manage the store?

22 A. Yes.

23 Q. Okay. Again, I just want to clarify, do
24 you have any knowledge from the months of March to
25 June who collected the credit card sales at the

1 spend it all. He's going to save for me.

2 Q. And did Mr. Kim, in fact, save \$500 a month
3 for you?

4 A. I don't know if he did or not, but I asked
5 for the money. He said he don't have it. He don't
6 know what I'm talking about. He said he never say
7 that.

8 Q. You never received that \$500 a month?

9 A. No, sir.

10 Q. You said at some point in time you
11 understood you became a manager, but you didn't know
12 how; is that what you said?

13 A. Yes, sir.

14 Q. When you started with Kim Enterprises, were
15 you, in fact, a manager?

16 A. When I first started, no, sir.

17 Q. Okay. Did you become a manager -- do you
18 know when that change happened?

19 A. No, sir. I don't remember.

20 Q. Were you ever informed of a change in your
21 position?

22 A. I'm sorry?

23 Q. Were you ever informed of a change in your
24 position to become a manager?

25 A. No, sir.

1 Q. Okay. Your duties ever change when you
2 became manager?

3 A. I'm sorry?

4 Q. Did your duties ever change when you became
5 manager?

6 A. Duties? No, sir.

7 Q. Duties?

8 A. No, sir. Still doing the same thing I was
9 doing.

10 Q. Okay. Did you get a pay increase when you
11 became manager?

12 A. I guess they put me under basic minimum of
13 the manager's salaries, so I guess it was kind of
14 increase.

15 Q. Okay. What was it before you were manager?

16 A. I'm sorry?

17 Q. What was your pay before you were manager?

18 A. \$2,500, before taxes, a month.

19 Q. So did you get an increase after that?

20 A. Yes, because I was getting \$3,600 before
21 taxes.

22 Q. Was that before or after the Department of
23 Labor investigation?

24 A. It was around the time. I think it was
25 before they put me under that price.

1 Q. And you had testified about a threat of
2 Mr. Kim to deposit all the checks at once. I wasn't
3 aware of that, so can you explain to me?

4 A. My sister told me. Youmi told me because
5 she was afraid, and she were even crying and she were
6 afraid that Mr. Kim deposited all the checks then
7 she's not going to have any money. She was scared.

8 Q. And what checks are those? Are you
9 referring to?

10 A. I don't know. She just say all the checks.
11 The one that I canceled. The stop payment checks.

12 Q. Did you stop payment on how many checks?

13 A. I don't remember how many. I just asked
14 the bankers to just stop payment on the checks.

15 Q. But I guess what I'm confused about is I
16 thought earlier you said you had no knowledge about
17 the multiple checks written by Youmi, but now you're
18 saying she was upset about all the checks?

19 MR. PAAVOLA: Object to the form.

20 MR. BROWN: Okay. Let me rephrase.

21 BY MR. BROWN:

22 Q. So is it your testimony that you have no
23 idea what the checks were for that Mr. Kim allegedly
24 threaten to deposit?

25 A. I don't know what kind of check was. All

1 my sister told me is just make a stop payments on the
2 checks.

3 Q. And when she asked you, you didn't ask her
4 what it was for?

5 A. No, sir.

6 Q. Okay. And then I was confused. You were
7 talking about Mr. Kim said he would pay the rent.
8 What was that?

9 A. He said by for -- he's saying just
10 \$800,000, but he would pay for the rent for the
11 stores.

12 Q. And is your understanding was that like
13 unlimited pay the rent for like an unlimited period
14 of time?

15 A. I just heard he would pay for the rent, so
16 I don't know. And after that, I wasn't there so I
17 don't know what was the final.

18 Q. Okay. And you testified that you saw the
19 document titled Business Asset Purchase Agreement
20 around the time of the -- that you got the \$250,000
21 check; is that correct?

22 A. I'm sorry, say one more time.

23 Q. I understood you to testify that you saw
24 the Business Asset Purchase Agreement, which is
25 saying 31 through 39, that you saw that around the

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

KIM ENTERPRISES, LLC,

Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOUMI CHO AND K&C BEAUTY, LLC,

Defendants.

_____/

YOUMI CHO AND K&C BEAUTY, LLC

Third Party Plaintiffs,

vs.

TOK KIM,

Third Party Defendant.

DEPOSITION OF YOUMI CHO

DATE TAKEN: Thursday, March 16, 2023

TIME START: 9:25 a.m.

TIME END: 12:28 p.m.

LOCATION: Belser & Belser, P.A.
1325 Park Street, Suite 300
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

1 A. So yes, the initial amount that he asked
2 for was 800,000, but when I refused and he said,
3 "Okay then, how about later you take over my other
4 stores as well?" So after the 250,000, there would
5 be payments for that.

6 Q. Were there any other conversations of
7 numbers?

8 A. That was the end of it. The 250,000 was
9 the last we spoke.

10 Q. Did all of that conversation happen in the
11 kitchen that night?

12 A. That night is when, in terms of the amount,
13 is when it was decided, yes. And he called me the
14 next day as well to reiterate that he would pay for
15 the rent as well; however, he asked me to keep it a
16 secret from my wife.

17 Q. Was Sang Cho there during these
18 conversations?

19 THE INTERPRETER: Clarification. Those
20 conversations, are you talking about the phone
21 call the next day?

22 MR. BROWN: I'm sorry, you're correct.
23 During that night in the kitchen.

24 THE WITNESS: He was.

25 BY MR. BROWN:

1 Q. So he heard the \$250,000 number?

2 A. No, at that moment he was not there.

3 Q. But I thought she said he heard the 250 --
4 he was there for the conversations?

5 MR. PAAVOLA: Object to form.

6 THE WITNESS: He was there for the initial
7 conversation, but he stepped away for a
8 cigarette.

9 BY MR. BROWN:

10 Q. I'm confused. Sang testified that he
11 recommended at the conversation \$500,000, and Tok Kim
12 said no. Is that not true?

13 MR. PAAVOLA: Object to form.

14 THE WITNESS: That is true.

15 BY MR. BROWN:

16 Q. When I asked earlier about the scope of the
17 conversations, why did you not mention the 500,000?

18 A. I did not feel it was necessary.

19 Q. But I asked for all the conversations, so
20 has she been withholding information in this
21 deposition thus far?

22 MR. PAAVOLA: Object to form. It's
23 confusion at your questions, Creston; it's not
24 her answers. If you want to ask her about it,
25 you can ask her about it. I don't know where

1 A. It was an offer for me to eventually take
2 over the other two stores.

3 Q. But did you have to pay any more than the
4 550?

5 A. That was not mentioned.

6 Q. So again, I'm sorry I'm asking, but I feel
7 like I'm not getting a correct answer.

8 MR. PAAVOLA: Object to form.

9 BY MR. BROWN:

10 Q. Was the 550 to purchase all the stores, the
11 other two stores or not?

12 MR. PAAVOLA: Object to form.

13 THE WITNESS: Based on the checks that were
14 written, as of now, it would be 550,000.

15 BY MR. BROWN:

16 Q. And three of the checks were cashed,
17 correct?

18 A. Yes. I gave it over to him in cash
19 actually because he wanted it in cash.

20 Q. So why did you not sue Mr. Kim to get the
21 \$45,000 back for a breach of contract?

22 MR. PAAVOLA: Object to form.

23 THE WITNESS: Partially it was because I
24 felt responsibility that I was foolish to give
25 him the checks in the first place. But also, I

1 put a stop payment on the checks, so I did not
2 feel a need to sue him.

3 BY MR. BROWN:

4 Q. But what about the three checks that were
5 cashed?

6 A. Because that was my mistake, I'm just not
7 following up on it.

8 Q. Is it because you just created this legal
9 argument?

10 MR. PAAVOLA: Object to form.

11 THE WITNESS: No.

12 BY MR. BROWN:

13 Q. Are you aware that you have sued Mr. Kim
14 for three -- under three causes of action?

15 A. Yes.

16 Q. But is it your testimony you did not sue
17 Mr. Kim for breach of contract because you felt
18 responsible for allowing him to cash the checks?

19 MR. PAAVOLA: Object to form.

20 THE WITNESS: That is a separate issue from
21 breach of contract. It has nothing to do with
22 the contract because the checks given were not
23 part of the purchase agreement.

24 BY MR. BROWN:

25 Q. Okay. I'd like to look back at the checks.

1 Q. Did anybody witness the signing of these
2 checks?

3 A. No, because I wrote them in front of
4 Mr. Kim. One of the threats included myself
5 preparing these checks in front of him. That was one
6 of the threats.

7 Q. Did you tell anybody about these -- about
8 this threatful conduct?

9 A. I told my mother.

10 Q. Anybody else?

11 A. I can't tell anybody else.

12 Q. I would like to look at the lease which
13 would be 15 pages or so up. It has a number 59 on
14 the bottom right.

15 And my question is, and she can look at
16 both of them, there's two of them that have slight
17 difference, and I'm just trying to understand why are
18 there two.

19 A. There's a difference that one has a date
20 and the other does not.

21 Q. And I see that, but why? Why would there
22 need to be the date in one location or the other?

23 A. My younger brother forgot to include the
24 date, and so we had to redo it.

25 Q. So which of the two is the correct one?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Civil Action No. 2021-CP-40-05596
	)	
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF AND COUNTERCLAIM
	)	DEFENDANTS'
Youmi Cho, K&C Beauty, LLC, and	)	RESPONSE IN OPPOSITION TO
Sang Cho,	)	DEFENDANTS' MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT
Defendants.	)	
_____	)	
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Counterclaim Plaintiffs,	)	
	)	
v.	)	
	)	
Kim Enterprises, LLC and Tok Kim,	)	
	)	
Counterclaim Defendants.	)	
_____	)	

Plaintiff Kim Enterprises, LLC ("Kim Enterprises") and Counterclaim Defendants Kim Enterprises and Tok Kim (collectively, "Kim") submit this response in opposition to Defendants' Motion for Partial Summary Judgment filed on March 29, 2024 (the "Motion").

Defendants present three arguments in support of their Motion, and Kim will address each argument separately.

I. Defendants' Actions Remove the Oral Contract from the Statute of Frauds

By way of brief background, Kim verbally agreed to sell the assets of one of his hair and beauty supply stores on Broad River Road (the "Broad River Store") to Defendants Youmi Cho and K&C Beauty, LLC (collectively, "Youmi Cho") for \$800,000,

payable as follows: \$250,000 up front, followed by thirty-six monthly installments of \$15,000 beginning on May 15, 2021, and concluding with a final payment of \$10,000 (the “Verbal Agreement”). See Tok Kim Depo. Tr. pp. 8, 9, 25, and 26, attached as **Exhibit A**; \$250,000 Down Payment Check, attached as **Exhibit B**; Thirty-Two of the Thirty-Six Pre-Signed \$15,000 Checks from Youmi Cho, attached as **Exhibit C**.¹

Youmi Cho posits the Verbal Agreement, which requires payments to occur over a three-year period, is violative of the statute of frauds. Youmi Cho’s position is incorrect, as Youmi Cho’s actions removed the oral contract from the statute of frauds.

“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.” *Settemeyer v. McCluney*, 359 S.C. 317, 320, 596 S.E.2d 514, 516 (Ct. App. 2004).

Here, Youmi Cho, after tendering a \$250,000 Cashier’s Check dated December 1, 2020, to Kim, see **Exhibit B**, gave Tok Kim thirty-six pre-signed, undated checks made payable to Tok Kim in the amount of \$15,000 each, see **Exhibits A, C**. During May, June, and July 2021, Tok Kim returned the pre-signed, undated checks to Youmi Cho in exchange for cash payments. See Tok Kim Depo. Tr. pp. 8:22-9:3, attached as **Exhibit A**. For the month of August 2021, Tok Kim deposited the fourth pre-signed, undated check. *Id.* at Tok Kim Depo. Tr. p. 9:3-5, attached as **Exhibit A**. Thus, by mid-August

¹ Exhibit C will not be filed with the Court, as the checks are marked “Confidential” and contain bank information. Kim will email a copy of the checks to the Court directly for its review.

2021, Youmi Cho had made four of the thirty-six \$15,000 payments to Kim according to the Verbal Agreement. *See id.*

Moreover, Defendant Sang Cho, Youmi Cho's brother, confidant, and a co-defendant in this matter, wrote in text messages to another family member, after receiving a copy of the Complaint in this matter, that: (a) the purchase price of the assets of the Broad River Store was \$800,000, (b) the sale agreement was verbal, and (c) the verbal sale agreement required a \$250,000 down payment with subsequent \$15,000 checks to follow.² *See* Sang Cho's Text Messages at **Exhibit D**.

The aforementioned course of conduct and documents meet the three-factor test set forth in *Settlemyer* to remove the Verbal Agreement outside the statute of frauds. As to the first factor, there is clear evidence of an oral agreement. *Notwithstanding* Sang Cho's text messages evidencing the Verbal Agreement, the course of conduct involving (a) the \$250,000 downpayment, (b) the tendering of thirty-six pre-signed, undated \$15,000 checks, and (c) four months of exchanging for cash or depositing four of the thirty-six pre-signed, undated \$15,000 checks, serves to provide this Court clear evidence of the Verbal Agreement. Concerning the second factor, the Verbal Agreement has been partially executed, as Youmi Cho has paid \$310,000 towards the \$800,000 purchase price (\$250,000 down payment check plus four \$15,000 installments). Lastly, Tok Kim, the party requesting performance, completed his part of the Verbal Agreement: he gave Youmi Cho the assets of the Broad River Store, yet he has not been fully paid for tendering of those assets to Youmi Cho.

² Sang Cho's text messages are the blue bubbles.

A. Alternatively, a Question of Fact Exists Whether the Doctrine of Estoppel May be Invoked by Kim

Alternatively, Kim may invoke the doctrine of estoppel to prevent Youmi Cho from asserting the statute of frauds.

“Our Supreme Court has acknowledged that, in a proper case, the doctrine of estoppel may be invoked to prevent a party from asserting the statute of frauds.” *Collins Music Co., Inc. v. Cook*, 281 S.C. 580, 583, 316 S.E.2d 418, 420 (Ct. App. 1984). “In order to overcome the statutory requirement of a writing, however, the party asserting estoppel must show that he has suffered a definite, substantial, detrimental change of position in reliance on the contract, and that no remedy except enforcement of the bargain is adequate to restore his former position.” *Id.* “It is not sufficient to show merely that he has lost an expected benefit under the contract.” *Id.*

In *Strickland v. Strickland*, our Supreme Court explained “[t]he essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel.” 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The *Strickland* Court continued:

The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped.

Id. at 84-85, 650 S.E.2d at 470. The Court in *Strickland* proceeded to note these elements demonstrate “equitable estoppel is based on affirmative conduct of the parties.” *Id.* at 85, 650 S.E.2d at 470.

Here, without question, and notwithstanding Sang Cho's text messages confirming the terms of the Verbal Agreement as alleged by Kim, the affirmative conduct of the parties requires the Court equitably estop Youmi Cho's statute of fraud defense. Kim, for a period of four months without interruption or issue, either exchanged for cash or deposited four of the thirty-six pre-signed, undated \$15,000 checks as payment towards the \$800,000 purchase price of the Broad River Store. Allowing Youmi Cho to use a fraudulent Business Asset Purchase Agreement to alter an agreed-upon price for the Broad River Store would represent a manifest injustice and encourage such unscrupulous conduct by others.

Kim not only lost the benefit of monetary payments due him by Youmi Cho, but he completely turned over to Youmi Cho one of his hair and beauty supply stores that he built and nurtured over many years. The Broad River Store was part of a very successful business enterprise in Columbia, South Carolina.

At bottom, equitable estoppel exists for factual circumstances such as this. The purpose of the statute of frauds is to prevent fraud, **not enable it**. See, e.g., *Remy Holdings Int'l, LLC v. Fisher Auto Parts, Inc.*, 90 4th 217, 229 fn 10 (4th Cir. 2024) (noting "because the object of the statute of frauds is to prevent fraud, Virginia courts refuse to apply the common law statute of frauds when doing so would result in a fraud or perpetrate a wrong.") (internal quotation omitted) (emphasis added). Defendants' efforts to use the statute of frauds to enable fraudulent conduct must not be allowed by this Court.

B. Alternatively, the Written Checks to Kim Constitute a Writing Evidencing the Sale of the Broad River Store for at Least \$790,000

Alternatively, Kim contends the \$790,000 in checks given by Youmi Cho to Kim constitute a written agreement to purchase the assets of the Broad River Store for at least \$790,000. See **Exhibits B, C**.

“It is well settled that the form of writing required by the statute [of frauds] is not material.” *Speed v. Speed*, 213 S.C. 401, 408, 49 S.E.2d 588, 591 (1948).

These thirty-seven checks given to Kim by Youmi Cho total \$790,000 and constitute a writing evidencing the purchase of the assets of the Broad River Store. Kim, after receiving these thirty-seven checks totaling \$790,000 from Youmi Cho, turned over the assets of the Broad River Store to her. Accordingly, in that these checks constitute a writing evidencing the sale of the assets of the Broad River Store, Defendants’ argument is moot and must be rejected.

II. Sang Cho had a Fiduciary Relationship With Kim Enterprises, and Questions of Fact Exist Whether Sang Cho Breached That Fiduciary Relationship and Whether Youmi Cho and K&C Beauty Aided and Abetted Sang Cho’s Breach of That Fiduciary Relationship

Defendants portend summary judgment should be granted on Kim Enterprises’ breach of fiduciary causes of action because Sang Cho has never been a fiduciary of Kim Enterprises. This argument must be soundly rejected at the summary judgment stage. Sang Cho had a fiduciary relationship with Kim Enterprises, and a question of fact exists whether Sang Cho breached that fiduciary relationship and whether Youmi Cho and K&C Beauty aided and abetted Sang Cho’s breach of that fiduciary relationship.

“Whether there is a fiduciary relationship between two people is an equitable issue.” *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003) (citation omitted). “A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one reposing confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992) (citation omitted).

Here, Sang Cho was not a mere low-level employee at Kim Enterprises. Sang Cho is Tok Kim’s nephew, and he and Tok Kim had a close and special relationship not typical of a standard employer-employee relationship. Sang Cho benefited from this special relationship. For example, Tok Kim allowed Sang Cho, while Sang Cho was employed by Kim Enterprises, to live in a property owned by Tok Kim rent free for two years. See Tok Kim Depo. Tr. p. 79:20-22, attached as **Exhibit E**; Vincent Fletcher Depo. Tr. p. 67:6-17, **attached as Exhibit F**.

Sang Cho served as a manager at the Broad River Store. See Vincent Fletcher Depo. pp. 41:22:25; 74:14-21; 76:22-77:2, attached as **Exhibit F**. Sang Cho had the authority to fire employees. *Id.* at p. 75:24-25, attached as **Exhibit F**. Sang Cho trained the new employees at the Broad River Store. *Id.* at p. 76:1-5, attached **as Exhibit F**.

A fiduciary relationship existed between Kim and Sang Cho, and a question of fact exists whether Sang Cho breached that fiduciary relationship. See, e.g., Am. Compl.

¶¶ 46-53 (setting forth how Sang Cho, during his deposition, testified the plain and unambiguous language of his own text messages confirming the terms of the Verbal Agreement somehow meant something entirely different). Again, a question of fact, exists whether Sang Cho breached his fiduciary duties to Kim Enterprises. And, as a result, a question of fact exists as to whether Youmi Cho and K&C Beauty aided and abetted Sang Cho's breaches of his fiduciary duties.

III. A Question of Fact Exists Whether Sang Cho Tortiously Interfered with the Contract Between Kim Enterprises and K&C Beauty

Defendants argue discovery shows Sang Cho did not tortiously interfere with the contract between Kim Enterprises and K&C Beauty. As an initial matter, discovery, in fact, shows the exact opposite. Regardless, for purposes of Defendants' motion for summary judgment as to this cause of action, a question of fact exists whether Sang Cho tortiously interfered with the contract to purchase the assets of the Broad River Store.

"The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993).

Here, at the summary judgment stage, Defendants' Motion must be denied. There is no dispute a contract existed between Kim Enterprises and Youmi Cho concerning the sale of the assets of the Broad River Store. There is no dispute Sang Cho knew about the contract, as he was present during the contract's negotiation in Tok Kim's kitchen. See Sang Cho Depo. Tr. pp. 14:9-15:2, attached as **Exhibit G**.

Concerning the third element of this tort, a question of fact exists whether Sang Cho intentionally procured Youmi Cho's breach by, among other things, interfering with her performance of the contract by giving false deposition testimony concerning the terms of the sale to support his sisters' false statements designed to breach the contract. For example, Sang Cho, in his deposition, gave false testimony about his clear and unambiguous prior text messages with a family member concerning the real terms of the contract for the sole purpose of procuring and continuing Youmi Cho's breach of the contract. See *id.* at pp. 15:2-19:20, 20:17-23:24, attached as **Exhibit G**. At bottom, Sang Cho's deposition testimony alone creates a question of fact whether he intentionally procured the breach of the contract.

As to the fourth element, there is no justification for Sang Cho's tortious interference with Kim's contract to sell the Broad River Store. Whether Sang Cho tortiously interfered with the contract out of loyalty to his sister, or because she employs him, does not justify his tortious actions.

Lastly, regarding the fifth element of resulting damages, Kim has sustained extensive damages due to Sang Cho's tortious interference with Kim's contract to sell the assets of the Broad River Store to Youmi Cho. Mr. Kim is still owed \$590,000 of the \$800,000 agreed upon Broad River Store sales price.

Accordingly, at the very least, a question of fact exists whether Sang Cho tortiously interfered with Tok Kim's contract to sell the assets of the Broad River Store, and Defendants' Motion must be denied.

[Signature Block on the Following Page]

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Enterprises, LLC and Tok Kim

Columbia, S.C.
October 15, 2024

EXHIBIT A

Tok Kim

ELECTRONICALLY FILED - 2024 Oct 15 9:14 AM - RICHLAND - COMMON PLEAS - CASE#2021CP4005596

1 - - - 2 P R O C E E D I N G S 3 - - - 4 WALTER SUNG, being first duly sworn as 5 the interpreter from English to Korean and 6 Korean to English, interpreted as follows: 7 - - - 8 TOK KIM, being first duly sworn, was 9 examined and testified as follows: 10 - - - 11 EXAMINATION 12 - - - 13 BY MR. PAAVOLA: 14 Q. Good morning, Mr. Kim. My name is David 15 Paavola. I represent Youmi Cho and K&C Beauty in 16 this lawsuit. 17 Can you please state your full name for the 18 record. 19 A. My name is Tok Chin Kim, Sr. 20 MR. PAAVOLA: So go off the record. 21 - - - 22 (Off the record.) 23 - - - 24 BY MR. PAAVOLA: 25 Q. Okay. Mr. Kim, I understand you may speak	Page 5 1 A. Yes. 2 Q. I just ask that you don't ask to take a 3 break in the middle of a question. 4 A. Yes. 5 Q. Okay. Do you understand you're under oath, 6 it's the same as if you're sitting in a court of law? 7 A. Yes. 8 Q. Okay. Your attorney may object to certain 9 questions I ask, so if he objects, let him object and 10 then you need to go ahead and answer the question 11 unless he instructs you not to answer. 12 Do you understand that? 13 A. Yes. 14 Q. And then during the break, do you 15 understand you're not allowed to talk about the 16 substance of your testimony with your attorney or any 17 other person in the room? Do you understand that. 18 A. Yes. 19 Q. And I say the room, but I really mean any 20 person. Even over the phone. 21 A. Yes. 22 Q. And if you do, I'm allowed to ask questions 23 about it. 24 A. Yes. 25 - - -
1 some English, correct? 2 A. A little bit, yes. 3 Q. But you've been asked today, at least for 4 the deposition purposes, to speak in Korean? 5 A. Yes. 6 Q. Have you ever been deposed before? 7 A. No. 8 Q. Okay. So the rules require me to inform 9 you of certain guidelines. First, it's important 10 that you verbalize your responses instead of head 11 nods or head shakes. Verbalize yes, no, and then 12 provide an explanation if you need to. 13 Do you understand that? 14 A. Yes. 15 Q. Okay. I also ask that -- because the court 16 reporter is taking down every word that we say, that 17 we take turns and don't talk over one another. 18 A. Yes. 19 Q. If I ask a question that you need 20 clarification about or is confusing, you can please 21 direct your question for clarification to me and not 22 your attorney. Do you understand that? 23 A. Yes. 24 Q. All right. If you need to take a break at 25 any point in time, just ask me to take a break.	Page 6 1 (DEFENDANT'S EXHIBIT NUMBER 1, Notice of 2 Deposition of Tok Kim, was marked for 3 Identification.) 4 - - - 5 BY MR. PAAVOLA: 6 Q. I'm handing you what's been marked as 7 Defense Exhibit 1. 8 Mr. Kim, have you seen this document 9 before? 10 A. No. 11 Q. Mr. Kim, do you read English? Are you able 12 to read this document? 13 A. I can only understand a little bit of it. 14 Q. Okay. This is a notice to take your 15 deposition today. 16 A. Yes. 17 Q. And this is in the lawsuit that Kim 18 Enterprises has brought against Youmi Cho and K&C 19 Beauty. 20 Do you understand that? 21 A. Yes. 22 Q. And what do you understand the reason that 23 Kim Enterprises sued Youmi Cho and K&C Beauty? 24 A. So the initial sale of the business was to 25 be for 800,000 where she bought for 250,000. And so

Page 9 1 I needed to push her in order to get the rest of the 2 payments. I was able to receive cash for three of 3 the checks. The fourth check was cleared by the 4 bank; however, starting with the fifth check, there 5 was a stop payment. 6 Q. Okay. So as far as money received from 7 Ms. Cho and K&C Beauty, you received \$250,000 and 8 then four installments of \$15,000 each; is that 9 correct? 10 A. Yes. 11 Q. So that's \$310,000? 12 A. No, there were 36 checks. 13 Q. But, I mean, he's received monies, total 14 monies of \$250,000 plus four installments of 15,000 15 each. That equals \$310,000 he's received? 16 A. Yes. 17 - - - 18 (DEFENDANT'S EXHIBIT NUMBER 2, Summons and 19 Complaint, was marked for identification.) 20 - - - 21 BY MR. PAAVOLA: 22 Q. Mr. Kim, I'm going to hand you what's been 23 marked as Defense Exhibit 2. This is a copy of the 24 Summons and Complaint that Kim Enterprises filed in 25 this case. On page 1 of the complaint, which is page	Page 11 1 store? 2 A. About 30 -- about 30 years. 28 something. 3 I'm not sure. 4 Q. Okay. So you opened it in the 1990s? 5 A. I don't exactly recall that detail. 6 Q. Okay. Did you buy a previously existing 7 beauty store, or did you open a brand-new store? 8 A. I opened it. 9 Q. All right. Paragraph 6 says that in late 10 2020, Kim Enterprises and Youmi Cho entered into a 11 verbal agreement. Is the late 2020 the time period 12 you recall entering the agreement with K&C Beauty? 13 A. Yes. 14 Q. Okay. Do you recall more specifically late 15 2020 when it was? What month? 16 A. I do not exactly recall. 17 Q. Okay. Was it around November, December? 18 A. If I recall, yes, it was November or 19 December. 20 Q. Okay. How did -- how did the idea to sell 21 the beauty store to K&C Beauty and Youmi Cho first 22 come up? 23 A. Youmi, my niece, had come for educational 24 purposes; however, because she did not want to study, 25 she asked to buy a store from her uncle.
Page 10 1 2 of the document I just handed you, paragraph 1 2 identifies Kim Enterprises as a limited liability 3 company; is that correct? 4 A. Yes. 5 Q. And are you the hundred percent or sole 6 owner of Kim Enterprises? 7 A. Yes. 8 Q. And Kim Enterprises is engaged in the hair 9 and beauty product business, correct? 10 A. Yes. 11 Q. All right. The paragraph 4 identifies this 12 case about the beauty supply store at 3315 Broad 13 River Road that was sold to K&C Beauty; is that 14 right? 15 A. Yes. 16 Q. Okay. So throughout your deposition, I'm 17 going to refer to that store that was sold to K&C 18 Beauty as the beauty store. 19 Is that a fair -- do you understand that's 20 how I'll be referring to it? 21 A. Yes. 22 Q. Okay. And so you previously owned and 23 operated the beauty store; is that right? 24 A. Yes. 25 Q. And for how long did you operate the beauty	Page 12 1 Q. Okay. So the idea to buy a store, was it 2 Youmi's idea? 3 A. Yes. 4 Q. And did Youmi -- and you understand, did 5 Youmi come for education for herself or for her 6 children or both? 7 A. It is my belief that it was for the 8 children. 9 Q. Okay. You said that Youmi did not want to 10 study, so what did you mean by she did not want to 11 study? 12 A. It was for a language school, so she didn't 13 want to have to take it again. 14 Q. All right. Did you ever ask Youmi Cho to 15 work in any of your beauty supply stores prior to her 16 purchasing one? 17 A. I had offered to become her sponsor so that 18 she would be able to get a working visa. Yes. 19 Q. Okay. Was Youmi eligible to work in the 20 United States when she first came here? 21 A. No. 22 Q. Have you been a sponsor for any other 23 person in the past? 24 A. Yes. 25 Q. How long does that process take to get

Page 25 1 ever married an individual so they could live and get 2 citizenship in the United States? 3 MR. BROWN: Object to the form. 4 THE WITNESS: No. 5 BY MR. PAAVOLA: 6 Q. Have you ever heard of anybody else doing 7 that so they could stay in the United States? 8 MR. BROWN: Object to the form. 9 THE WITNESS: No. 10 BY MR. PAAVOLA: 11 Q. You never heard of that? Never heard of 12 anybody else ever doing that? 13 MR. BROWN: Object to the form. 14 THE WITNESS: No. 15 BY MR. PAAVOLA: 16 Q. Back on your complaint and looking at 17 paragraph 6 again, this describes your -- the alleged 18 agreement between Kim Enterprises and K&C Beauty. 19 And it talks about it being a verbal agreement. Is 20 that your understanding? It was a verbal agreement? 21 A. Yes. 22 Q. Okay. It's not put in writing? 23 A. Yes. 24 Q. And then this paragraph states that the 25 agreement was for K&C Beauty to pay \$800,000 for the	Page 27 1 was -- is a date that K&C Beauty took over the 2 business? 3 A. Yes, that's when she took over. 4 Q. Okay. What's significant about March 8, 5 2021? 6 A. March 7th is when she received the business 7 license, and she told me, "I need money, Uncle, so I 8 need to take over." And starting the next day, she 9 took over. 10 Q. Okay. The agreement to sell the beauty 11 store was entered into around December of 2020; is 12 that right? 13 A. I believe so. Yes. 14 Q. Okay. So what is your understanding as 15 between December and March 7th as to which entity 16 owned the profits of the beauty store? 17 MR. BROWN: Object to the form. 18 THE WITNESS: So Youmi Cho had paid the 19 \$250,000 up front, however, not the remainder of 20 the payment, and she did not have a business 21 license as of yet. And so the income up until 22 March 7th, I took. 23 BY MR. PAAVOLA: 24 Q. That includes all the profits up until 25 March 7th; is that correct?
Page 26 1 beauty store. Is that what it says? 2 A. Yes. 3 Q. And then that was to be broken up by 4 \$250,000 up front followed by 36 installments of 5 \$15,000 beginning in May of 2021 and concluding with 6 one final payment of \$10,000? 7 A. Yes. 8 Q. Is that your understanding of the agreement 9 as we sit here today? 10 A. Yes. 11 Q. Okay. So the -- under your understanding 12 of the agreement there was to be an upfront payment, 13 is what it says here, followed by one payment each 14 month for three years; is that right? 15 A. Yes. 16 Q. All right. Paragraph 8 says that the 17 Defendants, K&C Beauty, Youmi Cho, assumed control of 18 the business on March 8, 2021. Do you see that? 19 A. Yes. 20 Q. And what does it mean to have assumed 21 control of the business? 22 A. I don't exactly know what that means 23 either. 24 Q. Okay. Do you have a -- do you -- sitting 25 here today, is it your testimony that March 8, 2021,	Page 28 1 A. Yes. 2 Q. Is it your testimony that Youmi Cho would 3 not own the business until all 36 checks would have 4 been cashed? 5 MR. BROWN: Object to the form. 6 THE WITNESS: So, no, she did not have her 7 business license up until March 7th, and at that 8 point regarding the checks, she still had not 9 given -- wait, actually I'm not sure. I do not 10 recall. That is when she received her business 11 license, March 7th. 12 BY MR. PAAVOLA: 13 Q. So are you basing your understanding that 14 the profits belong to Kim Enterprises before 15 March 8th because K&C Beauty did not have a business 16 license? 17 MR. BROWN: Object to the form. 18 THE WITNESS: Yes. 19 BY MR. PAAVOLA: 20 Q. Okay. Did you ever have discussions with 21 Youmi Cho that the business would not belong to her 22 until she obtained a business license? 23 A. And so Youmi Cho told me that her 24 immigration lawyer actually told her to not start any 25 of this transaction until all of her papers were in

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Account Detail - Wells Fargo



UNITED STATES FEDERAL RESERVE NOTE - HOLD TO RISK TO PAY, FOR ADDITIONAL SECURITY FEATURES SEE BACK	
CASHIER'S CHECK	
Office AU #	11-44 121001
Receiver:	YOMMI CHO
Operator ID:	00011550 00001320
Date of Issue: December 1, 2020	
Pay to the order of: TOK KH	
Two Hundred Fifty Thousand and 00/100 US Dollars	
\$250,000.00	
Total in Words: TWO HUNDRED FIFTY THOUSAND AND 00/100 US DOLLARS	
Payable to: TOK KH	
Motto: HONESTY IS THE BEST POLICY	
WELLS FARGO BANK, N.A. 101 SOUTH SUNDANCE BLVD COLUMBIA, SC 29201 FOR INQUIRIES CALL 1-800-857-8123	
Authorized Signature: <i>[Signature]</i>	
Authorized Signature: <i>[Signature]</i>	

[illegible]

You can see full or partial fronts and backs of the images by using the link at the top of the window.

EXHIBIT 2

R-000173

EXHIBIT C

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5442

1042

67-776/532 8556

Pay to the
Order of

Tok chin kim

\$ 15,000⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

MG

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5442

1041

67-776/532 8556

Pay to the
Order of

Tok chin kim

\$ 15,000⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

MG

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5442

1040

67-776/532 8556

Pay to the
Order of

Tok chin kim

\$ 15,000.⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

MG

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5442

Wells Fargo Bank, N.A. - Return Reason:
☐ Closed Account ☐ NSF
☒ Stop Payment ☒ Order to Maker
Serial # 0068855

1012

67-776/532 8556

Pay to the
Order of

Tok chin kim

\$ 15,000⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

STORE ON PAYMENT

MG

Defendant-000001
CONFIDENTIAL

R-000174

1013

K&C BEAUTY, LLC
2010 BROADWAY, SUITE 100
COLUMBIA, SC 29204-5445

Pay to the order of Tok Chin Kim \$ 15,000

Fifteen thousand

WELLS FARGO

For [redacted]

1014

K&C BEAUTY, LLC
2010 BROADWAY, SUITE 100
COLUMBIA, SC 29204-5445

Pay to the order of Tok Chin Kim \$ 15,000

Fifteen thousand

WELLS FARGO

For [redacted]

1015

K&C BEAUTY, LLC
2010 BROADWAY, SUITE 100
COLUMBIA, SC 29204-5445

Pay to the order of Tok Chin Kim \$ 15,000

Fifteen thousand

WELLS FARGO

For [redacted]

1016

K&C BEAUTY, LLC
2010 BROADWAY, SUITE 100
COLUMBIA, SC 29204-5445

Pay to the order of Tok Chin Kim \$ 15,000

Fifteen thousand

WELLS FARGO

For [redacted]

Defendant-000002
CONFIDENTIAL

R-000175

KAC BEAUTY, LLC
2700 BROADWAY, SUITE 200
COLUMBIA, SC 29204-4442

1017

Pay to the
Order of Tok Chin Kim \$ 15,000 ⁰⁰/₁₀₀

Fifteen thousand

Wells Fargo

For [Redacted]

KAC BEAUTY, LLC
2700 BROADWAY, SUITE 200
COLUMBIA, SC 29204-4442

1022

Pay to the
Order of Tok Chin Kim \$ 15,000 ⁰⁰/₁₀₀

Fifteen thousand

Wells Fargo

For [Redacted]

KAC BEAUTY, LLC
2700 BROADWAY, SUITE 200
COLUMBIA, SC 29204-4442

1023

Pay to the
Order of Tok Chin Kim \$ 15,000 ⁰⁰/₁₀₀

Fifteen thousand

Wells Fargo

For [Redacted]

KAC BEAUTY, LLC
2700 BROADWAY, SUITE 200
COLUMBIA, SC 29204-4442

1024

Pay to the
Order of Tok Chin Kim \$ 15,000 ⁰⁰/₁₀₀

Fifteen thousand

Wells Fargo

For [Redacted]

Defendant-000003
CONFIDENTIAL

R-000176

K&C BEAUTY, LLC
3315 BROADVIEW BLVD STE 30
COLUMBIA, SC 29210-5443

1025

Pay to the Order of Tok Chin Kim \$ 15,000

fifteen thousand

WELLS FARGO

For [Redacted]

K&C BEAUTY, LLC
3315 BROADVIEW BLVD STE 30
COLUMBIA, SC 29210-5443

1026

Pay to the Order of Tok Chin Kim \$ 15,000

fifteen thousand

WELLS FARGO

For [Redacted]

K&C BEAUTY, LLC
3315 BROADVIEW BLVD STE 30
COLUMBIA, SC 29210-5443

1027

Pay to the Order of Tok Chin Kim \$ 15,000

fifteen thousand

WELLS FARGO

For [Redacted]

K&C BEAUTY, LLC
3315 BROADVIEW BLVD STE 30
COLUMBIA, SC 29210-5443

1028

Pay to the Order of Tok Chin Kim \$ 15,000

fifteen thousand

WELLS FARGO

For [Redacted]

Defendant-000004
CONFIDENTIAL

R-000177

K&C BEAUTY, LLC
 3115 BROAD RIVER RD STE 300
 COLUMBIA, SC 29210-5443

1029
 07/26/2018

Pay to the Order of Tok Chin Kim \$ 15,000
fifteen thousand Dollars

WELLS FARGO
 Wells Fargo Bank, NA
 South Carolina
 www.wellsfargo.com

For [Redacted] *TKC*

K&C BEAUTY, LLC
 3115 BROAD RIVER RD STE 300
 COLUMBIA, SC 29210-5443

1030
 07/26/2018

Pay to the Order of Tok Chin Kim \$ 15,000
fifteen thousand Dollars

WELLS FARGO
 Wells Fargo Bank, NA
 South Carolina
 www.wellsfargo.com

For [Redacted] *TKC*

K&C BEAUTY, LLC
 3115 BROAD RIVER RD STE 300
 COLUMBIA, SC 29210-5443

1031
 07/26/2018

Pay to the Order of Tok Chin Kim \$ 15,000
fifteen thousand Dollars

WELLS FARGO
 Wells Fargo Bank, NA
 South Carolina
 www.wellsfargo.com

For [Redacted] *TKC*

K&C BEAUTY, LLC
 3115 BROAD RIVER RD STE 300
 COLUMBIA, SC 29210-5443

1032
 07/26/2018

Pay to the Order of Tok Chin Kim \$ 15,000
fifteen thousand Dollars

WELLS FARGO
 Wells Fargo Bank, NA
 South Carolina
 www.wellsfargo.com

For [Redacted] *TKC*

Defendant-000005
 CONFIDENTIAL

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 20
COLUMBIA, SC 29210-5443

1033

Pay to the
Order of

Tok chin kim

\$ 15,000⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

[Redacted]

YK

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 20
COLUMBIA, SC 29210-5443

1034

Pay to the
Order of

Tok chin kim

\$ 15,000⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

[Redacted]

YK

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 20
COLUMBIA, SC 29210-5443

1035

Pay to the
Order of

Tok chin kim

\$ 15,000⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

[Redacted]

YK

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 20
COLUMBIA, SC 29210-5443

1036

Pay to the
Order of

Tok chin kim

\$ 15,000⁰⁰

fifteen thousand

Dollars



Wells Fargo Bank, N.A.
Member FDIC
wellsfargo.com

For

[Redacted]

YK

Defendant-000006
CONFIDENTIAL

R-000179

K&C BEAUTY, LLC
1215 BOWLING GREEN RD STE 101
COLUMBIA, SC 29210-5443

1037

07/16/2018

Pay to the
Order of

Tok chin Kim

\$ 15,000

fifteen thousand

Exhibit

0



Wells Fargo Bank, N.A.
Member FDIC

[Signature]

K&C BEAUTY, LLC
1215 BOWLING GREEN RD STE 101
COLUMBIA, SC 29210-5443

1049

07/16/2018

Pay to the
Order of

Tok chin Kim

\$ 15,000

fifteen thousand

Exhibit

0



Wells Fargo Bank, N.A.
Member FDIC

[Signature]

K&C BEAUTY, LLC
1215 BOWLING GREEN RD STE 101
COLUMBIA, SC 29210-5443

1047

07/16/2018

Pay to the
Order of

Tok chin Kim

\$ 15,000

fifteen thousand

Exhibit

0



Wells Fargo Bank, N.A.
Member FDIC

[Signature]

K&C BEAUTY, LLC
1215 BOWLING GREEN RD STE 101
COLUMBIA, SC 29210-5443

1048

07/16/2018

Pay to the
Order of

Tok chin Kim

\$ 15,000

fifteen thousand

Exhibit

0



Wells Fargo Bank, N.A.
Member FDIC

[Signature]

Defendant-000007
CONFIDENTIAL

R-000180

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5443

1046

67.776532 0354

Pay to the
Order of

Tok chin kim
fifteen thousand

\$ 15,000⁰⁰

Dollars



Wells Fargo Bank, N.A.
South Carolina
wellsfargo.com

For

TK

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5443

1045

67.776532 0354

Pay to the
Order of

Tok chin kim
fifteen thousand

\$ 15,000⁰⁰

Dollars



Wells Fargo Bank, N.A.
South Carolina
wellsfargo.com

For

TK

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5443

1044

67.776532 0354

Pay to the
(Print) of

Tok chin kim
fifteen thousand

\$ 15,000⁰⁰

Dollars



Wells Fargo Bank, N.A.
South Carolina
wellsfargo.com

For

TK

K&C BEAUTY, LLC
3315 BROAD RIVER RD STE 90
COLUMBIA, SC 29210-5443

1043

67.776532 0354

Pay to the
Order of

Tok chin kim
fifteen thousand

\$ 15,000⁰⁰

Dollars



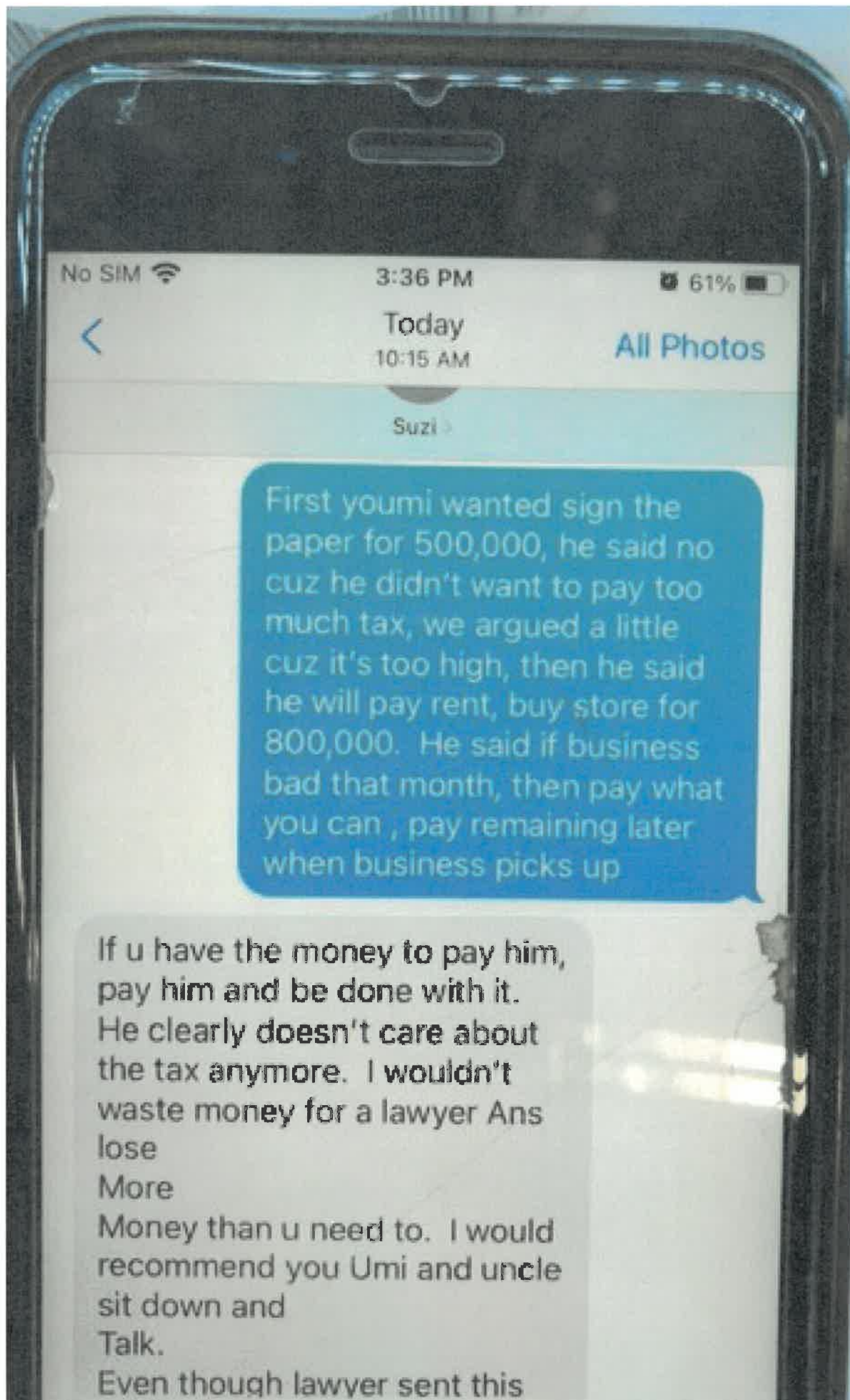
Wells Fargo Bank, N.A.
South Carolina
wellsfargo.com

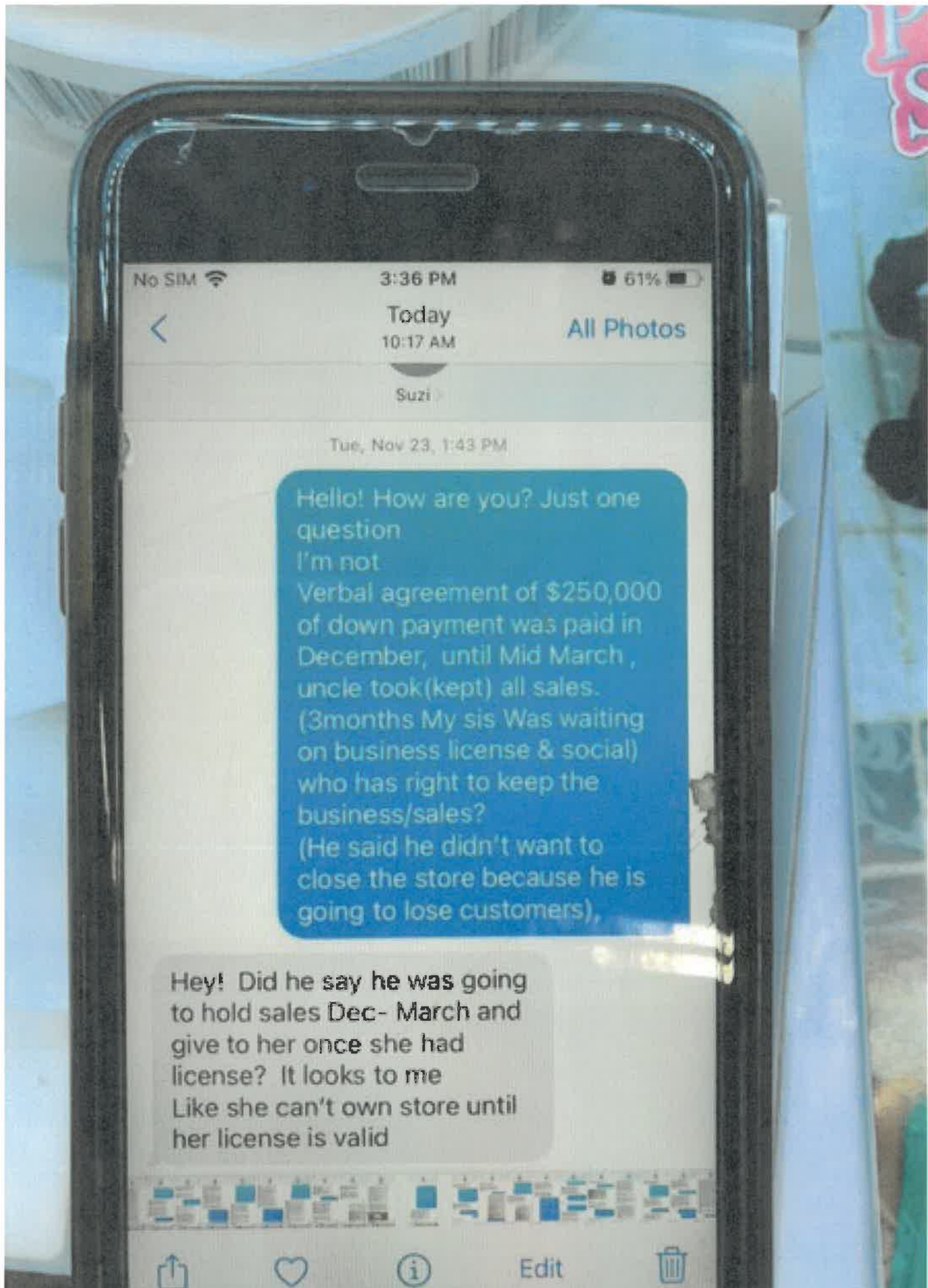
For

TK

Defendant-000008
CONFIDENTIAL

R-000181





Hello! How are you? Just one question
I'm not
Verbal agreement of \$250,000
of down payment was paid in
December, until Mid March,
uncle took(kept) all sales.
(3months My sis Was waiting
on business license & social)
who has right to keep the
business/sales?
(He said he didn't want to
close the store because he is
going to lose customers),

Hey! Did he say he was going
to hold sales Dec- March and
give to her once she had
license? It looks to me
Like she can't own store until
her license is valid

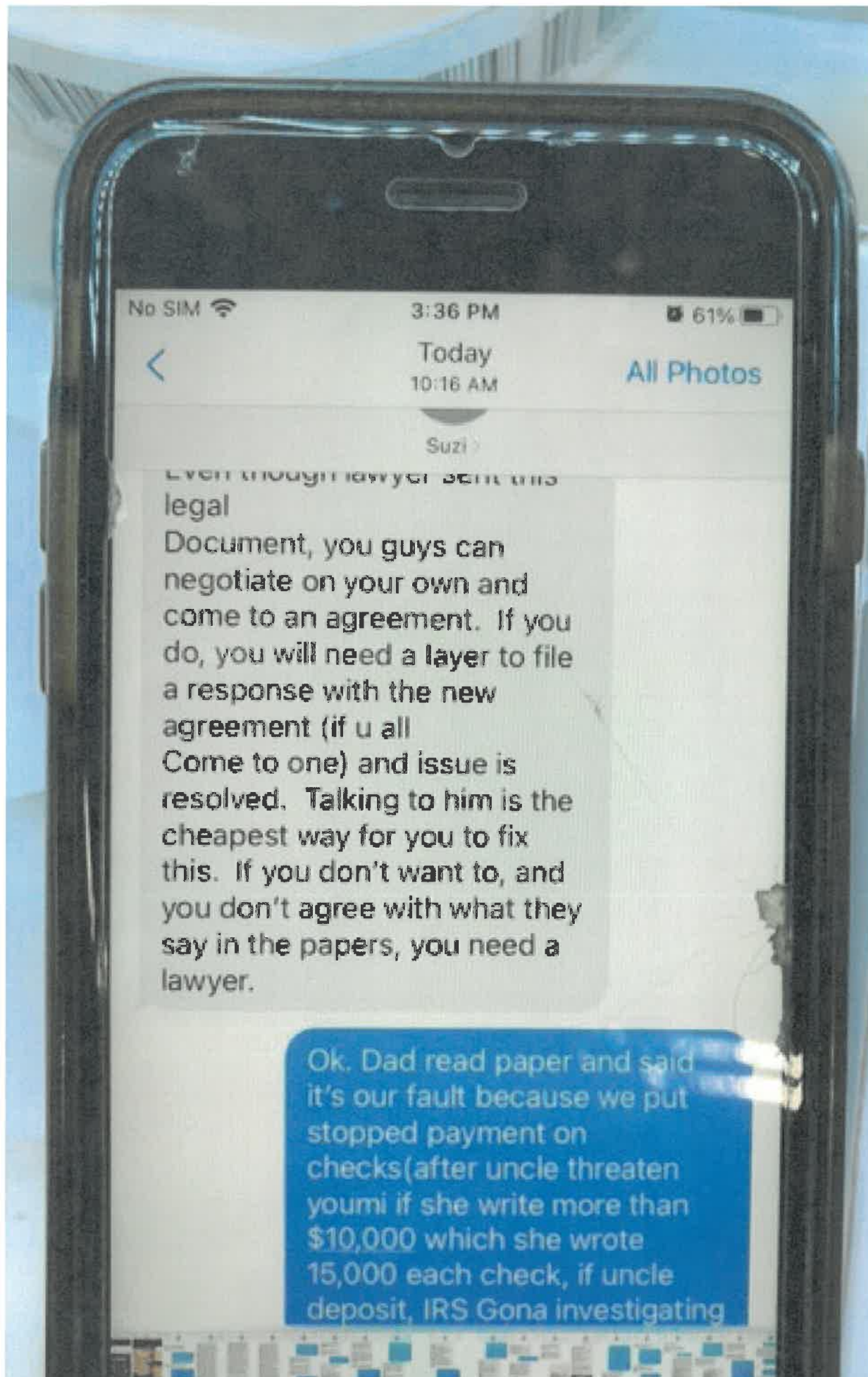


EXHIBIT E

Tok Kim

ELECTRONICALLY FILED - 2024 Oct 15 9:14 AM - RICHLAND - COMMON PLEAS - CASE#2021CP4005596

Page 77 1 Enterprises doesn't track the net profit by store. 2 Is that your understanding too? 3 A. So it really depends on the store. Some 4 stores, they -- in terms of the price for the hair 5 products, it's 1.5 or 1.6 or 1.7, the original cost. 6 For hair, it's more so. So it would be different. 7 Q. Let me clarify my question. I mean on an 8 annual basis, you do not track the net profit from 9 each of your four stores at the time you sold this to 10 K&C Beauty; is that right? 11 A. So I was in charge of the actual sales of 12 the stores and during COVID I was working by myself. 13 So in terms of depositing the sales, I would do so. 14 However, in terms of actual income, net income, 15 that's something my wife was aware of. 16 Q. Okay. We've seen with the sales receipts 17 that Kim Enterprises tracks its sales -- it's able to 18 identify sales by store. You understand that? 19 A. Yes. Yes. 20 Q. You were here for Mrs. Kim's deposition and 21 you also understand that expenses for the beauty 22 stores are not split up store by store? 23 A. Yes, however, that's not something I'm 24 familiar with. 25 Q. But are you -- do you understand that -- do	Page 79 1 Q. Okay. Who was that? 2 A. It was a salesman. 3 Q. And what was his offer? 4 A. His offer was three separate people 5 co-owning, and I said no. 6 Q. Did he have a sales price? 7 A. I did not ask about the amount. 8 Q. Okay. So you had an offer of -- or I guess 9 a salesman was asking you if you would sell to three 10 people; is that -- 11 A. So it's two people from Texas and one 12 person that lives in Atlanta. They were friends. 13 They visited me together. 14 Q. There was never any dollars talked about; 15 is that right? 16 A. No. 17 Q. Prior to selling the beauty store to Youmi 18 Cho, did you allow Ms. Cho to come in the store and 19 look at the store before she bought it? 20 A. So during the two years Sang was living in 21 my home, that home was only a few minutes away from 22 the store, five minutes away. And so while she was 23 staying there, she was able to visit the store 24 numerous times, for example, to bring lunch to her 25 brother.
Page 78 1 you know one way or the other or whether Kim 2 Enterprises can identify its net profit by store for 3 each of the past years from 2017 to 2020? 4 A. I do not know. 5 Q. Okay. You don't know either way? 6 A. Yes. 7 Q. But Mrs. Kim testified that expenses are 8 not broken out store by store. Do you have any 9 reason to disagree with that? 10 A. That, I don't even know the details of. 11 She completely manages it. 12 Q. Whatever she said, you would have -- not 13 disagree with? 14 A. Right. 15 Q. Did you have the beauty stores for sale for 16 a million dollars prior to the time you sold it to 17 Youmi Cho? 18 A. No. 19 Q. Okay. Did you ever receive any offers to 20 purchase the beauty store in the year or two prior to 21 selling to Youmi Cho? 22 A. Yes. 23 Q. Okay. Tell me about those offers. How 24 many did you have? 25 A. One person.	Page 80 1 Q. Okay. Did you ever invite Ms. Cho to come 2 in and look at the inventory in the store before she 3 bought it? 4 A. So, no, after she asked me to buy my store, 5 she went back to Korea. And after she returned, she 6 considered three other beauty stores and after which 7 she decided to buy my store. 8 Q. Did she ever ask to come in and visit and 9 look at the store before she bought it? 10 A. No. No, because Sang was already working 11 at that store since she was already familiarized by 12 going to see the store. 13 Q. Okay. Did Ms. Youmi Cho ever come in the 14 store to look at the inventory the store had 15 including the storage room? 16 A. I don't know. 17 Q. Okay. Did you ever -- did Ms. Cho ever ask 18 you the look at the inventory in the storage room? 19 A. No. 20 Q. Did you ever tell Ms. Cho she could not 21 look at the inventory in the storage room? 22 A. No. 23 Q. Was the storage room unlocked during the 24 day or times that Ms. Cho could visit? 25 A. No.

R-000185

Page 41

1 if the store needs it, we're made aware of it, there's
2 a confirmation, there's an okay, go ahead and place the
3 order.
4 Q Okay. And do you know if any of the inventory at the
5 beauty store at the time of the sale to K&C Beauty, do
6 you know if any of that inventory was expired?
7 A No.
8 Q No, you don't know, or no, it wasn't expired?
9 A No, I don't know.
10 Q Okay. And so, I know previously you'd said that you
11 worked at the beauty store at the Broad River location
12 about every other Tuesday. And so, when you did that,
13 did you ever go inspect the inventory?
14 A Yes, ma'am.
15 Q Okay. And did you ever find any expired inventory?
16 A No, ma'am.
17 Q Okay. And would you inspect the inventory every
18 Tuesday you worked, or how frequently would you do
19 that?
20 A I only did that when we was made -- when I was made
21 aware by Mr. Sang Cho that he needs to place an order.
22 I -- he's experienced, he's a manager, so I don't have
23 -- I didn't feel like I need to actually go and
24 visually inspect the inventory. He knows what the
25 store sells, he knows what that store needs, so he

Page 42

1 would place the order like that. Normally, when I'm
2 there on Tuesday, I'm behind the register. I'm on the
3 cash -- I'm the cashier.
4 Q Okay.
5 A I don't have -- I can help customers where I run back
6 if I don't have an employee there with me. Sometimes
7 I'm there by myself. But I don't have really time to
8 go and do his job. That's why he's a manager.
9 Q So, you didn't typically go evaluate the stock of the
10 inventory for the beauty store location?
11 A No.
12 Q Okay. All right. And so, I'm going to hand you an
13 exhibit. It's Exhibit 15 to Tok Kim's deposition.
14 MS. THIBAUT: And I'll give you a copy too.
15 MR. BROWN: Okay. Is this for me or him?
16 MS. THIBAUT: I'm going -- to him.
17 MR. BROWN: Oh, okay.
18 MS. THIBAUT: But in case you want to look at it
19 too.
20 MR. BROWN: Oh, okay. Yeah.
21 Q And so, I know it's a lot of pictures, but if you'll
22 just take a minute and look through them, and then let
23 me know if you recognize any of the photographs.
24 MR. BROWN: A lot of pictures.
25 MS. THIBAUT: I know. I'm sorry for the number

Page 43

1 of pictures there.
2 A Okay.
3 Q And did you recognize any of them?
4 A Yes.
5 Q Okay. I probably should've told you beforehand, but
6 can you identify which ones that you recognize?
7 A I recognize all of them except for the pictures -- the
8 pictures in there where it looks like they just threw
9 it all on the floor. So, for example, let's see --
10 MR. BROWN: And just, Vincent, you're not a
11 lawyer. If when you talk with Ashley --
12 MS. THIBAUT: There's a number on the bottom.
13 MR. BROWN: Yeah, you see like the Defendant, so
14 if you talk about like this page --
15 THE DEPONENT: I gotcha. I gotcha.
16 MR. BROWN: -- just make sure you let her know.
17 MS. THIBAUT: Just say the number.
18 THE DEPONENT: Okay. Yes, ma'am. Yes, sir.
19 A Defendant 157.
20 Q And so that's one that you don't recognize?
21 A Correct.
22 Q Okay.
23 A Defendant 174, Defendant 175. Defendant 189.
24 Defendant 196. That's it.
25 Q Okay. So, for all the pictures except the ones that

Page 44

1 you just listed, 157, 174, 175, 189, and 196, how do
2 you recognize those photos?
3 A From working at that location.
4 Q And which location would that be?
5 A That would be the Broad River location.
6 Q And so, does that look like the state of the inventory
7 at the Broad River location prior to the sale to K&C
8 Beauty?
9 A That is correct.
10 Q Okay. And do you know who took the pictures?
11 A No, I'm not aware.
12 Q Okay. But you didn't take these pictures?
13 A No, ma'am.
14 Q Okay. And the products that were in these photographs
15 that you recognized, are those the same kind of
16 products that would be sold at any of the beauty store
17 locations?
18 A That is correct.
19 Q Okay. Okay. And so, I know -- okay, and we're done
20 with that. We can put it to the side.
21 MS. THIBAUT: And then I'll toss you a copy in
22 case you need it later.
23 THE COURT REPORTER: Thank you.
24 MR. BROWN: What is it? It's --
25 MS. THIBAUT: Just keep it.

Page 65 1 Q Okay. And how do you know that that's true? 2 A I actually seen the items that he purchased. I didn't 3 know exactly all -- what it all was, but I know he took 4 them shopping, and I've seen the bags. 5 Q Okay. Did you see him give items to Youmi? 6 A No. 7 Q So, could you elaborate a little bit more on the 8 circumstances that you saw the bags that he purchased? 9 A Yeah because at the time I actually had -- while he was 10 gone to take them shopping, I had to run the store that 11 he normally runs. So, when he returned, I seen them in 12 the back with the kids, quite a few bags. So, I mean, 13 he said he was going to take them shopping, and that's 14 what I seen. 15 Q But do you know that Tok Kim paid for those at the 16 store? 17 A No. 18 Q Okay. Do you just know that because that's what Tok 19 Kim and said to you? 20 A That's correct. 21 Q Okay. And then the next sentence right after that, 22 "Gave money to them and then brought food when needed," 23 do you see that? 24 A Yes. 25 Q And when you say, "Gave money to them," who's the	Page 65 1 for Mr. Cho, his sister, the kids, whatever, whoever is 2 going to eat it. But yes, I've seen it. 3 Q Okay. So, you've seen the food, but have you ever seen 4 them physically drop it off at Sang's house? 5 A No. 6 Q Okay. And then, if we go just a couple sentences down 7 from there, do you see where it says, "Mr. Kim 8 purchased a patio home, parentheses, (condo), in which 9 Mr. Cho moved into and stayed there rent free for two 10 years?" 11 A Yes. 12 Q Okay. And how do you know that's true? 13 A I know about the purchase of the patio home. I 14 actually helped Mr. Cho move into the patio home. 15 Q But how do you know that Mr. Cho didn't pay rent? 16 A Mr. Kim told me -- told me so, and Mrs. Sang Cho also 17 told me. 18 Q Okay. And if we go down to the next sentence right 19 after that, "Also, when Mr. Kim's sister decided to 20 move here, he paid all expenses as well as gave Youmi 21 Cho \$2,000 to make sure she brought food that her 22 mother was used to eating as she is from Korea and not 23 really familiar to eating American food." Do you see 24 that? 25 A Yes.
Page 66 1 'them' you're referring to? 2 A I'm referring to his family: Youmi Cho, the kids, his 3 sister. 4 Q Okay. And did you ever see Tok Kim bring any of those 5 people food? 6 A Yes. 7 Q When? 8 A Actually, he cooked, and he brought it, and he dropped 9 it off quite a few times. 10 Q And where would he drop it off at? 11 A At Mr. Sang Cho house. 12 Q And so, were you physically there at Sang Cho's house 13 when he would drop it off? 14 A No. 15 Q But then how do you know that it was dropped off? 16 A Okay, the way this works is, I am picked -- I don't -- 17 I don't have a vehicle. Okay. So, for all these years 18 that I've been working here, Mr. Tok Kim picks me up in 19 the morning, and Mr. Tok Kim drops me off at the end of 20 business day. 21 Q Okay. 22 A As I was leaving, quite a few times at the end of the 23 business day, there is food. I can visually see it, 24 smell it, "Look," and he'll tell me, "Oh, I'm dropping 25 this stuff at Sang Choi house," which is Mrs. Sang Cho,	Page 66 1 Q Okay. And how do you know that that's true? 2 A I was told by Mr. Kim. 3 Q Okay. Did you ever see Mr. Kim give Youmi Cho the 4 \$2,000? 5 A No. 6 Q Okay. Have you ever seen Tok Kim give Youmi Cho any 7 money? 8 A No. 9 Q Okay. Okay. And then, the sentence right after that, 10 "Mr. Kim, as long as I have known him, has helped his 11 employees with money purchasing vehicles." Do you see 12 that? 13 A Yes. 14 Q Okay. And what employees are you referring to? 15 A Me -- myself, Vincent Fletcher, as far as monetary in 16 my -- in my -- for me. And I've also known Mr. Kim to 17 buy a couple of employees a vehicle. 18 Q How many employees do you think he's bought vehicles 19 for? 20 A Two. 21 Q And does that include yourself? 22 A No. 23 Q Okay. And how do you know that you bought vehicles for 24 them? 25 A I was -- I was literally there.

Page 73

1 A Yes.

2 Q Do you know when that offer was made?

3 A No.

4 Q Do you have any details surrounding that offer?

5 A It was actually made by the same person who purchased

6 North Main store, Mr. Lee.

7 Q And is that the only information you have about it?

8 A That is correct.

9 Q Okay. And do you have any knowledge regarding the

10 transition of the beauty store to K&C Beauty?

11 A Only what I stated previously what you asked me.

12 Q Okay. Do you know when it was turned over to K&C

13 Beauty?

14 A Yes. She received her business license March 7th. She

15 actually opened for business under, I don't know if it

16 was K&C yet, but she actually, for herself, opened the

17 next day, March 8th.

18 Q Okay. Of what year?

19 A 2021.

20 Q Okay. So, it's your understanding that the beauty

21 store became K&C Beauty's on March 8th of 2021?

22 A That is correct.

23 Q Okay. Do you know if Youmi Cho was provided any

24 training by anyone at Kim Enterprises prior to the

25 transition of the store to K&C Beauty?

Page 74

1 A I'm not aware of that, no.

2 Q Okay. Did -- so you haven't ever trained Youmi Cho?

3 A No.

4 Q Okay. Do you know Tok Kim ever trained her?

5 A No.

6 Q Okay. And so, were you involved with the transition of

7 the beauty store to K&C Beauty in any way?

8 A No.

9 Q And so I know you've said that Sang Cho is an employee

10 of the beauty store while it was still owned by K&C

11 Beauty, is that -- or while it was still owned by Kim

12 Enterprises; is that right?

13 A That is correct.

14 Q Okay. And did you work with Sang Cho?

15 A Yes.

16 Q And how often would you work with him?

17 A Here and there, some -- not -- not frequently, but

18 sometimes. I can't give you the exact number, but it

19 wasn't a lot. Because like -- as I stated, he's the

20 manager over there. I have my responsibilities on the

21 other side of town. So he can handle it.

22 Q And what Sang Cho -- what was Sang Cho's positioned at

23 K&C -- or at Kim Enterprises?

24 A Manager.

25 Q Manager. And was he the manager of the Broad River --

Page 75

1 Broad River location?

2 A Yes.

3 Q Okay. And so, I believe you said you're the general

4 manager; is that right?

5 A That is correct.

6 Q So as the general manager, are you the supervisor to

7 the managers?

8 A Yes.

9 Q Okay. And so, what interactions did you have with Sang

10 as far as managing and supervising him?

11 A Not too -- not too much. You know, occasionally, if he

12 over ordered a item or items or whatever, I would just

13 like, kind of be like, "Hey, man, just, you know, ease

14 up a little bit. Just be aware of what you purchase."

15 That's it. Nothing really.

16 Q And what types of tasks would you oversee Sang Cho do?

17 I know you said that he was supposed to get approval

18 before making purchase orders. Is there any other kind

19 of duties that he would need approval from you for?

20 A No.

21 Q Okay.

22 A Oh, I'm sorry. Yes. I'm sorry. As far as hiring new

23 employees.

24 Q Did he have the authority to fire people?

25 A Yes.

Page 76

1 Q Okay. And if a new employee was hired at the beauty

2 store location when it was owned by Kim Enterprises,

3 would Sang train the new employee or is that something

4 that you would do as a general manager?

5 A Sang.

6 Q Okay. Because I know previously you had said that you

7 train employees. So, which store locations would you

8 train the employees at?

9 A Usually, it's my store, 7390 Two Notch Road.

10 Q Okay. And how would you describe Sang Cho's work

11 ethic?

12 A Excellent.

13 Q Was he a proactive worker?

14 A Can you elaborate?

15 Q It -- was Sang Cho the type of employee that would see

16 something that needs to be done, and do it?

17 A Yes.

18 Q Okay. And did Sang Cho normally do as he was

19 instructed, like if he told him to do something, would

20 he typically do it?

21 A Yes.

22 Q Okay. And do you know what Sang Cho's specific job

23 duties are as the manager of the Broad River location?

24 A To oversee and run the business as need -- as needed.

25 Q And what kind of tasks would that entail?

Page 77 1 A Inventory control, ordering, employee training. Just 2 running the business as it needed. 3 Q Okay. Do you know if Sang Cho was involved with any 4 profit and losses of the beauty store? 5 A No. I don't know. 6 Q Do you know if Sang was responsible for tracking the 7 purchases of the beauty store? 8 A Yeah, yes, he has on occasion, yes. 9 Q And how would he do that, do you know? 10 A As far as the beauty store; as far as Broad River? 11 Q Yes. 12 A Case -- I mean, just in case a package occasionally 13 gets lost, and his job as the manager is to track it 14 down, find out what's going on, as well as doing 15 inventory control and the ordering. So yes. 16 Q And during inventory control if Sang found product that 17 was expired that he wanted to return to a vendor per 18 structural engineer, or wanted to throw out, is that 19 something that he would've discussed with you prior to 20 doing? 21 A Yes. 22 Q Okay. And did you have many conversations with Sang 23 about returning items to vendors or throwing away 24 products for the beauty store, Broad River location? 25 A No.	Page 77 1 So yes, he kept a ledger. 2 Q Did you ever see the ledger? 3 A Yes. 4 Q What did it look like? 5 A A book. 6 Q Like a hardback book or -- 7 A Yes. 8 Q Do you know what color? 9 A Brown. 10 Q Okay. Did you ever see what was inside the book, or 11 just a cover? 12 A Yes, I actually witnessed him write it -- write it in. 13 Yes, I've seen it. 14 Q Okay. And is that something that you do as well for 15 your location? 16 A No. 17 Q Okay. And did you ever see Youmi Cho in the beauty 18 store at the Broad Liver -- Broad River location before 19 she purchased the beauty store? 20 A Yes. 21 Q About how many times, do you know? 22 A Maybe once, twice, something like that. 23 Q So not very frequently? 24 A No. 25 Q All right. And I understand that, unfortunately, you
Page 78 1 Q Okay. And so, Sang Cho was involved with purchasing 2 items for the beauty store after he received your or 3 Tok Kim's permission? 4 A That is correct. 5 Q Okay. And it'd be Sang Cho's, part of Sang Cho's job 6 description, to check the store for inventory, or ask 7 other employees to do that? 8 A It was his -- it was his duty as a manager. 9 Q So as a manager it's not -- you typically wouldn't 10 elect to have an employee check the inventory, that's 11 something a manager would do more? 12 A Yes. 13 Q Okay. And are you aware of any book or ledger that 14 Sang Cho kept which listed all the sales of the beauty 15 store? 16 A Yes. 17 Q Can you elaborate on that? 18 A Mr. Cho kept the book under the register. And every 19 night at -- every -- at the close of business every day, 20 whatever he made for that day, he would write it down. 21 And he told me he did that for -- the reason he did 22 that was because he wanted to see how the sales -- once 23 he got to Broad River store, he wanted to see how the 24 sales went each and every year. What -- this year was 25 better on this day, this day would better on this year.	Page 78 1 were a victim of an attack this year; is that right? 2 A That's correct. 3 Q Okay. And do you know about when that was? 4 A I don't remember. 5 Q Okay. Do you know like what happened? 6 A Yes, I was on my way home, actually going to the -- 7 putting the key in my door and I was approached from 8 the -- behind -- they came behind me. And one of the 9 guys bent me around and punched me in my face, my nose. 10 Q I'm so sorry to hear that. 11 A Yeah. You -- I mean, it's -- it healed, but you can 12 still see it kind of right -- like yeah. 13 Q And did you file a police report? 14 A No. 15 Q Why not? 16 A I just -- I didn't feel like -- you know, it just 17 happened. I was just -- I don't know whether I was in 18 shock, or -- I mean, I just don't know what -- it was 19 just too -- it was overwhelming. I just -- you know, I 20 actually was -- I actually got into my house because I 21 am -- I have a concealed weapons permit. So, I was 22 actually going in my house to obtain my gun. Usually, 23 I have it on my person, but that particular day, I 24 didn't. And they're kind of lucky that I didn't. 25 Q Okay. And do you know who was responsible for this

Page 12 1 does have an expiration date, you were saying would 2 be products that are in bottles like hair care? 3 A. Yeah. Hair care products, like chemicals 4 and like relaxers, shampoo and stuff. Sometimes a 5 lot of stuff has expiration dates. 6 Q. Okay. We'll look at some pictures later, 7 but hair, again, in the clear plastic sleeves, that 8 does not have an expiration date, right? 9 A. No, sir. 10 Q. And what is your understanding of the 11 lawsuit that we're here today for? 12 A. I'm not sure. I don't know exactly what's 13 going on. 14 Q. Okay. Well, I'd like to look at some text 15 messages. What I've done is I'd like to introduce 16 this as Plaintiff's Exhibit 1. 17 - - - 18 (PLAINTIFF'S EXHIBIT NUMBER 1, Document 19 Notebook, Defendant_000103 through 132, 48 20 through 56, 133 through 199, 201, 202, 59, 60, 21 Sang Cho Deposition 000110 through 126, was 22 marked for identification.) 23 - - - 24 BY MR. BROWN: 25 Q. Prior to this deposition I gave opposing	Page 14 1 any knowledge that Youmi Cho and Mr. Kim agreed to 2 sell the store for \$800,000? 3 MR. PAAVOLA: Object to the form. 4 THE WITNESS: I don't know about agreeing. 5 My sister didn't agree first because I told her 6 it was too much. I say maybe 500,000, that's 7 doable, but not 800,000. 8 BY MR. BROWN: 9 Q. And was that in the kitchen at the Kims' 10 house? 11 A. Yes. 12 Q. So you do remember ... 13 A. Mr. Kim said -- first he said 800,000, and 14 I said that's too much. Then I started bringing it 15 up about other business that he sold to somebody, 16 which is Mr. Lee. And I said that store was sold for 17 cheap. Then he started getting a little upset. Then 18 he said 800,000, but he will pay for the rent. 19 That's all the part that I heard. And I told my 20 sister, I said, "Maybe 500,000." 21 Then Mr. Kim started raising his voice, 22 then I walked outside and I start -- I smoked 23 outside. I didn't come back in for a little while. 24 Q. So when the deal eventually closed at some 25 point in the future, did you have any knowledge of
Page 13 1 counsel, you know, the different documents I'll be 2 asking about this week. So I put together that list 3 there, and I'd like to look at them. 4 A. Yes, sir. 5 Q. You'll notice in the bottom left-hand 6 corner it has a number, Sang Cho Deposition Number, 7 and on the other side there might be some other 8 numbers. 9 A. Yes, sir. 10 Q. So before I go into these text messages and 11 look at these documents, I would like to ask: Did 12 Youmi Cho and Mr. Kim agree that Youmi would buy the 13 Broad River store for \$800,000? 14 MR. PAAVOLA: Object to the form. 15 THE WITNESS: I don't remember that part 16 about agreeing. 17 BY MR. BROWN: 18 Q. So it's your testimony under oath that you 19 do not know if Youmi Cho and Mr. Kim agreed to sell 20 the store for \$800,000? 21 A. I wasn't in the final decisions when they 22 made. 23 Q. And, again, not trying to be super 24 technical, but I'm not asking were you there. I'm 25 asking based on your knowledge, are you aware or have	Page 15 1 the payment terms? 2 A. No, sir. 3 Q. Okay. I'd like to look at some of these 4 text messages, so if you look -- 5 A. Yes, sir. 6 Q. -- at -- it will be Sang Cho Number 17, 7 which would also be Defendant 119. 8 A. Yes, sir. 9 Q. So I'll let you -- if you can just kind of 10 look at that blue -- 11 A. Yes, sir. 12 Q. -- the blue bubble. 13 A. Yes, sir. 14 Q. And I would like to read you -- well, first 15 let me ask: Is this a text message between you and 16 Suzi? 17 A. Yes, sir. 18 Q. And who is Suzi? 19 A. My stepsister, which is my cousin. 20 Q. Okay. And does -- am I reading this 21 correctly that you stated, "Verbal agreement of 22 \$250,000 of down payment was paid." 23 Is that correct? 24 A. Yes. 25 Q. And what do you mean by the words "Verbal

Page 16 1 agreement of \$250,000 of down payment"? 2 A. It was agreed to pay \$250,000, and we went 3 to bank and got the cashier's check and give to 4 Mr. Kim. I didn't give it to Mr. Kim, but I helped 5 my sister get her cashier's check for \$250,000 at the 6 bank. 7 Q. But what do the words "down payment" mean? 8 A. Like just give him first \$250,000. That's 9 all I know of. I just typed it probably the wrong 10 way, but I say \$250,000 give to him first. 11 Q. So you do not know what the words "down 12 payment" mean? 13 MR. PAAVOLA: Object to the form. 14 MR. BROWN: You can answer. 15 THE WITNESS: No. 16 BY MR. BROWN: 17 Q. Okay. I would like to look at Number 18 120 -- two pages up, 120, Sang Cho 20, and then also 19 labeled Defendant 122. 20 A. 122. 21 Q. Okay. I'd like to look at your blue text, 22 your blue bubble where you say, "Don't have that kind 23 of money, LOL," and like to ask what do you mean by 24 that language? And feel free to read above and below 25 to add some context.	Page 18 1 you under oath there these same questions. So please 2 do what you can to try to remember because I'm going 3 to ask them here and at trial. 4 MR. PAAVOLA: Object to the testimony of 5 counsel to this question. 6 BY MR. BROWN: 7 Q. So do you recall what Suzi meant by that 8 text? 9 A. I'm not sure. 10 Q. Okay. I would like to flip two pages up, 11 Sang Cho 22 and then Defendant 124. I'd like to look 12 at your text message at the bottom where it says, 13 "Dad read paper and said it's our fault because we 14 put stop payment on the checks." 15 What does that mean? 16 A. My sister asked me to call the bank and 17 make a stop payment because Mr. Kim kind of 18 threatened her, calling her late at night sometimes. 19 Sometimes he's calling just yelling at my sister 20 about depositing all the checks. So my sister was 21 afraid because she didn't know if checks get all 22 deposited. We didn't have any money in the bank, so 23 she didn't know how to do it, what to do, so she 24 asked me to call the bank and make a stop payment. 25 Q. So explain to me these checks. What
Page 17 1 A. Yeah, we -- I know the business wasn't that 2 good because all the merchandise were sold pretty 3 much before Mr. Kim hand it over to my sister, 4 Youmi Cho. And Mr. Kim didn't restock all the 5 merchandise that he sold. So pretty much all the 6 shelves were empty, and a lot of customers thought we 7 were going out of business. 8 They asked me all the time, "You guys going 9 out of business?" 10 I said, "No, we're not. We're trying to 11 restock all the merchandise." 12 Q. And then in the middle of the bubble 13 underneath the text, Suzi says, "You should have 14 talked to him before you did that. She broke you 15 all's contract when she did that." 16 What do you think Suzi meant by that, or 17 what do you recall? 18 MR. PAAVOLA: Object to the form. 19 THE WITNESS: I'm not sure. I'm not sure 20 what she meant by that. 21 BY MR. BROWN: 22 Q. If possible, I would like you to try to 23 remember because when we're at trial and you're 24 sitting in front of the jury and the judge, I'm going 25 to put these text messages up, and I'm going to ask	Page 19 1 were -- why did Youmi give Tok Kim 36 checks? 2 MR. PAAVOLA: Object to the form. 3 THE WITNESS: I'm not sure. 4 BY MR. BROWN: 5 Q. Why would your dad say it's your fault? 6 MR. PAAVOLA: Object to the form. 7 THE WITNESS: I have no idea why he would 8 say that. 9 BY MR. BROWN: 10 Q. If I asked him, would he know? 11 A. I'm not sure. 12 Q. Okay. Were the checks part of the deal? 13 MR. PAAVOLA: Object to the form. 14 THE WITNESS: I'm not sure. I wasn't 15 there. 16 BY MR. BROWN: 17 Q. Based on your knowledge, was it part of the 18 deal? 19 MR. PAAVOLA: Object to the form. 20 THE WITNESS: No. 21 BY MR. BROWN: 22 Q. Do you know Vincent Fletcher? 23 A. Yes. 24 Q. Is he a close friend? 25 A. You can say a close friend.

Page 20 1 Q. Last week did you ask him why he would be 2 coming to the depositions this week? 3 A. I'm sorry? 4 Q. Did you talk to Vincent about these 5 depositions last week? 6 A. No, sir. I didn't bring that up. 7 Q. So you did not ask Vincent why he was 8 coming to the depositions? 9 A. No, sir. 10 Q. Are you aware that Vincent was violently 11 attacked on Monday of this week? 12 A. Attacked? No, sir. 13 Q. Do you know who attacked him? 14 MR. PAAVOLA: Object to the form. 15 THE WITNESS: No, sir. 16 BY MR. BROWN: 17 Q. Okay. I'd like to look at the next page, 18 23, and also Defendant 125. Can you please look at 19 that first -- the blue bubble? 20 A. Yes. 21 Q. And I see it says, "First, Youmi wanted to 22 sign the paper for 500- and he said no." 23 Is that what you recall the conversation? 24 A. This is one that when I told my sister 25 500,000 is doable, not \$800,000. That's why I typed	Page 22 1 will pay for the rent. That was the verbal agreement 2 that I know of. 3 Q. And why did she write the checks? 4 A. That, I'm not sure. 5 Q. And what's this reference to Mr. Falgione? 6 A. That's another lawyer. 7 Q. And what's that in reference to? 8 A. Oh, I asked that lawyer to see if he knows 9 some lawyer that deal with this kind of, I guess, 10 case. 11 Q. So you reached out to Mr. Falgione? 12 A. I asked him, yes. 13 Q. So you knew about -- when you reached out 14 to Mr. Falgione, what was your understanding of the 15 legal issue? 16 A. Because we got served the paper, so I asked 17 Suzi and Dad, and they told me I need to get a lawyer 18 or Youmi need to get a lawyer. 19 Q. And so what was your understanding of the 20 papers you were served? 21 A. That Mr. Kim sued Youmi. 22 Q. And what's your understanding of why 23 Mr. Kim sued Youmi? 24 A. Not sure. I wasn't sure back then, but now 25 I know.
Page 21 1 them all to Suzi. 2 Q. And then when it says, "Then he said he 3 will pay rent. Buy store for 800,000." 4 Who offered to buy the store for 800,000? 5 A. Mr. Kim say \$800,000, he will pay rent. 6 Q. But, again, who said "buy store for 7 \$800,000"? 8 A. I typed the wrong. It's mistyping. 9 Q. A lot of mistyping. 10 A. Yes, sir. Because I was helping a customer 11 and trying to type in the same time. 12 Q. Were you helping a customer earlier when 13 you said that you mistyped "down payment"? 14 A. Pretty much all the text messages, I was at 15 work and I was helping customers. So I was trying to 16 type fast, but a customer kept on asking questions. 17 Q. Okay. I would like to look at Sang Cho's 18 Deposition 30, which is also Defendant 132. What do 19 you mean at the bottom where it says, "Agreed by 20 verbal, wrote checks, but he didn't keep his words." 21 A. He didn't pay the rent. 22 Q. I guess let's look at it little by little. 23 What does it mean "agreed to by verbal"? 24 See the words "agreed to by verbal"? 25 A. Youmi Cho would buy the store, but Mr. Kim	Page 23 1 Q. Oh, you do know. So why did Mr. Kim sue 2 Youmi? 3 A. Now I know why this case is going. 4 Q. Why? 5 A. Because they didn't -- their agree didn't 6 go through. 7 Q. What do you mean by that? 8 A. I'm not sure what their agree was. I 9 wasn't there their final agreement. 10 Q. What do you know? 11 A. After read these, basically what's on the 12 paper that I know after I read it. 13 Q. What paper? 14 A. The one that Mr. Kim served, the paper, or 15 Mr. Kim's lawyer served the paper. 16 Q. Okay. So just to confirm, you have no 17 knowledge of why you typed the words "down payment"; 18 is that your testimony under oath? 19 MR. PAAVOLA: Object to the form. 20 THE WITNESS: I'm not sure. It was a 21 mistake. 22 BY MR. BROWN: 23 Q. So it was a mistake? 24 A. Yes. 25 Q. I'd like to look at the Purchase Agreement

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
) Civil Action No. 2021-CP-40-05596

Kim Enterprises, LLC,
Plaintiff,

v.

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

**DEFENDANTS' REPLY IN SUPPORT
OF THEIR MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Youmi Cho and K&C Beauty, LLC,
Third-Party Plaintiffs,

v.

Kim Enterprises, LLC, and Tok Kim,

Third-Party Defendants.

Defendants Youmi Cho, K&C Beauty, LLC, and Sang Cho submit this Reply in Support of their Motion for Partial Summary Judgment. Defendants address each argument separately below.

I. Partial Performance Does Not Remove the Alleged Oral Agreement from the Statute of Frauds.

There is no part performance here that would remove the alleged oral agreement from the requirement to comply with the statute of frauds. Plaintiff alleges that Youmi Cho's actions removed the oral contract from the statute of fraud under the theory of part performance. However, Plaintiff has not met the requirements to show part performance.

“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).

Prong One

To satisfy the first prong of the specific 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). In *Fesmire*, the court found that there was no clear evidence of the oral contract where the evidence of the oral contract was 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*, Plaintiff’s primary evidence of the oral contract is the self-serving testimony of Tok Kim, the individual seeking specific performance of the alleged oral contract. Plaintiff further alleges that the checks are evidence of the oral agreement. However, for the reasons stated below, 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, and Youmi Cho has testified that the thirty-six checks were related to a separate agreement for two other beauty supply stores. (Mem. Supp. Mot. Summary J. 2).

Plaintiff also alleges the text messages of Sang Cho are evidence of the oral agreement; 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. 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. Sang Cho testified that he was not aware of the final terms of the agreement reached between Kim Enterprises and K&C Beauty. (Sang Cho Dep. 13:10-14:25; Ex. 6 to Mem. Supp. Summary J.). He had no knowledge as to why the checks were written to Kim Enterprises. (Sang Cho Dep. 18:19-20, 31:15-18, 81:22-82:5, Ex. 6). Similarly, Tok Kim and Youmi Cho testified that San was not part of the final agreement. (See Exhibits 5 and 7).

As such, Plaintiff has not satisfied the first prong of the standard for compelling specific performance to remove the oral contract from the Statute of Frauds.

Prong Two

Plaintiff has 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. *Id.* 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. *Id.*

Here, Plaintiff alleges that the \$250,000 payment and the subsequently provided thirty-six checks are evidence of partial performance of the oral agreement for purchase one store for \$800,000. 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 Plaintiff's version of the contract, they do not clearly and unequivocally relate to Tok Kim's alleged oral agreement. As in *Fesmire*, 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. Therefore, the second prong of the partial performance test is not met. As such, Plaintiff cannot demonstrate part performance such to remove its alleged oral agreement from the statute of frauds.

II. The Doctrine of Estoppel Does Not Prevent Defendants from Asserting the Statute of Frauds.

Plaintiff alleges that it may evoke the doctrine of estoppel to prevent Youmi Cho from asserting the statute of frauds. However, Plaintiff has failed to prove the necessary requirements to invoke the doctrine of estoppel.

First, before the estoppel doctrine can be invoked, there must be competent proof of the existence of the oral contract. *Springob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014). As stated above, Plaintiff has not presented competent proof of the existence of the oral contract. Therefore, Plaintiff cannot invoke the doctrine of estoppel.

Even if Plaintiff could invoke the doctrine of estoppel, Plaintiff cannot rely on Sang Cho's text messages a year after the contract to invoke equitable estoppel.

III. The Written Checks do not Constitute a Writing that Satisfies the Statute of Frauds

"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." *Springob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014) (citations and internal quotation marks omitted). The writing must reasonably identify

the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891, 1989 S.C. LEXIS 166 (1989).

Here, the checks do not contain the essential terms necessary to satisfy the statute of frauds. The checks do not identify the subject matter of the contract, which under Plaintiff's alleged contract is the Beauty Store. The checks do not identify with reasonable certainty that a contract is being entered between the parties or any other essential terms of a contract for the sale of a business. Therefore, the checks are not a writing that satisfies the statute of frauds.

IV. Plaintiff has Failed to Show that Sang Cho Owed a Fiduciary Duty to Kim Enterprises

Plaintiff claims Sang Cho is a fiduciary of Kim Enterprises based on a special relationship as an employee and manager of the Beauty Store. However, Plaintiffs have not established that Sang had a fiduciary duty to Kim Enterprises. The existence of a fiduciary duty is a question of law for the court. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008).

In the employment context, "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." *Legree*, 2019 U.S. Dist. LEXIS 229273 at *7 (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)). "An employer-employee relationship is not a fiduciary relationship. . . ." because "[a] fiduciary relationship cannot be established by the unilateral action of one party." *Big Red Box LLC v. Square Inc.*, Civil Action No.: 3:18-cv-00758-SAL-SVH, 2020 U.S. Dist. LEXIS 16008, at *16 (D.S.C. Jan. 22, 2020) (quoting *Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582,

607 (D.S.C. 1998) (internal quotation marks omitted)). There is no South Carolina authority that “would elevate the normal employer-employee relationship into a fiduciary relationship,” or “providing that all employees are agents of their employers and owe their employers fiduciary duties.” *Legree*, 2019 U.S. Dist. LEXIS 229273, at *7 (quoting *Coves Darden*, 2016 S.C. App. Unpub. LEXIS 475, at *5).

South Carolina courts have only recognized a breach of fiduciary duty in the employer-employee context in three limited circumstances: “when an employee directly competes with his employer, when the employee misappropriates the employer’s profits, property, or business opportunities, or when the employee breaches the employer’s confidences.” *Legree*, 2019 U.S. Dist. LEXIS 229273, at *8 (citing *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 515-16 (4th Cir. 1999)). There are no allegations in this lawsuit against Sang Cho falling within any of these limited categories.

Plaintiff has not accused Mr. Cho of any bad acts arising out of his employment. There are no allegations that Sang Cho directly competed with Plaintiff, committed acts of misappropriation, or breached Plaintiff’s confidences. Therefore, as a matter of law, Sang Cho did not owe Plaintiff a fiduciary duty, and even if he did, there are no facts supporting a breach of a fiduciary duty arising out of his employment. As such, Plaintiff’s claim for Breach of Fiduciary Duty against Sang fails.

V. Plaintiff’s Tortious Interference with Contractual Relations Claim Against Sang Fails as a Matter of Law

Plaintiff’s claim against Sang Cho for Tortious Interference with Contractual Relations fails as a matter of law. To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract; (3)

intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Eldeco, Inc. v. Charleston County Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007).

Assuming, only for the limited purposes of this argument, that the terms of the agreement between Kim Enterprises and K&C Beauty were as set forth by Plaintiff—\$250,000 upfront and then \$15,000/month for three years (Am. Compl. ¶ 19), and then assuming that K&C Beauty breached the contract as alleged by Plaintiff by placing a stop payment on the \$15,000 checks and refusing to pay any more to Kim Enterprises, Defendant Sang Cho can only be liable for tortious interference with contractual relations if Plaintiff proves that Sang Cho: (1) knew of the existence of the contract and its terms, and (2) intentionally procured K&C Beauty to breach the contract terms by placing a stop payment on the remaining checks and procured K&C Beauty to refuse to pay Kim Enterprises any additional money. The facts are undisputed that Sang Cho was not familiar with the final terms of the agreement between Kim Enterprises and K&C Beauty and that he did not procure any alleged breach by K&C Beauty.

Neither Plaintiff's allegations nor deposition testimony demonstrate any genuine issues of material fact that Sang Cho had no role in stopping payment on the checks that Kim Enterprises alleges breached the contract. In its complaint, Plaintiff alleges that it was Youmi Cho and K&C Beauty that put a stop payment on the checks in Kim Enterprises' possession. (Am. Compl. ¶¶ 24-25). Plaintiff also alleges that Youmi Cho and K&C Beauty "informed Kim Enterprises they didn't owe Kim Enterprises any money" (Am. Compl. ¶ 26). The only factual assertion in the complaint concerning Sang Cho's alleged interference with contact is the cause of action section which relies on statements made by Sang Cho during his deposition in this case as

evidencing the procurement of K&C Beauty's breach of contract. (Am. Compl. ¶ 124). It is axiomatic that actions taken after the alleged breach cannot be considered as procuring the breach.

There is no genuine issue of material fact that Sang Cho was not present when the final contact terms were agreed to, he was not involved in writing the checks Youmi Cho gave to Tok Kim, and he did not initiate the stop payment for these checks at his own urging or suggestion but solely as an aid to his sister. As such, Sang Cho is entitled to summary judgment on this cause of action for tortious interference with contract.

CONCLUSION

Plaintiff's alleged oral contract was to be performed over three years, meaning that it was required by the statute of frauds to be supported by a writing evidencing its essential terms. While Plaintiff now contends that the checks constitute a writing, the checks do not contain the essential terms necessary to satisfy the statute of frauds. Plaintiff's arguments for removing the oral contract from the statute of frauds and estopping Defendant from asserting the statute of frauds also fail as stated above. For this reason, summary judgment should be granted on Plaintiff's two breach of contract causes of action.

There are no facts supporting Plaintiff's contention that Sang Cho was a fiduciary for Kim Enterprises. Sang Cho did not owe Plaintiff a fiduciary duty, and even if he did, there are no facts supporting a breach of a fiduciary duty arising out of his employment. As such, Plaintiff's claim for Breach of Fiduciary Duty against Sang fails. For this same reason, Plaintiff's claim against Youmi Cho for Aiding and Abetting Breach of Fiduciary Duty fails.

Finally, there are no facts showing that Sang Cho took any actions to procure a breach of the alleged oral contract. Sang Cho only assisted Youmi Cho in placing a stop payment on checks

he did not direct or procure these actions. Accordingly, Sang Cho is entitled to summary judgment on this cause of action for tortious interference with contract.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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Columbia, South Carolina
October 18, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
) Civil Action No. 2021-CP-40-05596

Kim Enterprises, LLC,
Plaintiff,

v.

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

**DEFENDANTS' MOTION IN LIMINE
ON PAROL EVIDENCE
AND TRIAL ORDER**

Youmi Cho and K&C Beauty, LLC,
Third-Party Plaintiffs,

v.

Kim Enterprises, LLC, and Tok Kim,

Third-Party Defendants.

Defendants Youmi Cho, K&C Beauty, LLC, and Sang Cho, by and through their undersigned counsel, hereby submits this Motion in Limine to exclude certain evidence pursuant to the Parol Evidence Rule and set the order of trial, and states as follows:

In December 2020, Kim Enterprises and K&C Beauty entered into an agreement to transfer ownership of the Beauty Store. The parties disagree on the terms of the agreement. Kim Enterprises alleges that there was an oral agreement for K&C to purchase the Beauty Store for \$800,000 and K&C Beauty alleges that there was a written agreement to purchase the Beauty Store for \$250,000.

K&C Beauty has produced a written Business Asset Purchase Agreement (“Purchase Agreement”) reflecting a sales price of \$250,000 for the Beauty Store signed by both parties. The Purchase Agreement includes an entire agreement clause stating that the parties’ full agreement is set forth therein and any changes are required to be in a signed writing. Pursuant to the Purchase Agreement and the law on parol evidence, all extrinsic evidence of the parties’ agreement outside of the four corners of the Purchase Agreement should be excluded as inadmissible parol evidence.

The Purchase Agreement is clear and unambiguous, and Plaintiff has not asserted any ambiguities in the Purchase Agreement. Rather, Plaintiff contends that the Purchase Agreement is fraudulent and a fake because Tok Kim did not sign the document, and his signature is a fake or copied onto the document. Because there is a dispute as to whether Tok Kim signed the Purchase Agreement, not as to its meaning, extrinsic evidence should be admissible on this fact alone. Only upon a finding that the Purchase Agreement was not signed by Tok Kim should the Plaintiff then be permitted to introduce parol evidence regarding the alleged oral agreement.

Parol Evidence Rule

Under the parol evidence rule, absent fraud, accident or mistake, when the terms of a written instrument are unambiguous, extrinsic evidence of contemporaneous statements, allegedly made by the parties to the agreement, are inadmissible if they contradict or vary the terms of the written agreement. *Skinner v. Elrod*, 308 S.C. 239, 417 S.E. 2d 599 (Ct. App. 1992). The parol evidence rule prevents the introduction of extrinsic evidence of oral or written agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument. *Callawassie Island Mbrs. Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667 (2018).

If a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties.” *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999). “A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.” *Gordon Farms, Inc. v. Carolina Cinema Corp.*, 363 S.E.2d 235, 236, 294 S.C. 158, 160 (Ct. App. 1987) (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975)). An ambiguous contract is one that “is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.” *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). It is a question of law for the court whether the language of a contract is ambiguous. *Callawassie*.

Fraud Exception Not Apply

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, 316-17, 364 S.E.2d 202, 205 (Ct. App. 1988). Simply alleging fraud in the breach of contract, as Plaintiff has done here, is not an exception to the parol evidence rule. *Id.* The fraud exception to parol evidence is limited to where such 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.*

Here, Plaintiff will seek to introduce extrinsic evidence about an alleged oral agreement, the parties’ negotiations prior to signing the written agreement, Youmi Cho’s immigration status and process, and other alleged conduct that seeks to vary the terms of the written Purchase

Agreement. All of this evidence is inadmissible parol evidence as it is outside of four corners of the Purchase Agreement and does not relate to any alleged ambiguity in the Purchase Agreement.

Proposed Trial Order

Accordingly, Defendants respectfully request that the Court set the order of trial to exclude or limit parol evidence from being entered into evidence until a determination has been made on whether Tok Kim signed the Purchase Agreement and whether there is an ambiguity in the contract. Defendants propose the following order for trial:

1. Hear witness testimony on whether Tok Kim signed the Purchase Agreement, including Defendants' handwriting expert Roy Fenoff.
2. If the Court finds that Tok Kim signed the Purchase Agreement, all extrinsic evidence of the contract's formation should be excluded unless there is shown to be any relevant ambiguity in the four corners of the Purchase Agreement.
 - a. Determination on ambiguity
 - b. Only if Purchase Agreement is determined ambiguous can parol evidence be admitted as to the alleged ambiguity
3. If the Court finds that Tok Kim did not sign the Purchase Agreement, or reserves judgment on this factual issue, then the parties can proceed to present parol evidence.

If the Court determines to follow this order, Defendants will need to inform their handwriting expert to be available on the first day of trial, Monday, October 21, 2024. Otherwise, Defendants' expert will likely not be called until later in the week.

South Carolina law permits the court to order the trial in this manner. Pursuant to South Carolina Rule of Evidence 611(a)(2) the Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to avoid needless consumption of time. It is consistent with the general rule in this state that the conduct of the trial, including the

examination of witnesses, is within the sound discretion of the trial judge. See, *McMillan v. Ridges*, 229 S.C. 76, 91 S.E.2d 883 (1956) and *State v. Nathari*, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1990).

Ordering the trial in this manner is within the Court's discretion and necessary to prevent the inadvertent admission of evidence into the record. Additionally, ordering the trial in this manner is in the interest of judicial economy as it can reduce the time of trial.

Therefore, Defendants respectfully request that the Court set the order of trial as set forth herein.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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Counsel for Defendants K&C Beauty LLC, Youmi Cho, and Sang Cho

Columbia, South Carolina
October 18, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
) Civil Action No. 2021-CP-40-05596

Kim Enterprises, LLC,
Plaintiff,

v.

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

**DEFENDANTS' MOTION IN LIMINE
ON PAROL EVIDENCE**

Youmi Cho and K&C Beauty, LLC,
Third-Party Plaintiffs,

v.

Kim Enterprises, LLC, and Tok Kim,

Third-Party Defendants.

Pursuant to Rules 103 and 104 of the South Carolina Rules of Evidence, and Rules 8, 36, SCRCP, Defendants hereby move the Court to exclude certain evidence pursuant to the Parol Evidence Rule.

In December 2020, Kim Enterprises and K&C Beauty entered into an agreement to transfer ownership of the Beauty Store. The parties disagree on the terms of the agreement. Kim Enterprises alleges that there was an oral agreement for K&C to purchase the Beauty Store for \$800,000 and K&C Beauty alleges that there was a written agreement to purchase the Beauty Store for \$250,000.

K&C Beauty has produced a written Business Asset Purchase Agreement (“Purchase Agreement”) reflecting a sales price of \$250,000 for the Beauty Store signed by both parties. The Purchase Agreement includes an entire agreement clause stating that the parties’ full agreement is set forth therein and any changes are required to be in a signed writing. Pursuant to the Purchase Agreement and the law on parol evidence, all extrinsic evidence of the parties’ agreement outside of the four corners of the Purchase Agreement should be excluded as inadmissible parol evidence.

The Purchase Agreement is clear and unambiguous, and Plaintiff has not asserted any ambiguities in the Purchase Agreement. Rather, Plaintiff contends that the Purchase Agreement is fraudulent and a fake because Tok Kim did not sign the document, and his signature is a fake or copied onto the document. Because there is a dispute as to whether Tok Kim signed the Purchase Agreement, not as to its meaning, extrinsic evidence should be admissible on this fact alone. Only upon a finding that the Purchase Agreement was not signed by Tok Kim should the Plaintiff then be permitted to introduce parol evidence into the record regarding the alleged oral agreement.

Parol Evidence Rule

Under the parol evidence rule, absent fraud, accident or mistake, when the terms of a written instrument are unambiguous, extrinsic evidence of contemporaneous statements, allegedly made by the parties to the agreement, are inadmissible if they contradict or vary the terms of the written agreement. *Skinner v. Elrod*, 308 S.C. 239, 417 S.E. 2d 599 (Ct. App. 1992). The parol evidence rule prevents the introduction of extrinsic evidence of oral or written agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument. *Callawassie Island Mbrs. Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667 (2018).

If a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties.” *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999). “A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.” *Gordon Farms, Inc. v. Carolina Cinema Corp.*, 363 S.E.2d 235, 236, 294 S.C. 158, 160 (Ct. App. 1987) (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975)). An ambiguous contract is one that “is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.” *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). It is a question of law for the court whether the language of a contract is ambiguous. *Callawassie*.

Fraud Exception Does Not Apply

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, 316-17, 364 S.E.2d 202, 205 (Ct. App. 1988). Simply alleging fraud in the breach of contract, as Plaintiff has done here, is not an exception to the parol evidence rule. *Id.* The fraud exception to parol evidence is limited to where such 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.*

Here, Plaintiff will seek to introduce extrinsic evidence about an alleged oral agreement, the parties’ negotiations prior to signing the written agreement, Youmi Cho’s immigration status and process, and other alleged conduct that seeks to vary the terms of the written Purchase

Agreement. All of this evidence is inadmissible parol evidence as it is outside of four corners of the Purchase Agreement and does not relate to any alleged ambiguity in the Purchase Agreement.

Therefore, Defendants respectfully request that the Court exclude all evidence related to the parties' agreement that transpired prior to the execution of the Purchase Agreement as parol evidence.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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Counsel for Defendants K&C Beauty LLC, Youmi Cho, and Sang Cho

Columbia, South Carolina
October 19, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2021-CP-40-05596
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Youmi Cho and K&C Beauty, LLC, and	)	DEFENDANTS AND
Sang Cho,	)	COUNTERCLAIM PLAINTIFFS’
	)	POST-TRIAL MOTIONS TO ALTER
Defendants.	)	OR AMEND THE FINDINGS OF FACT
	)	AND CONCLUSIONS OF LAW; TO
	)	ALTER OR AMEND JUDGMENT;
	)	NEW TRIAL NISI REMITTITUR; AND
	)	NEW TRIAL ABSOLUTE
	)	
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Counterclaim Plaintiffs,	)	
	)	
v.	)	
	)	
Kim Enterprises, LLC, and Tok Kim,	)	
	)	
Counterclaim Defendants.	)	

Pursuant to South Carolina Rules of Civil Procedure 52, and 59, Defendants, Youmi Cho, K&C Beauty, LLC, and Sang Cho (collectively “Defendants”) and Counterclaim Plaintiffs, Youmi Cho and K&C Beauty, LLC (collectively “Counterclaim Plaintiffs”) hereby move the Court to alter or amend its findings of fact and conclusions of law and judgment, alter or amend judgment, to reduce the judgment, or in the alternative for a new trial on the grounds set forth herein.

BACKGROUND

The bench trial of this matter took place in Columbia, South Carolina over four days on October 21-24, 2024. This case concerns a dispute over the sale price for a beauty supply store (“Beauty Store”) that Kim Enterprises, LLC (“Kim Enterprises”) sold to K&C Beauty, LLC (“K&C

Beauty”) in December 2020, as well as a dispute over when sales and profits from the Beauty Store belonged to K&C Beauty. Kim Enterprises is controlled by Tok Kim, and K&C Beauty is controlled by Youmi Cho. Tok Kim is an uncle to Youmi Cho and Sang Cho, who are siblings.

Kim Enterprises asserted the following causes of action against Youmi Cho, K&C Beauty, and Sang Cho:

#	Kim Enterprises - Cause of Action	Defendant(s)
1	Breach of Contract	Youmi Cho and K&C Beauty
2	Breach of Contract Accompanied by Fraudulent Act	Youmi Cho and K&C Beauty
3	Fraud	Youmi Cho and K&C Beauty
4	Conversion	Youmi Cho and K&C Beauty
5	Unjust Enrichment	Youmi Cho and K&C Beauty
6	Breach of Fiduciary Duty	Sang Cho
7	Aiding and Abetting Breach of Fiduciary Duty	Youmi Cho and K&C Beauty
8	Civil Conspiracy	Youmi Cho and Sang Cho
9	Tortious interference with Contractual Relations	Sang Cho

K&C Beauty and Youmi Cho asserted the following counterclaims:

#	K&C Beauty - Causes of Action	Counterclaim Defendant(s)
1	Breach of Contract	Kim Enterprises
2	Conversion	Kim Enterprises and Tok Kim
3	Breach of Contract Accompanied by Fraudulent Act	Kim Enterprises and Tok Kim
4	Money Had and Received	Kim Enterprises and Tok Kim

Defendants moved for directed verdict at the conclusion of Plaintiff's presentation of evidence on all of Plaintiff's causes of action and the Court granted a directed verdict on Plaintiff's claims as follows:

#	Kim Enterprises - Cause of Action	Directed Verdict
1	Breach of Contract	Denied
2	Breach of Contract Accompanied by Fraudulent Act	Denied
3	Fraud	Granted
4	Conversion	Granted
5	Unjust Enrichment	Denied
6	Breach of Fiduciary Duty	Denied
7	Aiding and Abetting Breach of Fiduciary Duty	Denied
8	Civil Conspiracy	Granted
9	Tortious interference with Contractual Relations	Granted

Defendants renewed their motion for directed verdict on the remaining causes of action at the close of evidence, which was denied. On February 6, 2025, the Court entered an Order in favor of Plaintiff on all remaining causes action and denied relief on all of Counterclaim Plaintiffs' causes of action.

Pursuant to Rule 52(b), SCRCP, "when findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment." "In an action at law, tried without a jury, the trial court's findings of fact will not be disturbed unless found to be without evidence

which reasonably supports the court's findings.” *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

Pursuant to Rule 59(e), SCRAP, a party may file for a motion to alter or amend the judgment within ten days after receipt of the written notice of the entry of the order. The purpose of a motion filed pursuant to Rule 59(e), SCRCP, is to “request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Rule 59(e), SCRCP.

Pursuant to Rules 52 and 59, SCRCP, the Court should amend its findings of fact and conclusions of law as follows:

I. Neither the Facts Nor the Law Support a Finding that Sang Cho is a Fiduciary of Kim Enterprises.

Neither the facts nor the law support a finding that Sang Cho, by virtue of his role as Kim Enterprises’ manager of the Beauty Store, became a fiduciary of Kim Enterprises in its negotiations to sell the Beauty Store to Youmi Cho and K&C Beauty. Accordingly, the judgment should be amended to deny Plaintiff relief on its breach of fiduciary duty claims.

The Court’s factual findings describe Sang Cho as: (1) Tok Kim’s nephew (Order ¶ 10); (2) Employed at the Beauty Store since 2013 (Order ¶ 11); and (3) Manager of the Beauty Store prior to its sale to K&C Beauty, with authority to hire, fire, and train new employees, and manage inventory (Order ¶¶ 13, 73). Even if these facts were uncontroverted, which they are not¹, they do not turn Sang Cho into a fiduciary of Kim Enterprises, and even if these facts could, Sang Cho’s role as a fiduciary would only be relevant to this lawsuit to the extent Plaintiff’s allegations concerned a breach of Sang Cho’s fiduciary

¹ Sang Cho testified that any role he had in hiring and firing of employees was limited, as was his ability to manage inventory. Trial Tr. 274:9-17 (Sang Cho). For example, Sang Cho testified that he was never given the authority from his uncle Tok Kim to dispose of old unsaleable inventory. Trial Tr. 278:3-17 (Sang Cho).

duty as related to the scope of his employment. In this lawsuit, all of Kim Enterprises' claims relate to K&C Beauty's and Youmi Cho's alleged breach of contract to purchase the Beauty Store. The only facts identified in the Order that connect Sang Cho to the sale of the Beauty Store is one meeting he attended where Tok Kim and Youmi Cho discussed price and Mr. Cho participated in initial discussions but ultimately left before the final price term was agreed to. (Order ¶¶ 17-24; Trial Tr. 322:19-22 (Sang Cho), 122:7-14 (Tok Kim), and 418:18-23 (Youmi Cho), trial transcripts attached as **Exhibit C**).

The overwhelming evidence shows that the idea to sell the Beauty Store arose in conversations between Tok Kim and Youmi Cho. Trial Tr. 117:6-118:20 (Tok Kim) and 409:16-25 (Youmi Cho). After Tok Kim offered to sell the Beauty Store to Youmi Cho, she returned to Korea to sell her apartment to raise funds to purchase the store. Trial Tr. 160:1-7 (Tok Kim) and 409:5-410:15 (Youmi Cho). Sang Cho only became aware of Youmi Cho's intentions to purchase the Beauty Store after she returned from Korea. Trial Tr. 418:18-420:4 (Youmi Cho) and 161:13-19 (Tok Kim). Sang Cho was not part of Tok Kim's decision to sell the Beauty Store or Youmi Cho's decision to purchase the Beauty Store. Sang Cho only became involved because he was invited to attend one meeting between Tok Kim and Youmi Cho. Trial Tr. 418:18-420:4 (Youmi Cho) and 161:13-19 (Tok Kim). These are insufficient facts to hold Sang Cho as a fiduciary to Kim Enterprises in its business dealings with K&C Beauty.

To succeed on a claim for breach of fiduciary duty, a party must prove by a preponderance of the evidence: (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. *Legree v. Hammett Clinic, LLC*, No. 3:19-cv-0871-MGL-TER, 2019 U.S. Dist. LEXIS 229273, at *6 (D.S.C. Aug. 29, 2019) (citation omitted). "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due

regard to the interests of the one reposing confidence.” *Id.* (quoting *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992)). The existence of a fiduciary duty is a question of law for the court. *Vortex Sports & Entm’t, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008). “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.’” *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) (quoting *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817, 822 (Ct. App. 2004)). “As the South Carolina Supreme Court has explained: ‘The term fiduciary implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him.’” *Id.* This in no way characterizes Sang Cho’s relationship with Tok Kim, where Mr. Cho testified that Mr. Kim was in charge of hiring, firing, and inventory. Trial Tr. 274:9-17 (Sang Cho) and 278:3-17 (Sang Cho).

Additionally, in the employment context, “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.” *Legree*, 2019 U.S. Dist. LEXIS 229273 at *7 (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)). “An employer-employee relationship is not a fiduciary relationship. . . .” because “[a] fiduciary relationship cannot be established by the unilateral action of one party.” *Big Red Box LLC v. Square Inc.*, Civil Action No.: 3:18-cv-00758-SAL-SVH, 2020 U.S. Dist. LEXIS 16008, at *16 (D.S.C. Jan. 22, 2020) (quoting *Hooters of America, Inc. v. Phillips*, 39 F. Supp. 2d 582, 607 (D.S.C. 1998) (internal quotation marks omitted)). There is no South Carolina authority that “would elevate the normal employer-employee relationship into a fiduciary relationship,” or “providing that all employees are agents of their employers and owe their employers

fiduciary duties.” *Legree*, 2019 U.S. Dist. LEXIS 229273, at *7 (quoting *Coves Darden*, 2016 S.C. App. Unpub. LEXIS 475, at *5).

South Carolina courts have only recognized a breach of fiduciary duty in the employer-employee context in three limited circumstances: “when an employee directly competes with his employer, when the employee misappropriates the employer’s profits, property, or business opportunities, or when the employee breaches the employer’s confidences.” *Legree*, 2019 U.S. Dist. LEXIS 229273, at *8 (citing *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 515-16 (4th Cir. 1999)).

In one of the only reported cases where a manager was found to be a fiduciary, *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987), the car wash manager was married to the daughter of the spouse-owners, the owners put “special faith and confidence in Norris in the starting up of the car wash business,” he was responsible for purchasing equipment and doing whatever was necessary to open the car wash business, he handled business negotiations, and he was accused of conspiring with the equipment provider to overinflate equipment invoices to convert excess funds from the owners. *Id.* at 600, 358 S.E.2d at 152. There are no similar allegations here. Again, there was no evidence that Sang Cho stole from Tok Kim or took away business opportunities. Trial Tr. 332:2-10 (Sang Cho).

The evidence at trial shows that Sang Cho was an employee of the Beauty Store prior to its sale to K&C Beauty. Sang Cho was not an owner, was not responsible for paying expenses of the Beauty Store while Tok Kim owned it, and did not share in the Beauty Store profits. Trial Tr. 193:22-194:8 (Tok Kim). Plaintiff did not prove by preponderance of the evidence that any of the three limited circumstances where an employee can be elevated to a fiduciary were met. Plaintiff admitted that Sang Cho never opened his own beauty store to compete with Tok Kim’s beauty store. Trial Tr. 194:9-13 (Tok

Kim). Sang Cho never stole from Tok Kim or took business opportunities away from Tok Kim or Kim Enterprises. Trial Tr. 332:2-10 (Sang Cho). Sang Cho has not breached Tok Kim's confidences in any manner related to his role as manager of the Beauty Store. Trial Tr. 332:11-12 (Sang Cho).

Additionally, Kim Enterprises unilaterally promoted Sang Cho to manager without his knowledge. 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).

Therefore, as a matter of law, Sang Cho did not owe a fiduciary duty to Tok Kim or Kim Enterprises, LLC. Accordingly, judgment should be amended to deny Plaintiff relief on this cause of action and rule that Sang Cho did not owe a fiduciary duty to Kim Enterprises.

For these same reasons, as a matter of law Youmi Cho did not aid and abet a breach of fiduciary duty and Plaintiff's cause of action for aiding and abetting a breach of fiduciary duty should be denied. "The elements for the cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages." *Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008). Plaintiff alleged that Youmi Cho and K&C Beauty aided and abetted Sang Cho in breaching his fiduciary duties owed to Tok Kim and Kim Enterprises, LLC. (Order ¶ 74). However, because Sang Cho did not owe Kim Enterprises a fiduciary duty, Youmi Cho and K&C Beauty, as a matter of law, did not aid and abet Sang Cho in breaching a fiduciary duty and judgment should be amended accordingly.

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

The evidence does not reasonably support the Court's conclusion that Tok Kim did not sign the Asset Purchase Agreement and that his signature was digitally imposed on the contract. (Order ¶ 49). Kim Enterprises had the burden of proof to show that the parties entered into an oral agreement, which

necessarily includes the burden to prove that Tok Kim did not sign the Asset Purchase Agreement and that it was a fraudulent document.² The only evidence that Plaintiff presented at trial that Tok Kim did not sign the Asset Purchase Agreement was Tok Kim's own testimony. Trial Tr. 139:22-24 (Tok Kim). However, the record is replete with evidence that Tok Kim did sign the Asset Purchase Agreement. Youmi Cho testified that she brought the Asset Purchase Agreement to Tok Kim and Tok Kim signed the Asset Purchase Agreement in front of her. Trial Tr. 424:12-425:2 (Youmi Cho). Tok Kim, Sang Cho, Patricia Kim, and Vincent Fletcher all testified that the signature on the Asset Purchase Agreement looks like Tok Kim's signature. Trial Tr. 187:18-22 (Tok Kim), 330:12-20 (Sang Cho), 477:14-4 (Vincent Fletcher), 523:12-21 (Patricia Kim).

Moreover, Tok Kim testified that he signed the Bill of Sale which is a one-page document with three paragraphs of text that makes no less than four references to a separately executed "Asset Purchase Agreement." Trial Tr. 189:25-190:12 (Tok Kim); Bill of Sale. The Bill of Sale, admitted by Tok Kim as authentic, states that:

The exact detailed terms of the agreement are outlined in the Business Asset Purchase Agreement executed by both the Seller and the Buyer and to the extent those terms are more detailed or different from those in this Bill of Sale, the terms in the Business Asset Purchase Agreement are the master terms of this transaction.

Bill of Sale ¶ 2 (emphasis added). By admitting the authenticity of the Bill of Sale, Tok Kim is bound to its provisions, which clearly state that Kim Enterprises executed a separate Business Asset Purchase Agreement. It would be error to allow Tok Kim to admit the authenticity of this document and then at

² See *Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct. App. 2008) (stating defendant asserting an affirmative defense bears the burden of its proof) and Rule 8(c), SCRC, which states that fraud is an affirmative defense. Additionally, see *O'Neal v. Pearson*, 2007 S.C. App. Unpub. LEXIS 393, 2007 WL 8327921, at 13 (Ct. App. 2007) (stating that a party seeking to invalidate a deed for an alleged forgery bears the burden of proving, by clear and convincing evidence, the grantor's signature is unauthorized).

the same time deny its plain admission that both parties signed a separate more detailed contract, and then to find that the agreement to sell the Beauty Store was entirely oral. (Order ¶¶ 56-57).

Additionally, Tok Kim testified that he knew Youmi Cho needed to have a written contract to satisfy immigration requirements. Trial Tr. 166:1-19 (Tok Kim). Youmi Cho's immigration attorney, Andy Kim, sent Ms. Cho the agreement on December 9, 2020. Trial Tr. 85:19-86:7 (Andy Kim). Andy Kim also had a signed copy of the Asset Purchase Agreement in his file. Trial Tr. 87:24-88:3 (Andy Kim). Andy Kim indicated that he received the signed copy back on December 14, 2020. 63:4-5 (Andy Kim). Andy Kim testified that Tok Kim was aware that Youmi Cho needed to have a purchase contract. Trial Tr. 58:9-59:6 (Andy Kim), 89:24-90:15 (Andy Kim), and 98:3-6 (Andy Kim). Tok Kim testified that he received and deposited the \$250,000 purchase check in December. This evidence corroborates the timing that the agreement was made and signed in December 2020. Additionally, Kim Enterprises did not report an installment contract for the sale of the Beauty Store on its tax returns, which it is required to report. Trial Tr. 594:6-596:4 (Mark Bokesch). This further corroborates that the Asset Purchase Agreement, and not the oral contract alleged by Kim Enterprises, governed the sale of the Beauty Store.

Plaintiff's only explanation for what is clearly Tok Kim's signature on the Asset Purchase Agreement, is to claim, without evidence, that Tok Kim's signature was digitally imposed. However, the evidence does not reasonably support the factual conclusion that Youmi Cho digitally imposed Tok Kim's signature onto the Asset Purchase Agreement.³ Rather, the evidence reasonably supports the opposite finding—that Tok Kim's signature on the Asset Purchase agreement was authentic.

³ The Order cites the best evidence rule concluding that Ms. Cho's failure to produce the original agreement and her explanation for the same were unsatisfactory. (Order ¶ 50). However, the best evidence rule is an exclusionary evidentiary rule where the authentication of a document is at issue.

Dr. Roy Fenoff was qualified by the Court as a handwriting expert. Dr. Fenoff has been qualified as a handwriting expert by numerous courts. Trial Tr. 648:18-649:21 (Roy Fenoff). Dr. Fenoff testified that it is very hard to copy another person's signature because a signature is a mixture of rhythm, spacing, line quality and placement all at the same time with relatively rapid speed. Trial Tr. 663:6-16 (Roy Fenoff). Dr. Fenoff reviewed twenty-six prior known signatures of Tok Kim dating back twenty years, twenty-four of which Tok Kim stipulated to having signed. Trial Tr. 654:8-17 (Roy Fenoff). Dr. Fenoff was then presented with two questioned documents, Q1 – the Asset Purchase Agreement, and Q2 - the Bill of Sale. Tok Kim stipulated to having signed Q2- the Bill of Sale after the sample documents were provided to Dr. Fenoff for examination. (See Stipulation, Ex. A).

Upon completing his review, Dr. Fenoff testified that in his expert opinion to a reasonably degree of scientific certainty the author of the known sample documents, K1 through K26, also authored the questioned documents Q1 - Asset Purchase Agreement, and Q2 - the Bill of Sale. Dr. Fenoff testified that there are no signs that the signature on the Asset Purchase Agreement is a cut-and-paste signature. Trial Tr. 675:24-676:12 (Roy Fenoff). Youmi Cho also testified that she did not impose Tok Kim's signature on the Asset Purchase Agreement. Trial Tr. 401:4-6 (Youmi Cho).

Finally, the Plaintiff did not offer any witness testimony or other evidence to contradict Dr. Fenoff's testimony and to support a finding that the signature on the Asset Purchase Agreement was digitally imposed. In reaching the conclusion that Tok Kim's signature was digitally imposed, the Order simply relies on the fact that *it is possible* to digitally impose a signature. This is not sufficient evidence

However, Plaintiff waived any objection to the introduction of the Asset Purchase Agreement into evidence when it published the deposition transcript of Andy Kim and all exhibits into evidence, which included the Asset Purchase Agreement. Trial Tr. 44:20-45:18 and 166:17-167:12. Failure to object when evidence is offered constitutes a waiver of the right to object, and the issue may not then be raised for the first time on appeal. *Crawford v. Crawford*, 321 S.C. 511, 469 S.E.2d 622 (S.C. Ct. App. 1996).

to support a finding that Tok Kim's signature was in fact digitally imposed. If Tok Kim's signature was digitally cut & paste, then there must be a source document from which the signature was copied. Dr. Fenoff reviewed more than two dozen Tok Kim signatures and none of them match exactly to Tok Kim's signature on the Asset Purchase Agreement. Trial Tr. 665:6-10 (Roy Fenoff). Tok Kim presumably has access to many more documents that he has signed over the years, (based on his numerous business dealings (Trial Tr. 150:16-152:15 (Tok Kim))), but he failed to produce any possible source document.

Dr. Fenoff testified that each person has natural variation in their signature every time they sign a document. Trial Tr. 665:6-10 (Roy Fenoff). The most reasonable and plausible explanation is that Tok Kim signed the Asset Purchase Agreement and that any variation in his signature was the natural variation that each person exhibits when signing new documents.

For these reasons, the Order should be amended to find that Tok Kim did not prove by preponderance of the evidence that he did not sign the Asset Purchase Agreement and that K&C Beauty and Youmi Cho proved that he did sign the agreement and judgment should be amended accordingly.

III. Even if the Asset Purchase Agreement is Fake, Plaintiff's "Contract" Does Not Satisfy the Statute of Frauds.

Even if the Asset Purchase Agreement is fake as Plaintiff contends, Kim Enterprises' alleged oral agreement fails because it does not satisfy the statute of frauds. The Court, after finding that the Asset Purchase Agreement was fake, concluded that Kim Enterprises and K&C Beauty entered into an oral agreement to convey the Beauty Store for \$800,000, with \$250,000 up front, followed by thirty-six (36) monthly installments of \$15,000 beginning mid-May 2021 and concluding with a final payment of \$10,000. (Order ¶¶ 56-57). As a matter of law, Kim Enterprises' oral contract to be performed over more than one year is barred by the statute of frauds because there is no writing evidencing the essential terms of the agreement.

The statute of frauds applies to “any agreement that is not to be performed within the space of one year from the making thereof[.]” S.C. Code Ann. § 32-3-10(5). “[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.” *Collins Music Co. v. Cook*, 281 S.C. 580, 583, 316 S.E.2d 418, 420 (Ct. App. 1984).

“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.” *Springob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014) (citations and internal quotation marks omitted). The writing must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891, 1989 S.C. LEXIS 166 (1989).

Plaintiff testified that the alleged agreement for the sale of the Beauty store was an oral agreement, Trial Tr. 157:5-10 (Tok Kim), and that the thirty-two checks in Plaintiff’s Ex. 1 were the only writing that established the terms of the contract. The thirty-two checks are written out to Tok Kim personally and not Kim Enterprises, LLC. Trial Tr. 154:21-155:1 (Tok Kim). The checks did not include any item in the memo line.

These checks do not satisfy the statute of frauds because they do not (1) identify the subject matter of the contract, (2) indicate that a contract has been made, (3) state the essential terms of the alleged agreement such as price or payment terms, or (4) describe what is being sold. Given the lack of sufficiency of the checks, at trial Plaintiff had to present and rely on parol evidence to supply the missing essential terms of the alleged oral agreement and for the alleged oral agreement to make any sense.

For these reasons, Plaintiff's oral contract is barred by the statute of frauds as a matter of law and Plaintiff's breach of contract causes of action fail. Accordingly, the Order should be amended to deny relief to Plaintiff on its breach of contract causes of action and amend judgment to reflect the purchase price of \$250,000.

IV. Plaintiff Did Not Prove It Is Entitled to Relief on Its Unjust Enrichment Cause of Action.

Plaintiff did not present any evidence that K&C Beauty or Youmi Cho were unjustly enriched. As such, this cause of action should be dismissed. "Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). Plaintiff put forth no evidence regarding what the Beauty Store was worth or the fair market value of the Beauty Store. Therefore, Plaintiff failed to prove that the amount K&C Beauty paid for the Beauty Store was insufficient.

V. The Order Should Correct the Factual Findings as to Sang Cho's Text Messages.

The Order concludes that Sang Cho's text messages entered into evidence support Plaintiff's position that Tok Kim agreed to sell the Beauty Store in an oral agreement for a \$250,000 downpayment and future \$15,000 checks. (Order. ¶¶ 25-28, 63). This mischaracterizes Sang Cho's testimony. Sang Cho testified that he was texting his cousin Ms. Mancine about the substance of the allegations in the lawsuit that Youmi Cho had recently been served. Trial Tr. 233:10-235:1, 235:22-236:6, 236:20-237:11, 238:24-239:4, 243:13-17, 321:8-322:8, 322:22-325:19 (Sang Cho). There is no evidence in the record that Sang Cho had personal knowledge of the alleged verbal agreement or the terms of the sale. Tok Kim contends that the final agreement was struck at the kitchen table conversation. Trial Tr. 122:7-14 (Tok Kim). Yet, all parties agree that Sang Cho was not at the kitchen table when the alleged verbal agreement

between Youmi Cho and Tok Kim regarding the sale of the Beauty Store was made. Trial Tr. 322:19-22 (Sang Cho), 122:7-14 (Tok Kim), 418:18-23 (Youmi Cho). Further, Sang Cho testified that he did not discuss the deal with Youmi Cho. Trial Tr. 283:5-22 (Sang Cho) and 323:15-16 (Sang Cho). Sang Cho testified that while he assisted Youmi Cho with stopping payment on the thirty-six checks given to Tok Kim, he did not know the nature of why these checks were given to Tok Kim. Trial Tr. 283:23-284:15 (Sang Cho). Therefore, there is no evidence to reasonably support a factual conclusion that Sang Cho's text messages were anything other than him repeating the substance of the original complaint and not stating his own understanding of terms of an agreement to which he was not a party.

VI. The Order Should Be Amended to Correct the Erroneous Legal Conclusion that Parties Are Not Bound to Contracts They Have Not Read.

Paragraph 59 of the Order states that the Asset Purchase Agreement fails as a matter of law because the basic elements of a contract could not be met since Youmi Cho testified that she did not read the agreement. In fact, Youmi Cho testified that she ran the contract through Google Translate. Trial Tr. 459:23-460:9 (Youmi Cho). However, even if she did not read the agreement, it is of no moment because South Carolina law is clear that a person that signs a document is bound to the document even if they did not read the contract.

“South Carolina case law is replete with cases finding a party's failure to read a contract does not vitiate the contract or that party's obligations under it.” *May v. May*, 428 S.C. 131, 833 S.E.2d 78 (2019). “A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.” *Id.* (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. [*140] 2003)). “Under South Carolina law, ‘a party who signed a contract is deemed to have read and understood ‘the effect’ of the contract.’” (citing *York v. Dodgeland of*

Columbia, Inc., 406 S.C. 67, 749 S.E.2d 139, 146 (S.C. Ct. App. 2013)). *Wellin v. Farace*, 2022 U.S. Dist. LEXIS 228613 at *19, 2022 WL 17811722 (D.S.C. Dec. 17, 2022). See also, *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81, 749 S.E.2d 139 (Ct. App. 2013).

“It is elementary that, if the contracting party is in position to learn the contents of a written contract and thereby protect himself by reading it or having it read, one who is unable to read is bound to have the instrument read to him before signing it, just as one who can read is bound to read it before signing.” *White v. Southern Ry. Co.*, 208 S.C. 319, 38 S.E.2d 111 (1946). “The rule is a person who is unable to read is bound to have the paper read to him before signing, just as a person who can read is bound to read it before signing; and failure by such illiterate person to take this precaution will ordinarily be regarded such gross negligence as will estop him from avoiding the contract.” *Duke v. Life Ins. Co.*, 184 S.C. 500, 193 S.E. 36 (1937).

The same holds true for Tok Kim. The record clearly shows that Tok Kim had signed dozens of legal contracts in his past personal and business dealings. (Defense Exhibit K1-26, Q2; Stipulation, attached hereto as **Exhibit A.**). Mr. Kim is well versed in reviewing legal documents and his not reading the Asset Purchase Agreement is no defense to enforcing its terms.

As far as meeting of the minds, the testimony showed that Tok Kim and Youmi Cho initially agreed to a purchase price of \$250,000, roughly the amount Youmi Cho could raise from selling her apartment in Korea. Trial Tr. 410:1-25 (Youmi Cho). Youmi Cho traveled to Korea to sell her apartment in the summer of 2020 and her net proceeds from the sale were approximately \$222,500. (Exhibit 7 and Trial Tr. 393:10-16 (Youmi Cho)). Youmi Cho hired Andy Kim to draft a purchase agreement reflecting the \$250,000 sales price, which he did. Trial Tr. 84:22-85:13 (Andy Kim). Youmi Cho presented the contract to Tok Kim to sign, and she used the funds from her apartment sale to write Tok Kim a check

for \$250,000 in December 2020 and Tok Kim cashed the check in December 2020. (Trial Tr. 424:12-425:2 (Youmi Cho), 393:6-16 (Youmi Cho), 427:1-3 (Youmi Cho) and 154:2-6 (Tok Kim). This is sufficient evidence of meeting of the minds to form a contract.

Therefore, the conclusion that the written contract is invalid for lacking the essential elements of a contract since the parties allegedly did not read the contract is incorrect as a matter of law and should be corrected.

VII. Youmi Cho Testified to Duress and Threats From Tok Kim.

Paragraph 60(b) of the Order indicates that Youmi Cho's testimony, that she provided the thirty-six checks to Tok Kim under duress due to a threat to her immigration status and for the purchase of two other beauty stores, lacks any factual support in the record. This is incorrect. Youmi Cho testified that she was pressured into giving Tok Kim the checks and that she felt that she did not have a choice. Ms. Cho further testified that she was scared of Tok Kim and that he threatened her and her immigration status. Trial Tr. 358:18-359:14 (Youmi Cho) and 428:9-428:15 (Youmi Cho). There is also evidence in the record that Mr. Kim had threatened Youmi Cho on other occasions. Trial Tr. 284:24-25, 285:20-286:4 (Sang Cho). This is evidence that corroborates Youmi Cho's testimony, and the Order should be corrected to reflect these facts.

VIII. The Order Should be Amended to Reflect Mr. Bokesch's Actual Business Valuation.

The Order misstates Mr. Bokesch's testimony on business valuation. Mr. Bokesch was retained to prepare a historical valuation of the Beauty Store and objectively review the reasonableness of a \$250,000 purchase price, he was not hired to prepare a traditional business valuation before a purchase. To prepare his analysis, Mr. Bokesch began by analyzing income, expenses, and net profits generated by Kim Enterprises and reported to the federal government on its federal tax returns. Trial Tr. 597:1-4

(Mark Bokesch). In his review of Kim Enterprises' federal tax returns, Mr. Bokesch calculated that Kim Enterprises' net income from the Beauty Store as reported to the federal government was roughly \$18,463 in 2019 and \$24,013 in 2020.⁴ Trial Tr. 575:9-15 (Mark Bokesch – Demonstrative 4). At this level of net income, it would take approximately ten years for a purchaser to recoup a \$250,000 investment in the Beauty Store, a reasonable time period (\$250,000 divided by \$24,000). However, if the purchase price were in fact \$800,000 as Plaintiff contends, it would take thirty-two years to recoup an \$800,000 investment (\$800,000 divided by \$25,000), which is unreasonably long for a potential investor to wait to recoup their initial investment. This rough calculation demonstrates the reasonableness of a \$250,000 purchase price and how unreasonable it would have been for K&C Beauty to agree to pay \$800,000 for a store generating \$25,000 in annual net profits.

Kim Enterprises reported to the federal government that the Beauty Store only made \$25,000 in 2020, but it wants this Court to believe that its "true" value is three to four times what it reported for tax purposes. Paragraphs 66 and 67 of the Order conclude that the testimony of Mr. Bokesch supports a \$800,00.00 evaluation of the Beauty Store. However, Mr. Bokesch testified that to a reasonable degree of certainty for a certified valuation expert the Beauty Store was valued between \$207,968 and \$250,528 at the time of the sale of the Beauty Store. Trial Tr. 592:8-14 (Bokesch). Mr. Bokesch did not testify that \$800,000.00 was a reasonable value of the Beauty Store at the time it was sold to K&C Beauty.

Plaintiff could have offered testimony from its own business valuation expert but chose not to. In fact, Plaintiff identified Mark Hobbs as a potential witness but instead chose not to put forward any

⁴ Kim Enterprises combined revenue and expenses for all four stores in 2019 and 2020, and was unable to break out revenue and expenses on a store-by-store basis, such that Mr. Bokesch had to estimate the Beauty Store's single store profitability.

evidence of the value of the business at the time of sale. The Order should be amended to explain the incongruence between Kim Enterprises' federally reported net income and its claimed purchase price.

IX. The Order Should be Amended to Reflect that a Substantial Amount of Inventory Had to Be Discarded by K&C Beauty.

Paragraph 68 of the Order concludes that the inventory quality issues are irrelevant and that there is no dispute that Youmi Cho and Sang Cho knew the full extent of the quantity and quality of inventory in the Beauty Store prior to the store's purchase. As stated above, Plaintiff's oral contract is barred by the statute of frauds. The quality of the inventory is relevant under the Asset Purchase Agreement and to determine the fair market value of the Beauty Store in the event the written agreement does not stand.

There is no evidence to reasonably support the conclusion that Youmi Cho knew the full extent of the quantity and quality of the inventory in the Beauty Store prior to the sale to K&C Beauty. Tok Kim testified that he never invited Youmi Cho to visit the Beauty Store and look at the inventory before she bought it. Trial Tr. 195:4-8 (Tok Kim). Tok Kim also testified that he never directed Sang Cho to go through the inventory to throw out old inventory. Trial Tr. 195:11-19 (Tok Kim). Tok Kim further testified that the last time he ordered inventory for the Beauty Store was when Youmi went to Korea. Trial Tr. 197:18-199:17 (Tok Kim). Tok Kim also testified that Kim Enterprises does not have records of the inventory or stock it transfers to other stores. Trial Tr. 204:10-205:11 (Tok Kim). The Beauty Store did not have a system to track inventory. Trial Tr. 279:2-4 (Sang Cho). Sang Cho did not inspect the store for expired products as part of his job duties and Tok Kim never instructed him to do so. Trial Tr. 277:20-278:5 (Sang Cho).

Sang Cho also testified that the shelves of the Beauty Store were empty and there wasn't a lot of merchandise when Youmi took over the Beauty Store in March of 2021. Trial Tr. 295:17-21 (Sang Cho).

After K&C Beauty took over the Beauty Store and inspected the inventory, it ended up having to throw away a substantial amount of old hair products that were unsaleable. Trial Tr. 297:3-312:9 (Sang Cho).

Youmi Cho also testified that Sang Cho did not inform her about the inventory of the Beauty Store and that she was not able to go inside the Beauty Store before she purchased it due to Covid. Trial Tr. 378:22-25 and 379:8-14 (Youmi Cho). Youmi Cho further testified that when she first took over the Beauty Store in March of 2021 there were totally empty shelves, and she was surprised to find that only one-third of the items were able to be sold and two-thirds needed to be thrown away. Trial Tr. 447:20-24 and 448:12-21 (Youmi Cho).

The evidence presented at trial also showed that Kim Enterprises retained complete control over the Beauty Store after completion of the purchase in December 2020 and did not turn control over to K&C Beauty until March 7, 2021. Trial Tr. 132:3-5 (Tok Kim). Sang Cho testified that Tok Kim told him not to reorder inventory after the store was sold to K&C Beauty. Trial Tr. 327:1-6 (Sang Cho). Documents produced by Kim Enterprises did not list any inventory expense incurred between December 15, 2020, and March 6, 2021. By retaining complete control of the Beauty Store after its sale, Kim Enterprises was able to sell pre-existing inventory, not restock the shelves, and then retain all Beauty Store net revenues between December 15, 2020, and March 6, 2021. When Youmi Cho finally took control of the Beauty Store in March 2021, the inventory on the shelves was sparse enough that customers inquired if the store was closing. Trial Tr. 295:17-21 (Sang Cho) and 447:20-24 and 448:12-21 (Youmi Cho).

Therefore, the evidence does not reasonably support a finding that Youmi Cho was aware of the true state of the inventory before K&C Beauty purchased the Beauty Store. Any valuation of the Beauty Store outside of the Asset Purchase Agreement should take into consideration that the shelves were

empty and that significant remaining inventory when K&C Beauty took over control in March 2021 had to be thrown away.

NEW TRIAL NISI REMITTITUR

Pursuant to Rules 52 and 59, SCRCP, Defendants move for a new trial nisi remittitur based on the excessiveness of the judgment in light of evidence presented that Plaintiff kept Beauty Store profits after it sold the store to K&C Beauty. *Burke v. AnMed Health*, 393 S.C. 48, 56-57, 710 S.E.2d 84, 88-89 (Ct. App. 2011) (“If the trial court determines that the verdict is ‘merely excessive,’ the court has the power to reduce the verdict by granting a new trial nisi remittitur.”). “A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive.” *Id.* at 56, 710 S.E.2d at 88 (citing *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006)). “[A]s to a new trial nisi remittitur, the trial judge’s discretion is broad.” *Id.* at 57, 710 S.E.2d at 89.

X. The Order Should Be Reduced to Reflect that Kim Enterprises Retained Profits After Selling the Beauty Store to K&C Beauty.

The Order should be amended to reduce the judgment by the amount of net profits for the Beauty Store that Kim Enterprises kept between December 15, 2020 and March 6, 2021. Tok Kim admitted that Kim Enterprises did not turn over profits of the Beauty Store to Youmi Cho and K&C Beauty until March 7, 2021. Trial Tr. 132:3-5 (Tok Kim). Mr. Bokesch testified that based on Kim Enterprises’ sales tax records and expense documentation provided by Kim Enterprises in discovery, between December 15, 2020, and March 6, 2021, the Beauty Store earned revenue of \$179,062.26 and Kim Enterprises incurred expenses of \$30,201.02. This means that Kim Enterprises retained net revenues of \$148,860.34 between December 15, 2020, and March 6, 2021. Mr. Bokesch further testified that the pre-judgment interest on this amount is \$56,988.20. Trial Tr. 597:6-600:16 (Bokesch).

Plaintiff did not dispute that it retained these net revenues after the sale of Beauty Store and after depositing the \$250,000 check. There is no legal reason that these profits do not rightfully belong to K&C Beauty after it purchased the Beauty Store on December 15, 2020. Plaintiff contends that it held such revenues back from K&C Beauty and only started providing store revenue once K&C Beauty obtained its business license on March 7, 2021. (Order ¶ 75). However, the evidence shows that K&C Beauty did not obtain its business license until April 7, 2021. (Email Richland County Business Center (April 7, 2021), Exhibit 37, attached hereto as **Exhibit B**). This timing does not support Plaintiff's argument for withholding revenues. The more reasonable explanation is that Tok Kim decided to turn the store over to Youmi Cho when the shelves were so bare that he would have to purchase more inventory at his own expense. Sang Cho's testimony corroborates this as he testified that Tok Kim would not restock the Beauty Store before Youmi Cho took over and that the shelves looked so bare that customers thought they were going out of business. Trial Tr. 295:22-24 (Sang Cho) and 327:11-23.

Accordingly, 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.

XI. The Order Does Not Support an Award of Punitive Damages.

The Order does not analyze each of the required factors for an award of punitive damages. Punitive damages are governed under the Fairness in Civil Justice Act in S.C. Code § 15-32-510. The factors to be considered to determine if punitive damages should be awarded are listed in S.C. Code § 15-32-520(E) and include, but are not limited to, (1) the defendant's degree of culpability; (2) the severity of the harm caused by the defendant; (3) the extent to which the plaintiff's own conduct contributed to the harm; (4) the duration of the conduct, the defendant's awareness, and any concealment by the

defendant; (5) the existence of similar past conduct; (6) the profitability of the conduct to the defendant; (7) the defendant's ability to pay; (8) the likelihood the award will deter the defendant or others from like conduct; (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff; (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

The Order does not analyze the appropriateness of punitive damages under the required statutory factors. The only factor mentioned in the Order is potentially factor four, which is the Court's conclusion that Youmi Cho and K&C Beauty concealed the true agreement. The Court did not analyze the existence of similar past conduct, the defendant's ability to pay, or the likelihood that the award will deter the defendant or others from like conduct in the future. There is no evidence in the record of Youmi Cho's or K&C Beauty's ability to pay such a significant sum as \$245,000 in punitive damages, which amounts to a 30% penalty of Plaintiff's alleged purchase price of \$800,000, or a penalty of 20% of the total gross revenues for the Beauty Store in 2020. It is also hard to imagine how assigning punitive damages in a case involving a disputed family business transaction will deter anyone in the broader community from similar conduct in the future.

Accordingly, the Order should be amended to remove punitive damages from the judgment.

NEW TRIAL ABSOLUTE

XII. A New Trial Should Be Granted Because Testimony Has Been Mischaracterized, Evidence Overlooked, and Certain Conclusions of Law Are Erroneous.

Under Rule 59(a), SCRCP, a new trial may be granted in an action tried without a jury, for any of the reasons for which rehearing have heretofore been granted in the courts of the State. On a motion

for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of new judgment.

As stated above, Defendants and Counterclaim Plaintiffs contend that the Order contains mischaracterization of facts, overlooks certain evidence, and made improperly characterizations of the law. Therefore, Defendants and Counterclaim Plaintiffs respectfully request that a new trial be ordered in this matter.

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

At the outset of trial, Defendants informed the Court of the risk that the trial could be infected by parol evidence and moved in limine requesting that the Court first hear witness testimony on the authenticity of the Asset Purchase Agreement and rule on whether Tok Kim signed the contract before proceeding to hear any testimony that controverted the substance of the written agreement. Defendants requested as follows:

Accordingly, Defendants respectfully request that the Court set the order of trial to exclude or limit parol evidence from being entered into evidence until a determination has been made on whether Tok Kim signed the Purchase Agreement and whether there is an ambiguity in the contract. Defendants propose the following order for trial:

1. Hear witness testimony on whether Tok Kim signed the Purchase Agreement, including Defendants' handwriting expert Roy Fenoff.
2. If the Court finds that Tok Kim signed the Purchase Agreement, all extrinsic evidence of the contract's formation should be excluded unless there is shown to be any relevant ambiguity in the four corners of the Purchase Agreement.
 - a. Determination on ambiguity
 - b. Only if Purchase Agreement is determined ambiguous can parol evidence be admitted as to the alleged ambiguity

3. If the Court finds that Tok Kim did not sign the Purchase Agreement, or reserves judgment on this factual issue, then the parties can proceed to present parol evidence.

(Defendants' Motion in Limine on Parol Evidence and Trial Order).

Under the parol evidence rule, absent fraud, accident or mistake, when the terms of a written instrument are unambiguous, extrinsic evidence of contemporaneous statements, allegedly made by the parties to the agreement, are inadmissible if they contradict or vary the terms of the written agreement. *Skinner v. Elrod*, 308 S.C. 239, 417 S.E. 2d 599 (Ct. App. 1992). The parol evidence rule prevents the introduction of extrinsic evidence of oral or written agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument. *Callawassie Island Mbrs. Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667 (2018).

If a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties.” *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999). “A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.” *Gordon Farms, Inc. v. Carolina Cinema Corp.*, 363 S.E.2d 235, 236, 294 S.C. 158, 160 (Ct. App. 1987) (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975)). An ambiguous contract is one that “is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.” *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). It is a question of law for the court whether the language of a contract is ambiguous. *Callawassie*.

As Defendants feared, the Court’s analysis of whether the Asset Purchase Agreement is authentic, and its conclusion that Tok Kim’s signature was digitally imposed, is based largely on parol

evidence and not on evidence as to execution of the contract itself. The Court concludes that the Asset Purchase Agreement is a fake based primarily on its acceptance of Tok Kim's version of the kitchen table conversation. The Order recounts the discussion in Tok Kim's kitchen where Tok Kim demanded \$800,000, Sang Cho suggested \$500,000, and to which Tok Kim said "Hell No." (Order ¶¶ 17-24). The Order concludes based on these discussions that it would be illogical for Tok Kim to say no to \$500,000 and then say yes to \$250,000. (Order ¶ 60). The Court again reasons that the kitchen table conversation supports the \$800,000 purchase price and anything less would be illogical and strain credulity. (Order ¶ 64). Further, the Court uses the thirty-six checks as additional evidence supporting the kitchen table conversation and as additional reasons to discard the authenticity of the written agreement. (Order ¶¶ 58, 60(b), 61, 62).

The only evidence that Plaintiff offered to dispute that Tok Kim signed the Asset Purchase Agreement was Tok Kim's statement that he did not sign it and Dr. Fenoff's acknowledgement that because he does not have the original, he cannot rule out a digital copy & paste. There is nothing more. This standing alone would not be sufficient for Plaintiff to carry its burden to show that the Asset Purchase Agreement is a fake.

Because this parol evidence so infected the trial and judgment, Defendants request a new trial absolute.

CONCLUSION

Defendants and Counterclaim Plaintiffs request that the Court amended the judgment to (1) rule that Sang Cho is not a fiduciary to Kim Enterprises and Plaintiff's breach of fiduciary causes of action fail; (2) find that the only reasonable conclusion supported by the evidence is that Tok Kim signed the Asset Purchase Agreement; (3) rule that Plaintiff's alleged oral agreement is barred by the statute of

frauds; and (4) rule that the purchase price is \$250,000. In the alternative, Defendants request that the Court reduce the judgment by the amount of net revenues that Kim Enterprises did not turn over to K&C Beauty after it sold the Beauty Store to K&C Beauty on December 15, 2020, and eliminate punitive damages from the judgment. Alternatively, Defendants and Counterclaim Plaintiffs request that a new trial be granted on the grounds described herein.

Respectfully submitted,

/s David L. Paavola

David L. Paavola (S.C. Bar No. 100714)

Ashley Thibault (Bar No. 103522)

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Cayce, SC 29033

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*Counsel for Defendants K&C Beauty LLC, Youmi
Cho, and Sang Cho*

February 17, 2025

EXHIBIT A

ELECTRONICALLY FILED - 2025 Feb 17 6:00 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005596

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2021-CP-40-05596
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	STIPULATION ON SIGNED
Youmi Cho and K&C Beauty, LLC, and	)	DOCUMENTS
Sang Cho,	)	
	)	
Defendants.	)	
	)	
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Kim Enterprises, LLC, and Tok Kim,	)	
	)	
Third-Party Defendants.	)	

COME NOW, Plaintiff and Third-Party Defendants, Kim Enterprises, LLC and Tok Kim, and Defendants and Third-Party Plaintiffs, Youmi Cho, K&C Beauty, LLC, and Sang Cho, by and through their undersigned counsel, and hereby stipulate that Third-Party Defendant Tok-Kim signed the documents listed below and no parties raise any objections to the authenticity of these documents.

Defendant-000060	Assignment of Lease
Defendant-000056	Bill of Sale
Defendant-000058	K1 - \$250,000 Check
Defendant-000059	K2 - Assignment of Lease
Defendant-000061-65	K3 - Landlord's Consent Assignment Lease
Fenoff-000192	K4 - Spectrum Business Change
WellsFarsoSDT_0205	K5 - Check to Tok Kim from Youmi Cho
Fenoff-000080-83	K6 - Title Real Estate

Fenoff-000187-190; Def. 43-46	K7 - Fifth Amendment to Lease
Fenoff-000086-88	K8 - General Warranty Deed
Fenoff-000111-112	K9 - Assignment of Lease
Defendant-000041-42	K10 - Fourth Amendment to Lease
Fenoff-000113-126	K11 - Mortgage
Fenoff-000084-85	K12 - Power of Attorney
Fenoff-000106-109	K13 - Quit Claim Deed
Fenoff-000127-130	K14 - Quit Claim Deed
Fenoff-000089-92	K15 - Quick Claim Deed
Fenoff-000131-134	K16 - Quit Claim Deed
Defendant-000039-40	K17 - Third Amendment to Lease
Fenoff-000057	K18 - Assignment of Lease
Fenoff-000056	K19 - Assignment of Lease
Fenoff-000110	K20 - Assignment of Lease
Fenoff-000093-105	K22 - Home Equity
Defendant-000011-13	K23 - Second Amendment to Lease
Fenoff-000058-73	K25 - Mortgage
Defendant-000014-38	K26 - Lease Beauty Store

This ____ day of October 2024.

WE SO STIPULATE:

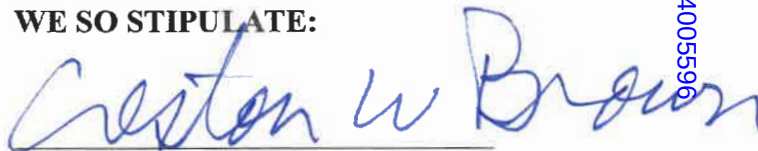


David L. Paavola (Bar No. 100714)
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1122-B Barnwell Street
Columbia, South Carolina 29201
(864) 242-4899

paavola@conlaw.com
thibault@conlaw.com

*Counsel for Defendants and Third-Party
Plaintiffs K&C Beauty LLC, Youmi Cho, and
Sang Cho*

WE SO STIPULATE:



H. Freeman Belser, Esq.
Creston W. Brown, Esq.
Belser & Belser, P.A.
Post Office Box 96
Columbia, SC 29202

freeman@belserpa.com
creston@belserpa.com

*Counsel for Plaintiff and Third-Party
Defendants Kim Enterprises, LLC, and Tok
Kim*

EXHIBIT B



Fw: Richland County - Business License Fees Due - K & C Beauty LLC. 3315 Broad River Road Suite 90

From cho372new@aol.com <cho372new@aol.com>

Date Mon 10/21/2024 3:14 PM

To David Paavola <paavola@conlaw.com>

[Sent from the all new AOL app for iOS](#)

Begin forwarded message:

On Wednesday, April 7, 2021, 10:07 AM, Business Service Center <bsc@richlandcountysc.gov> wrote:

Good Morning:

We have processed the paperwork for your business license. Below is a screen shot showing the total Balance Due for business license and any other fees. When submitting payment please make check/money order payable to "Richland County", include a copy of this email (first page only), mailing address 2020 Hampton St., Suite 1050, P.O. Box 192, Columbia, SC 29202. (Online or telephone payments are **not** available.) **Total Amount Due \$ 822.70 .**

BL # 60218-59089

Business Name: K&C Beauty LLC Arrival Type:

Saved Licenses / Fees

Fee Type	Begin Date	Expiration Date	Amount	Edit
Business License Fee	4/1/2021	12/31/2021	\$796.37	

Charges

Type	Quantity	Unit Price	Amount	Edit	Delete
Zoning Review Fee	1	\$26.33	\$26.33		
				Add	

Payments

Type	Number	Amount	Edit	Delete
			Add	

1 Fees	+	\$796.37
1 Charges	+	\$26.33
0 Payments	-	\$0.00

Balance Due	\$822.70

R-000240

ELECTRONICALLY FILED - 2025 Feb 17 6:00 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005596

If you have any questions or concerns please let me know.

Barbara Beard, ABL

Revenue Analyst
Richland County Government
Community Planning & Development Department
Business Service Center Division

☎ 803-576-2287 📠 803-576-2289

2020 Hampton St., Suite 1050
P.O. Box 192
Columbia, SC 29202
richlandcountysc.gov

-
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From: cho372new <cho372new@aol.com>
Sent: Friday, March 26, 2021 2:12 PM
To: Business Service Center <bsc@richlandcountysc.gov>
Subject: Fwd: K & C Beauty LLC. 3315 Broad River Road Suite 90 Clearance Form

Sent from my iPhone

Begin forwarded message:

From: Toby Taylor <Taylor.Toby@richlandcountysc.gov>
Date: March 26, 2021 at 12:20:04 PM EDT
To: Business Service Center <bsc@richlandcountysc.gov>, Cho372new@aol.com
Subject: 3315 Broad River Road Suite 90 Clearance Form

Please see attached clearance form signed by Fire Marshal's Office

Thanks

Toby B Taylor

Deputy Fire Marshal
Richland County Government
Emergency Services Department
Fire and Enforcement Division
Taylor.Toby@richlandcountysc.gov

📞 803-260-8570

1410 Laurens Street
Columbia, SC 29204

R-000241

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EXHIBIT C

Kim v Cho Trial - Day 1

ELECTRONICALLY FILED - 2025 Feb 17 6:00 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4005596

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No.: 2021-CP-40-05596

KIM ENTERPRISES, LLC,
Plaintiff,

v.

YOUMI CHO, K&C BEAUTY, LLC,
and SANG CHO,
Defendants.

_____/

YOUMI CHO AND K&C BEAUTY, LLC,
Counterclaim Plaintiffs,

v.

KIM ENTERPRISES, LLC and TOK KIM,
Counterclaim Defendants.

T R I A L - VOLUME I
BEFORE THE HONORABLE JOSEPH M. STRICKLAND,
MASTER IN EQUITY

DATE TAKEN: Monday, October 21, 2024

TIME START: 10:21 a.m.

TIME END: 4:22 p.m.

LOCATION: Richland County Central Court
2500 Decker Boulevard
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

R-000243

1 selling the store in December, keeping all the
2 revenues for January, February; selling all the
3 inventory, not restocking it; and keeping all of
4 that money and refusing to sign a written
5 agreement evidencing the secondary agreement for
6 the other stores.

7 In fact, what they're doing is using an
8 absence of a written agreement to help push that
9 all into the first agreement. That is the
10 injustice here, Your Honor.

11 We appreciate your time in this case.

12 THE COURT: Okay. Let's stand in recess
13 for five minutes.

14 - - -

15 (A recess transpired.)

16 - - -

17 THE COURT: Okay. Mr. Brown, call your
18 first witness.

19 MR. BROWN: Thank you, Your Honor. We
20 would like a little guidance from the Court. We
21 would like to publish Andy Kim's deposition. We
22 have his sealed deposition, and I guess the
23 errata or Certificate In Lieu of Signing.

24 Your Honor, would you prefer that
25 Mr. Belser and I read the deposition transcripts

1 or ...

2 THE COURT: He's not available, I guess?

3 MR. BROWN: He's an immigration attorney in
4 Georgia.

5 THE COURT: Right. I understand who he is.
6 But you want to publish his deposition instead
7 of having him testify?

8 MR. BROWN: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. PAAVOLA: Nothing other than we have
11 filed with the Court objections to certain
12 documents and certain parts of his testimony.

13 THE COURT: Are you going to publish the
14 whole thing?

15 MR. BROWN: Yes, Your Honor. We would like
16 to publish the deposition. And there's one
17 exhibit -- and then Exhibit 1, which is all the
18 documents.

19 THE COURT: I prefer someone take the stand
20 and read from the deposition.

21 MR. BELSER: This is Freeman Belser. I
22 will play the role of Andy Kim.

23 MR. PAAVOLA: Would you like us to make our
24 objections at the time you're reading? How do
25 you want to handle our objections to the

1 And also it's the testimony of a party
2 opponent, which will be Ms. Cho, what she said.
3 And regarding speculation, I don't understand
4 what's speculation. It's just recounting the
5 call.

6 THE COURT: Repeat the question again,
7 please.

8 BY MR. BROWN:

9 Q. Okay. And we may delve into this a little
10 bit later, but the few times you talked to Mr. Kim
11 after the attorney-client privilege or
12 attorney-client relationship was established, what
13 was the purpose of those conversations, if you
14 recall, with Mr. Kim?

15 THE COURT: Stop. What was the objection
16 again?

17 MR. PAAVOLA: Objection is to hearsay.
18 He's about to get into talking about what
19 Tok Kim has told him in prior conversations.
20 That's hearsay.

21 THE COURT: Objection overruled.

22 THE WITNESS: Yeah, for the preparation --
23 for the preparation of Ms. Cho's immigration
24 documentation because that business was about
25 Mr. Kim, the business, so I had to get some

1 information what kind of business it is.

2 Primarily, Ms. Cho provided that
3 information for Mr. Kim, but sometimes she
4 doesn't have the domestic knowledge. So in the
5 case I talked with him, but it is just one or
6 two times, I guess.

7 BY MR. BROWN:

8 Q. Okay. Okay. I'd like to --

9 A. So -- and also the last time I talked to
10 Mr. Kim was after Ms. Cho's E-2. The status was
11 approved. And then maybe it was six months or one
12 year later, Mr. Kim called my office. And then he
13 said that the extra price was \$800,000. Yes, the
14 price -- the actual price was different. And then he
15 said what Ms. Cho is -- was refusing to pay the
16 balance.

17 But he said that he had some -- several
18 checks which was given by the Ms. Cho, but he said
19 that he's demanding copies of the check. But because
20 it is approved at the extra price, he will not give
21 me back.

22 Q. Okay. Well, and what I'd like to do is
23 just go through some documents. These are the
24 documents I sent you yesterday, and then what I did
25 in case I had any questions about the ones David

1 A. Yes.

2 Q. Okay. Then in paragraph A, again, it
3 references Kim Enterprises Beauty Supply. That's
4 something you would have inputted through this form.

5 A. Maybe that's the business name.

6 Q. This is something you would have typed in
7 the form, correct?

8 A. Excuse me?

9 Q. You prepared this form?

10 A. Yes. Yes.

11 Q. And you would have written in the words Kim
12 Enterprises Beauty Supply?

13 A. Yes. Maybe I -- that is the doing business
14 name of Kim Enterprise, LLC.

15 Q. All right. But in Section 2, Defendant's
16 48, it has a purchase price of \$250,000. Do you see
17 that?

18 A. Yes.

19 Q. And you earlier testified that that
20 information came from Ms. Cho?

21 A. Yes.

22 Q. Okay. And then paragraph 3, it says, "The
23 buyer shall execute and deliver to a seller on or
24 before December 15th, 2020, and the cash payment to
25 seller in principal amount of \$250,000."

1 Did I read that correctly?

2 A. Yes.

3 Q. Okay. So Ms. Cho gave you the amount of
4 \$250,000. Where do you get the date of
5 December 15th, 2020, from?

6 A. I don't think Ms. Cho provided the date,
7 but maybe I heard when they say, you know, pay that
8 amount and then, yeah -- and then I put the date.

9 Q. Okay. So this may have been after the
10 fact?

11 A. I'm not sure. Maybe the payor, yeah.
12 After the transaction, I prepared these documents.
13 I'm not sure.

14 Q. Do you know what date you sent this
15 document?

16 A. In addition to this, the agreement also
17 received the checks that Ms. Cho paid to Mr. Kim,
18 so ...

19 Q. Okay. Yeah. Do you recall when you --
20 what date you prepared the -- you know, the draft
21 agreement that wasn't signed when you sent that?

22 A. When I sent this document to Ms. Cho, yeah,
23 it is not signed.

24 Q. Do you know when you sent it?

25 A. I think I already sent an email. Let me

1 check my email. I think, yeah, for the prior person,
2 yeah, I think it was even before she actually paid
3 the amounts.

4 Q. Do you know the date? Are you looking at
5 the email right now?

6 A. Yes. I sent a form December 9.
7 December 9, 2020.

8 Q. Okay. All right. On Bates-stamp Andy Kim
9 Deposition 28, which is also Bates-stamped
10 Defendant's 49. Let me scroll down here. In Section
11 5 it says, "Allocation purchase price."

12 These amounts you input in this form,
13 correct?

14 A. Yes. Yes.

15 Q. Was it your testimony that Ms. Cho gave you
16 this split between good will and tangible assets, or
17 is this something you came up with?

18 A. Can you say that again?

19 Q. Yeah. Where did the split between good
20 will and tangible assets come from?

21 A. I'm not so sure. Maybe, yeah. Yeah,
22 maybe, yeah. Some, yeah. She explained about
23 business and then, yes, roughly the total amount of
24 money of the payment.

25 Q. Let me ask you this: Is there a reason

1 that you split on the purchase price into good will
2 and tangible assets?

3 A. Yes. Normally when a person purchase a
4 business, there is a -- you know, this splits the
5 amounts for good will and tangible assets are common,
6 so ...

7 Q. If you look at Andy Kim Deposition 30,
8 Defendant's 51, it has a Section 13 and a section for
9 notice. And it give a seller/buyer information. Do
10 you see that?

11 A. Yes. Maybe that's the other for each
12 person.

13 Q. Who provided this information?

14 A. I believe it was Ms. Cho.

15 Q. Okay.

16 A. Because I primarily talked with Ms. Cho for
17 the preparation of her E-2 status. And when I talked
18 a few times with Mr. Kim, it's mostly related to his
19 business.

20 Q. Okay. Let me ask you about that. Since
21 you were on that, you brought that up again. You
22 said -- hold that. Let me just scratch that. Sorry.
23 Let's finish this and we'll come back to that.

24 This signed version and this Asset Purchase
25 Agreement, what I sent you on Defendant's 55, was the

1 signed document part of the immigration files you
2 prepared?

3 A. Yeah, I submit this document to the USCIS.

4 Q. Okay. All right. Based on this document
5 that was signed, and that was in -- so this was in
6 your file, correct?

7 A. Yes. Yes.

8 Q. All right. Based on this agreement that
9 was signed, and then you got a copy of, what did you
10 understand to be the purchase price of the business
11 Ms. Cho purchased?

12 A. All right. Based on this document that was
13 signed and that you had --

14 MR. PAAVOLA: I'm sorry. I think you
15 skipped.

16 MR. BELSER: Oh, sorry.

17 THE WITNESS: Yes, yes.

18 MR. PAAVOLA: You were on 39, line 23.

19 MR. BELSER: Okay.

20 THE WITNESS: Can you say that again?

21 BY MR. PAAVOLA:

22 Q. Yes. Based on this document, this Asset
23 Purchase Agreement that was in your file, what did
24 you understand to be the purchase price of the
25 business?

1 A. Yeah, 250- . 250- .

2 Q. 250,000?

3 A. Yeah, \$250,000.

4 Q. Again, on the Andy Kim Deposition, Bates
5 35, the Bill of Sale document, was this also a
6 document that was in your file?

7 A. Yes.

8 Q. And was this a document that you submitted
9 to as part of the immigration application?

10 A. Yes.

11 Q. Prior to seeing these two documents, have
12 you ever seen any documents in both of these, the
13 Bill of Sale and the Asset Purchase Agreement, at
14 least on their face, and purportedly signed by
15 Youmi Cho and it says Tok Kim? Do you see that?

16 A. Yes.

17 Q. Have you ever seen any other document
18 signed by Mr. Tok Kim?

19 A. Other document? I don't think.

20 Q. Okay.

21 A. No, because, you know, I'm thinking about
22 the required document for E-2 status. But, yeah,
23 this is only document we need his signature.

24 Q. All right. Let me go back and ask you
25 about the times you have talked to Mr. Tok Kim. I

1 believe you said there were several times you
2 mentioned you had talked to him it was about his
3 business. So what do you remember asking him about
4 his business?

5 A. Actually, I don't remember clearly because
6 it was just a few times.

7 Q. Okay. What would typically be the
8 information that you would need to gather?

9 A. Because of Ms. Cho was purchasing Mr. Kim's
10 business, but she didn't have the full information
11 about the business, so -- but I had to know some
12 information relating to the E-2 business. So that's
13 why I had to contact Mr. Kim. Maybe just a one time,
14 maybe I talked with his wife. She was American who
15 can speak in Korean.

16 Q. What did you talk about with Mr. Kim's
17 wife?

18 A. I don't remember, but it was definitely
19 related to the E-2 business.

20 Q. Let me show you what's been Bates-stamped
21 as Andy Kim Deposition 38, also Defendant 200. Do
22 you recognize this document?

23 A. Yes.

24 Q. What is it?

25 A. This is the copies of the canceled check.

1 knowledge about \$450,000 contracts, you know, our
2 conversation would be different.

3 Q. Okay. So it's your understanding that he
4 was aware of the Business Asset Purchase Agreement
5 for \$250,000?

6 A. I believe so.

7 Q. So Mr. Kim tells you the purchase price was
8 \$800,000. What else do you recall him talking about
9 during the conversation?

10 A. He said that she's refusing to pay the
11 balance and then -- but she gave him some checks to
12 pay the balance and she stopped it. And then she is
13 asking for those checks back. But Mr. Kim told me
14 that he would not give those back to her because
15 that's the evidence of the extra price, the \$800,000.

16 Q. Have you ever heard about the checks before
17 that point in time?

18 A. Which check?

19 Q. You just mentioned Mr. Kim said.

20 A. No. No. He didn't show me those checks.
21 He just told me over the phone.

22 Q. Okay. So you've not seen any checks?

23 A. No. No. No.

24 Q. Is that the first time you had ever heard
25 about checks?

1 A. At first I didn't know she came on a
2 student visa, but she was attending the school on a
3 student visa for about a year. And she told me,
4 "Uncle, I am on a student visa," and that she went to
5 Korea.

6 Q. And when -- did she ask to buy the store?
7 How did the conversation about selling the store come
8 about?

9 A. We didn't have a conversation. She just
10 said, "Uncle, I don't want to study, so please sell
11 me your store."

12 THE INTERPRETER: Clarification.

13 THE WITNESS: Then she took her two
14 children and went back to Korea.

15 BY MR. BROWN:

16 Q. So at this conversation you testified
17 about, was price talked about at all, or did she just
18 tell you she wanted to buy the store?

19 A. Yes.

20 THE INTERPRETER: So when the interpreter
21 asked, "Did she just talk about buying the
22 store?" the witness said yes.

23 BY MR. BROWN:

24 Q. When Youmi Cho returned from South Korea,
25 did you and her agree on a price for the store?

1 MR. PAAVOLA: Objection, Your Honor. This
2 gets into the parol evidence. I'm going to
3 object to any discussions about what the
4 conversations were related to the agreement.

5 THE COURT: All right. Overruled.

6 MR. PAAVOLA: Your Honor, can I have a
7 standing objection to the parol evidence given
8 the fact that it's likely --

9 THE COURT: A continuing objection?

10 MR. PAAVOLA: I'm sorry?

11 THE COURT: A continuing objection?

12 MR. PAAVOLA: Continuing objection given
13 it's likely to --

14 THE COURT: Your motion is granted, yes.

15 THE WITNESS: Yes.

16 BY MR. BROWN:

17 Q. And what price did you and Youmi Cho agree
18 on?

19 THE INTERPRETER: Clarification.

20 THE WITNESS: \$800,000.

21 MR. PAAVOLA: Your Honor, may we approach?

22 THE COURT: Yes.

23 - - -

24 (A bench conference was held.)

25 - - -

1 THE COURT: All right. Please proceed,
2 Mr. Brown.

3 BY MR. BROWN:

4 Q. When Youmi Cho returned from South Korea,
5 did you and her agree on a price for the store?

6 A. That's correct.

7 Q. And what price did you and her agree on?

8 A. We did it for \$800,000.

9 Q. Did you and Youmi Cho have the conversation
10 about this agreement in your home kitchen?

11 A. Yes. That's correct.

12 Q. And was it just Youmi Cho in your kitchen
13 at this -- when this conversation occurred?

14 A. That's correct.

15 Q. Did Youmi Cho and Sang Cho later come to
16 your house a couple of days later to discuss the
17 purchase price?

18 A. That's correct.

19 Q. Did Sang Cho state that he believed the
20 Broad River store should be sold for 500,000?

21 MR. PAAVOLA: Objection, Your Honor. It's
22 hearsay.

23 THE COURT: I'm sorry, what was your
24 objection?

25 MR. PAAVOLA: Hearsay, Your Honor.

1 the expenses of the Broad River store?

2 A. Yes, that's correct. March.

3 Q. And did you collect all the sales revenue
4 through March 7th?

5 A. That's correct.

6 Q. So when Youmi Cho received her business
7 license on March 7th, was she able to get a credit
8 card processing terminal?

9 A. Because she did not have a Social Security
10 number at that time, the credit card number transfer
11 was not able to occur.

12 Q. Based on your experience as a business
13 owner that accepts credit cards, do you need a Social
14 Security number to open a credit card processing
15 account?

16 A. That's correct.

17 Q. And are most of the beauty supply store
18 sales made on credit cards?

19 A. Almost all, correct.

20 Q. How did Youmi Cho process credit card
21 transactions on March 8th if she did not have a
22 Social Security number?

23 A. Because Youmi Cho did not have a Social
24 Security number, we couldn't transfer the name so all
25 the credit card went through me.

1 THE INTERPRETER: Interpreter needs it
2 back.

3 THE WITNESS: Youmi did not write the check
4 in front of me. And she asked me to send all
5 the checks to my employee. So I sent one piece
6 to my employee. So Youmi said, "Did you send
7 the check all to my all employees?" Youmi said,
8 to our employee, "Did you take all the checks?"

9 So my employee said "Only one was brought."

10 Then Youmi said, "I will not write it for
11 you then." Then I deposited one check to the
12 bank. Then all was stop deposited.

13 BY MR. BROWN:

14 Q. And have you received any more payments
15 since that -- since this check was attempted to be
16 deposited?

17 A. I did not receive it.

18 Q. Are you aware of the eight-page document
19 that Youmi Cho says you signed titled Business Asset
20 Purchase Agreement?

21 A. I did not know.

22 Q. Did you sign an eight-page agreement titled
23 Business Asset Purchase Agreement?

24 A. I did not.

25 Q. When did you first learn that Youmi Cho

1 your own translator. Are you going to use your
2 own translator?

3 MR. PAAVOLA: Your Honor, our translator is
4 for our witness. The parties have agreed to use
5 this translator for this witness.

6 THE COURT: That's fine.

7 MR. PAAVOLA: Your Honor, I've got exhibits
8 I'd like to hand to the witness. Binders of
9 exhibits.

10 THE COURT: Okay. You need to walk around
11 to do that.

12 - - -

13 CROSS-EXAMINATION

14 - - -

15 BY MR. PAAVOLA:

16 Q. Mr. Kim, you've got two binders in front of
17 you. One is white and one is black.

18 A. Yes.

19 Q. You've signed legal documents in the past
20 for business transactions, correct?

21 A. In the past?

22 THE INTERPRETER: Interpreter didn't hear.

23 THE WITNESS: What kind of contracts are
24 you talking about?

25 BY MR. PAAVOLA:

1 Q. Can you turn to -- get the white binder out
2 and you can turn to tab 7. I've also brought it up
3 on the screen in front of you for your convenience.

4 Mr. Kim, are you on the tab that says
5 Number 7 -- behind letter K, Number 7?

6 Let me know when you're there.

7 A. Yes.

8 Q. Okay. And I just brought it on the screen
9 in front of you as well for your convenience. It
10 says "Fifth amendment to lease." Do you see that?

11 A. Yes.

12 Q. And on the last page of this document has a
13 line for your signature, and you signed this
14 document, correct?

15 A. Yes.

16 Q. On the screen, I'm going to bring up what's
17 marked as Defendant's K8. It's on the screen now.
18 It says General Warranty Deed on top. Do you see a
19 document on your screen?

20 THE INTERPRETER: What was the name of?

21 MR. PAAVOLA: General Warranty Deed.

22 BY MR. PAAVOLA:

23 Q. Do you see the document on the screen?

24 A. What does this mean?

25 THE INTERPRETER: Let me get my dictionary.

1 THE WITNESS: What does it -- what is it
2 warranting?

3 BY MR. PAAVOLA:

4 Q. Mr. Kim, you bought and sold property in
5 the past, correct?

6 THE INTERPRETER: You what?

7 BY MR. PAAVOLA:

8 Q. You bought and sold property in the past?

9 A. Yes, I have.

10 Q. And you signed real documents for that
11 process, right?

12 A. Yes.

13 Q. And you've used an attorney in the past to
14 help you with that process?

15 A. Yes.

16 Q. All right. So you can read English enough
17 to sign legal documents, correct?

18 A. I cannot.

19 Q. You've been in the United States for 40
20 years since 1983, haven't you?

21 A. That's correct, yes.

22 Q. In this case, Kim Enterprises received
23 \$250,000 from K&C Beauty, didn't it?

24 A. That's correct.

25 Q. And I put on the screen what we've marked

1 A. That's correct.

2 Q. And the date is December 1st, 2020?

3 A. Yes.

4 Q. And on the back of the check, you signed
5 the check, didn't you?

6 A. That's correct.

7 MR. PAAVOLA: Your Honor, I believe these
8 are the witness exhibits. Can I give them to
9 Mr. Kim?

10 THE COURT: Yes.

11 THE WITNESS: Yes.

12 BY MR. PAAVOLA:

13 Q. Mr. Kim, you were asked about the 36 checks
14 or 32 checks that are marked as Plaintiff's
15 Exhibit 1.

16 A. Yes.

17 Q. And so I brought up on the screen
18 photocopies of these checks. Do you see those on the
19 screen?

20 A. Yes, I see.

21 Q. These checks are also made written out
22 payable to you personally, correct?

23 A. That's correct.

24 Q. They're not made payable to Kim
25 Enterprises, LLC, are they?

1 A. That's correct.

2 Q. All right. You directed Youmi Cho to write
3 these checks to you personally, didn't you?

4 A. I did not say that.

5 Q. But you demanded that she give you these 36
6 checks, didn't you?

7 A. It's not 36. Originally it's 24 pieces,
8 but ...

9 THE INTERPRETER: Interpreter didn't hear
10 the last part.

11 THE WITNESS: But she wrote 36 of them.
12 BY MR. PAAVOLA:

13 Q. You demanded that she come to your house
14 and write these checks to you personally in front of
15 you, didn't you?

16 THE INTERPRETER: The witness was --
17 interpreter thought the witness finished, but I
18 need to ask him to repeat.

19 THE WITNESS: On the seventh day, Youmi
20 telephoned me. And then she visited my home.
21 Originally, Youmi was supposed to write 24
22 checks; however -- originally, she was supposed
23 to write 24 checks which were going to be
24 \$30,000 each.

25 Originally, Youmi was supposed to write

1 THE WITNESS: Because I trusted Youmi
2 because she is my niece, so I just received the
3 checks. That's correct.

4 BY MR. PAAVOLA:

5 Q. Oral agreement only.

6 A. So she gave me the promise letter by checks
7 for three years. For three years.

8 Q. What promise letter are you referring to?

9 A. I did not receive a promise letter. I just
10 received it verbally.

11 Q. You exchange for the checks for money
12 totaling \$60,000; is that right?

13 THE INTERPRETER: Could you repeat the
14 question?

15 MR. PAAVOLA: Could you read back?

16 - - -

17 (The Court Reporter read the record as
18 requested.)

19 - - -

20 THE INTERPRETER: You exchange checks for
21 money for \$15,000. Is that right?

22 THE COURT REPORTER: \$60,000.

23 THE INTERPRETER: You exchange checks for
24 money for \$60,000. Is that right?

25 THE WITNESS: I received it. One was

1 Q. In the summer of 2020, Youmi Cho went back
2 to Korea to sell her apartment. Are you aware of
3 that?

4 A. I know.

5 Q. She was selling her apartment to raise
6 money to buy one of your stores; isn't that right?

7 A. That's correct.

8 Q. All right. You had suggested that she
9 could sell her apartment to buy your store?

10 A. It's not that. Youmi said, "I don't want
11 to study, so sell one of your stores." Then she went
12 to Korea.

13 Q. But it was your suggestion that she sell
14 her apartment to buy your store; isn't that right?

15 A. No.

16 Q. In fact, before she left for Korea, you had
17 agreed to sell her one store for \$250,000; isn't that
18 right?

19 A. I did not.

20 Q. Okay. You knew \$250,000 would be about all
21 she would get from selling her apartment in Korea?

22 A. I did not know that.

23 Q. You discussed a price before she went back
24 to Korea, didn't you?

25 A. No, I did not.

1 Q. And your testimony is that Youmi Cho went
2 back to Korea to sell her apartment having no idea
3 whether it would be enough money to buy a store from
4 you; is that what you're saying?

5 A. I know that she went to Korea to sell her
6 apartment to buy her uncle's store.

7 Q. You testified about a meeting that you had
8 with Youmi Cho after she came back from Korea. Do
9 you recall that?

10 THE INTERPRETER: Interpreter didn't
11 understand.

12 BY MR. PAAVOLA:

13 Q. You testified about a meeting you had with
14 Youmi Cho after she came back from Korea.

15 A. What meeting?

16 Q. You testified about a meeting when you were
17 present, Youmi Cho was present, and Sang Cho was
18 present, right?

19 A. Those two people came to our home.

20 Q. Okay. You called that meeting, right?

21 A. Youmi telephoned me and asked "Can I come
22 to you, Uncle's home, together with Sang Cho?" So I
23 said okay.

24 Q. Vincent Fletcher was not involved in that
25 meeting, was he?

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

4 A. She only brought one contract paper.

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

9 A. I know that.

10 Q. Okay. So you knew Youmi Cho's immigration
11 attorney needed a written contract in December of
12 2020 for the sale of the Beauty Store?

13 A. I knew that.

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

16 A. Yes.

17 Q. We'll show you what's been marked as
18 Defendant's Exhibit 1.

19 A. Yes.

20 MR. PAAVOLA: Your Honor, we move
21 Defendant's Exhibit 1 into evidence. This is
22 the Asset Purchase Agreement Bates-stamped
23 Defendant's 48 to 55.

24 MR. BROWN: Your Honor, we object for the
25 same reasons we argued in our motion in limine.

1 And we'd ask to have a standing objection to any
2 testimony regarding this.

3 THE COURT: Objection overruled.

4 MR. PAAVOLA: Thank you, Your Honor. I'll
5 also for the record note that Plaintiff put this
6 exhibit -- document already into evidence and
7 the attachment to Andy Kim's deposition. They
8 identified his entire deposition, his entire
9 exhibit. Our Exhibit 1 is included in Andy
10 Kim's deposition documents at Andy Kim --
11 Andy Kim Deposition 27 through 34, just so the
12 record is clear.

13 THE COURT: All right. Let's break for the
14 evening. We'll stand in recess and resume
15 cross-examination in the morning at 10:00.

16 MR. PAAVOLA: Your honor, I'm not sure if
17 the witness is aware, Mr. Kim is still on the
18 stand. He's not allowed to talk with these
19 attorneys.

20 THE COURT: Okay.

21 - - -

22 (The trial recessed at 4:22 p.m.)

23 - - -
24
25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

KIM ENTERPRISES, LLC,
Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOU MI CHO, K&C BEAUTY, LLC,
AND SANG CHO,
Defendants.

_____/

YOU MI CHO AND K&C BEAUTY, LLC
Counterclaim Plaintiffs,

vs.

KIM ENTERPRISES, LLC AND TOK KIM,
Counterclaim Defendants.

T R I A L - VOLUME II
BEFORE THE HONORABLE JOSEPH M. STRICKLAND,
MASTER IN EQUITY

DATE TAKEN: Tuesday, October 22, 2024

TIME START: 10:01 a.m.

TIME END: 4:26 p.m.

LOCATION: Richland County Central Court
2500 Decker Boulevard
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

1 THE INTERPRETER: Can I have the question?

2 BY MR. PAAVOLA:

3 Q. How are you sure you did not sign this
4 document?

5 A. Youmi did not sign in front of me, and she
6 did not tell me how many pages there were and that
7 there were many more pages. And she did not tell me
8 the contents of the many pages, so ...

9 THE INTERPRETER: Your Honor, I just need
10 the last part again, so can I clarify?

11 THE COURT: Yes.

12 THE INTERPRETER: I'll just tell him what I
13 interpret so far.

14 THE WITNESS: If she had brought all the
15 pages, I would have known the content. But this
16 one is similar, but this is not what I signed.

17 BY MR. PAAVOLA:

18 Q. Mr. Kim, I've just zoomed in on one
19 signature block for Kim Enterprises on Exhibit 1.
20 And you've testified that this signature is similar
21 to your signature, correct?

22 A. Yes. Yes.

23 Q. And the only thing you ever identified as
24 being different than your signature is this little
25 checkmark to the left; is that correct?

1 THE INTERPRETER: Clarification. So
2 interpreter needs to strike "I saw this
3 business." She brought this page, and I just
4 signed it and she took it away.

5 BY MR. PAAVOLA:

6 Q. Mr. Kim, you don't have any doubt this is
7 Ms. Cho's signature on this document, do you?

8 A. Because she did not sign in front of me, I
9 do not know. Only I signed it.

10 Q. This is your signature, isn't it?

11 A. Yes.

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

16 A. That's correct.

17 Q. In fact, what it says is the exact detailed
18 terms of the agreement are outlined in a Business
19 Asset Purchase Agreement executed by both seller and
20 buyer. Do you see that?

21 THE INTERPRETER: Interpreter didn't get
22 the first part, Your Honor.

23 THE COURT: Could you repeat, please.

24 THE INTERPRETER: Clarification.

25 THE WITNESS: I read the Bill of Sale, but

1 -- but under that I did not read the writing.
2 And Youmi Cho said she's busy and asked me to
3 sign quickly, so only I signed and then she took
4 it.

5 BY MR. PAAVOLA:

6 Q. So your testimony is that you saw that it
7 referenced a Business Asset Purchase Agreement but
8 you didn't ask for a copy of it?

9 A. I did not have time to read it, and it was
10 COVID time so nobody was there. Only I was there,
11 and I couldn't ask. And she asked me to sign it
12 quickly, and she took it away.

13 Q. Mr. Kim, we established earlier that you've
14 signed legal documents in the past, right?

15 A. What legal documents?

16 Q. Legal documents just in general, Mr. Kim.

17 A. Selling the house?

18 Q. We had that entire binder -- white binder
19 in front of you. K documents 1 through 26. All
20 legal documents. You've signed legal documents in
21 the past, haven't you?

22 A. Yes, I have done leases, houses. And the
23 interpreter remembered a little late but early on. I
24 think the witness said I trusted Youmi Cho.

25 MR. PAAVOLA: I'm sorry, what are you

1 What's the objection?

2 MR. BROWN: Assuming facts not in evidence,
3 that the checks were signed in '21, not '20.

4 THE COURT: Okay.

5 MR. PAAVOLA: I misspoke, Your Honor.

6 THE COURT: You misspoke.

7 MR. PAAVOLA: I said March 2020.

8 THE COURT: Sustained.

9 BY MR. PAAVOLA:

10 Q. Mr. Kim, you received the checks that are
11 sitting in front of you March 2021?

12 A. On the night of March 7th, she came and
13 wrote it for me.

14 Q. All right. And you told Ms. Cho these
15 checks were a good faith business gesture towards the
16 purchase of two other beauty stores, right?

17 A. No.

18 Q. Youmi Cho asked you to put the second
19 agreement for additional stores in writing, do you
20 remember that?

21 A. No.

22 Q. Mr. Kim, Sang Cho was not an owner of the
23 beauty store before it was sold to K&C Beauty, was
24 he?

25 A. He was not.

1 Q. All right. And he did not share in the
2 profitability of the beauty store as part of his
3 compensation, did he?

4 A. That's correct.

5 Q. And Sang Cho was not responsible for paying
6 expenses of the beauty store while you owned it, was
7 he?

8 A. That's correct.

9 Q. And Sang Cho never opened his own beauty
10 store to compete with your beauty store, did he?

11 THE INTERPRETER: Once again, interpreter
12 can just ask.

13 THE WITNESS: No, that's correct.

14 BY MR. PAAVOLA:

15 Q. But Sang Cho was familiar with the
16 inventory and the products that were in the Beauty
17 Store at the time it was sold to K&C Beauty, right?

18 THE INTERPRETER: Interpreter can ask
19 again.

20 THE WITNESS: Before the purchasing of
21 the --

22 THE INTERPRETER: The interpreter will
23 start over.

24 THE WITNESS: Before selling the beauty
25 store, when Sang Cho made a list of the

1 inventory of the purchase products, I would
2 bring it and I would bring the products for him.

3 BY MR. PAAVOLA:

4 Q. You never invited -- you testified earlier
5 you never invited Youmi Cho to visit the beauty store
6 and look at the inventory before she bought it,
7 right?

8 A. That's correct, but since Sang Cho was the
9 manager, Youmi Cho went in and out of the store every
10 day.

11 Q. You never directed Sang Cho to go through
12 inventory and throw out inventory and keep good
13 inventory, did you?

14 THE COURT: Say it again, please.

15 BY MR. PAAVOLA:

16 Q. You never directed Sang Cho to go through
17 the inventory and throw out the old inventory and
18 keep the good inventory?

19 A. Because Sang Cho is the manager.

20 THE INTERPRETER: Clarification.

21 THE WITNESS: So because Sang Cho is the
22 manager, he throws out the expired products
23 himself.

24 BY MR. PAAVOLA:

25 Q. You never directed Sang Cho to take --

1 was in Korea?

2 A. No.

3 Q. All right. Do you remember giving a
4 deposition in this case?

5 A. What's a declaration?

6 Q. A deposition. He sat for a deposition.

7 A. At the attorney's office?

8 Q. It was at your attorney's office.

9 A. What -- what testimony?

10 Q. Does he remember having a deposition taken?

11 A. No.

12 Q. Okay. Do you remember I asked you
13 questions in front of your attorney and the court
14 reporter?

15 A. I'm not sure.

16 MR. PAAVOLA: Okay. Your Honor --

17 BY MR. PAAVOLA:

18 Q. Mr. Kim, do you remember I asked you that
19 question in your deposition when the last time you
20 ordered inventory for the beauty store was; do you
21 remember that?

22 A. Yes. However, whether Youmi goes to Korea
23 or whether she does not go to Korea, since it is my
24 store, I continue to do the inventory.

25 MR. PAAVOLA: Your Honor, may I approach

1 with the --

2 THE COURT: Yes, sir.

3 THE WITNESS: Yes.

4 MR. PAAVOLA: I'm sorry, what are you
5 asking him?

6 THE INTERPRETER: I just interpreted, Your
7 Honor, may I show the witness the deposition of
8 his --

9 MR. PAAVOLA: Your Honor, will you open the
10 seal.

11 THE INTERPRETER: -- transcript.

12 THE COURT: Okay. Let's take a 15-minute
13 break at this time.

14 - - -

15 (A recess transpired.)

16 - - -

17 THE COURT: Thank you so much. Please be
18 seated.

19 You may proceed.

20 BY MR. PAAVOLA:

21 Q. Mr. Kim, I have handed you a copy of your
22 deposition. Will you please open it up and turn to
23 page 86.

24 THE COURT: Can Mr. Kim read English?

25 THE WITNESS: I don't understand the

1 meaning.

2 MR. PAAVOLA: We'll translate it.

3 THE COURT: Okay.

4 MR. PAAVOLA: I'll have the screen for her.

5 THE COURT: Please proceed.

6 BY MR. PAAVOLA:

7 Q. On line 21, I asked you prior to selling
8 the beauty store, when was the last time that Kim
9 Enterprises ordered inventory to restock the beauty
10 store?

11 And you stated "So that would have been
12 while Youmi was in Korea and Sang Cho ordered
13 overstock."

14 THE INTERPRETER: Can I see?

15 THE WITNESS: But because this is my store,
16 when Youmi was in Korea, I had to do the
17 inventory. So I don't know if Youmi brought the
18 money, but Sang Cho and Youmi probably discussed
19 about the contents at the house. So Sang Cho
20 and Youmi went around the other store. Sang Cho
21 and Youmi store -- went around and visited the
22 three stores and then said that they will buy
23 our store. And she said --

24 THE INTERPRETER: Clarification.

25 THE WITNESS: And then I was asked how much

1 if they threw it away after they just saw the
2 items.

3 MR. PAAVOLA: Your Honor, I'd ask
4 permission to publish a portion of his
5 deposition where I asked these questions to him.

6 THE COURT: Your motion is granted.

7 MR. PAAVOLA: I'll bring up on the screen
8 for the Court deposition page 87 starting at
9 line 24.

10 And I asked: "And does Kim Enterprises
11 have records of inventory or stock purchases it
12 made between December and March of 2021?"

13 ANSWER: So, for example, Sang would come
14 up to me and give me a list of all the product
15 he would need the night before. And I would
16 give him that product from the CK store.

17 QUESTION: Okay. So your testimony is that
18 between December 2020 and March 2021, any
19 inventory or stock provide or placed in the
20 beauty store came from your other beauty stores.

21 ANSWER: Yes. So the other stores would be
22 the ones to do the actual ordering and once
23 arrived, we would transfer it over to Sang's
24 store.

25 QUESTION: Do you have any records of those

1 orders?

2 ANSWER: Yes, we do.

3 QUESTION: Okay. Do you keep records of
4 inventory transferred from one store to the
5 other.

6 ANSWER: No.

7 QUESTION: So are there any documents at
8 all that are about the transfer of inventory
9 from the other three stores to the beauty store
10 for this time period?

11 ANSWER: There is not.

12 MR. PAAVOLA: That will be the end of my
13 publication.

14 THE COURT: Okay. You may proceed.

15 BY MR. PAAVOLA:

16 Q. Mr. Kim, Sang Cho is the most reliable
17 person to know about what inventory was restocked in
18 the beauty store between December 15th and March 7th,
19 2021. Do you agree with that?

20 A. That's correct.

21 Q. All right. Mr. Kim, you received the
22 \$250,000 check in December of 2020, right?

23 A. That's correct.

24 Q. If you turn to Defense Exhibit 4 in your
25 binder, let me know when you get there.

1 MR. BROWN: We're fine with the blue
2 bubbles.

3 MS. THIBAUT: And I reserve the right to
4 if any of the blue bubbles have hearsay in it,
5 then I'll object at the time.

6 Creston, what is the Bates on those?

7 MR. BROWN: Yeah. I have a copy for you
8 all. So this would be Plaintiff's 2.

9 BY MR. BROWN:

10 Q. So did you text Suzi that the terms of the
11 sale of the store were verbal, Mr. Cho?

12 A. I'm sorry?

13 Q. Did you text Suzi and state that the sale
14 of the store was a verbal agreement?

15 A. It says what it says, yes.

16 Q. No. I mean, before referring to this, I'm
17 asking you, did you text Suzi and state the sale was
18 a verbal agreement between Mr. Kim and Youmi Cho?

19 A. I just texted her after I received the
20 paper.

21 Q. So you agree that the agreement between
22 Youmi Cho and -- or wouldn't you agree that the
23 agreement between Youmi Cho and Mr. Kim was a verbal
24 agreement?

25 A. I'm not sure. I wasn't at the final

1 agreement.

2 Q. So when you texted this, did you not mean
3 what you said in the text message?

4 A. What do you mean by what I mean?

5 Q. When you texted "verbal agreement," did you
6 not mean that it was a verbal agreement?

7 A. I just trying -- after I read it, I just
8 typed -- text her about the paper that my sister got
9 served.

10 Q. When you wrote the words "verbal
11 agreement," what did you mean?

12 A. Just agree with the words?

13 THE COURT: Could you publish the text?

14 MR. BROWN: Yeah. Publish Plaintiff's
15 Exhibit 2. I'm sorry. Can I put it on the
16 ELM0? Can I try the ELM0?

17 BY MR. BROWN:

18 Q. Mr. Cho, do you see the blue text message
19 on your screen?

20 A. Yes, sir.

21 Q. When you wrote "verbal agreement," what did
22 you mean by that?

23 MR. BROWN: Your Honor, could the Court --

24 THE WITNESS: It was just by the paper that
25 my sister got served. I was reading it, and I

1 was just texting her after I read it.

2 BY MR. BROWN:

3 Q. So do you not understand what the words
4 "verbal agreement" are?

5 A. Verbal agreement, just that they change the
6 word. They have a conversation, talking to each
7 other, verbal agreement.

8 Q. And I believe I understood testimony
9 earlier, did you help Youmi Cho get the \$250,000
10 check in December?

11 A. Yes, sir.

12 Q. So you -- can you explain how -- what --
13 did you go to the bank with her? What was your
14 involvement in that check?

15 A. Yes. I went to the bank with her, and I
16 told the teller that I needed \$250,000 cashier check
17 because of my sister wasn't good with English so I
18 helped her getting it at the bank.

19 Q. So your sister explained to you why she
20 needed the check and that's what led to you helping?

21 A. She just asked me to get that \$250 check.

22 Q. So when you stated \$250,000 down payment,
23 you're referring to the down payment your sister made
24 on the store that you helped get the check with,
25 correct?

1 A. I'm not sure. She just asked me, but I
2 just wrote it down as down payment. I guess it was
3 that -- put down down payment as buying the store.

4 Q. Do you know what the words "down payment"
5 mean?

6 A. Words? Yes. The words, yes.

7 Q. In your deposition did you testify that you
8 did not know what the words down payment mean?

9 A. The words down payment?

10 Q. Do I need to -- in your deposition, when I
11 asked you about this text message, did you state you
12 did not know what the words down payment mean?

13 A. I know the down pavement, but I didn't know
14 the words on this one as a down payment, why I wrote
15 it.

16 Q. Okay. So you don't know why you wrote the
17 word "verbal agreement," correct?

18 A. Verbal agreement? That's after I read the
19 paper that she got served.

20 Q. So yes or no, do you understand what the
21 words verbal agreement mean?

22 A. Verbal agreement, yes, I know the wording.
23 Not in this text message, but I know the word verbal
24 agreement.

25 Q. So you do not know what the words verbal

1 agreement as applied to the context of your own text
2 message, correct?

3 A. I typed this after my sister got served the
4 paper, then I typed it.

5 Q. So you typed it to Suzi Mancine sitting
6 right there, correct?

7 A. Yes.

8 Q. Okay. So you wrote to Suzi that it was a
9 down payment paid in December? Is that what you
10 typed?

11 A. Yes, it says what it says. Yes.

12 Q. And did that refer to the down payment on
13 the store?

14 A. Purchasing a store?

15 Q. Did that refer to the Broad River store at
16 issue after you received the lawsuit?

17 A. I'm not sure about the -- just the Broad
18 River location.

19 Q. Mr. Cho, do you understand you're under
20 oath?

21 A. Yes.

22 Q. Are you telling the truth?

23 A. Yes.

24 Q. Okay. So let's see. So normally when you
25 type text messages, do you understand what you're

1 typing? Or is this a one-off situation where you
2 don't understand why you were typing what you were
3 typing?

4 A. At that moment I was a little busy helping
5 customer, running the store, and I got the paper and
6 I was trying to explain same time while helping our
7 customers.

8 Q. So is your testimony now changing from you
9 don't know why to you were distracted and that's the
10 reason?

11 A. No.

12 Q. So is your testimony that you don't
13 understand why you typed these words because a
14 customer was talking to you?

15 A. Not just a customer was talking. I was
16 busy trying to run the store at the same time, trying
17 to explain -- trying to type it in, but I wasn't
18 really focusing. Just typing whenever I read the
19 paper that my sister got served.

20 Q. In another text message -- let's look at
21 Defendant's 132. Do you see this text message with
22 your aunt Suzi?

23 A. Yes, sir.

24 Q. So looking at the third from the bottom
25 "Agreed to by verbal," what does that mean?

1 A. It was about the paper that got served.

2 Q. I'm sorry, I don't understand.

3 A. It was about the paper that my sister got
4 served.

5 Q. So your sister got served by a verbal
6 paper?

7 A. No. It's just a -- the lawsuit paper.

8 Q. Was it served to you verbally?

9 A. No, sir.

10 Q. So how does "agreed to by verbal" relate to
11 the lawsuit that was served in paper?

12 A. I'm sorry, say it one more time.

13 Q. How does verbal relate to a physical
14 document being served on your sister?

15 A. It was just saying the same as other texts.
16 Repeat text earlier.

17 Q. So when you have these text messages with
18 Suzi, did you have this at one period of time or was
19 it broken up over an afternoon?

20 A. It was throughout the -- it was quite a few
21 hours.

22 Q. Now, were you helping customers during
23 that -- those several hours?

24 A. Yes. Store is steady. Customers keep
25 coming in and out.

1 MS. THIBAUT: Where it says, Your Honor,
2 "Dad read paper and said," so everything after
3 "said" is what his father had to say.

4 MR. BROWN: And we would say the clear
5 reading shows that that's not true. The hearsay
6 would only be "Dad says it's our fault." And
7 then after, it's his testimony about what he
8 recalls. So we're not -- yeah, so we do not
9 introducing about any -- anything that his dad
10 said.

11 THE COURT: Objection overruled.

12 BY MR. BROWN:

13 Q. So when you wrote \$15,000 each check, what
14 was that referring to?

15 A. After the lawsuit papers and my sister got
16 served, that I knew that I had. That was the one
17 that -- that I canceled the check.

18 Q. So did you know about the check before the
19 lawsuit?

20 A. Because I could cancel the -- making the
21 stop payment.

22 Q. Okay. Looking at Defendant 125, when you
23 say "First Youmi want to sign the paper for 500," is
24 that referring to the kitchen table conversation we
25 discussed earlier?

1 Q. How did you find out that you were
2 promoted?

3 A. When my pay got raised.

4 Q. Were you ever informed by anyone that you
5 had received a promotion?

6 A. No.

7 Q. Did your job duties change as a manager?

8 A. No.

9 Q. As a manager, did you have the ability to
10 hire new employees?

11 A. No.

12 Q. Did you have the ability to fire any
13 employees?

14 A. No.

15 Q. Did you have the ability to set pricing for
16 products?

17 A. No.

18 Q. And who set the pricing?

19 A. Mr. Kim.

20 Q. How many days a week would you typically
21 work at the Broad River beauty store?

22 A. Six days a week.

23 Q. And about how many hours a week?

24 A. 60, 70, sometimes more than 70 hours, I'm
25 guessing.

1 A. Yes. He wouldn't talk to me for a couple
2 of weeks he was so mad.

3 Q. And what kind of items does the Broad River
4 beauty store sell?

5 A. Hairs, wigs, chemicals, and accessories.

6 Q. And do any of the products that the beauty
7 store sells expire?

8 A. Hair care products, yes. I found that out
9 when my customer brought it up and mentioned to me.

10 Q. And do the hair extensions ever get too
11 hard so you can't sell them?

12 A. Some of the hair got -- if it's old enough,
13 it's hard, yes.

14 Q. And did you receive training when you first
15 started working at the beauty store?

16 A. No.

17 Q. Were you ever trained to inspect for old
18 inventory?

19 A. No.

20 Q. As part of your job duties at the Broad
21 River beauty store, did you ever inspect the
22 inventory for expired products?

23 A. I'm sorry, say one more time.

24 Q. As part of your job duties when you worked
25 at the Broad River beauty store, did you ever inspect

1 the inventory for expired products?

2 A. No.

3 Q. Did your employer ever instruct you to
4 inspect the products to see if they were expired?

5 A. No, ma'am.

6 Q. Would you have done so if your employer
7 asked you to do that?

8 A. Yes.

9 Q. Did your employer ever provide you any
10 instructions regarding expired products?

11 A. No.

12 Q. Did Mr. Kim ever instruct you to not throw
13 away old hair products?

14 A. I'm sorry?

15 Q. Did Mr. Kim ever instruct you to not throw
16 away old hair products?

17 A. Yes.

18 Q. What was the inventory like when you first
19 started working at the Broad River beauty store?

20 A. It was a lot of old hair boxes and storage
21 was full of containers and boxes all to the ceiling.

22 Q. And where was that located at?

23 A. I'm sorry?

24 Q. And where was this located at?

25 A. It was in the aisles and also two storage

1 rooms in the back of the store.

2 Q. And did the beauty store at the Broad River
3 location have a system to track inventory?

4 A. No, ma'am.

5 Q. So how did you know when you needed to
6 order more product?

7 A. When a salesman come and it's low, they
8 tell us it's low, you need to order this. And
9 sometime I see some shelf is empty so it's time to
10 order some of the merchandise.

11 Q. Do you have any knowledge regarding the
12 amount of sales the Beauty Store made when it was
13 owned by Tok Kim?

14 A. No, ma'am.

15 Q. Do you have any knowledge regarding the
16 amount of money that the beauty store made during a
17 day when it was owned by Tok Kim?

18 A. No.

19 Q. Do you have any knowledge regarding the
20 expenses of the beauty store when it was owned by Tok
21 Kim?

22 A. No.

23 Q. Do you have any knowledge regarding the
24 annual profits of the beauty store when it was owned
25 by Tok Kim?

1 A. I'm sorry?

2 Q. Did Youmi Cho ever ask you how much you
3 thought the beauty store was worth?

4 A. No.

5 Q. And you had previously testified that you
6 went with Youmi to help her get a \$250,000 cashier
7 check; is that right?

8 A. Yes.

9 Q. And why did you have to go to the bank with
10 Youmi Cho?

11 A. Youmi asked me to go because her English
12 barrier, so I helped her try and get the check.

13 Q. And were you aware at that time that that
14 check was for the purchase of the beauty store?

15 A. Yes.

16 Q. And did you discuss with Youmi at that time
17 what the agreement for the beauty store was?

18 A. No, ma'am.

19 Q. So at that time that you went to get the
20 \$250,000 cashier's check, did you know what the total
21 sales price of the beauty store was?

22 A. No.

23 Q. Are you aware that Youmi Cho gave Tok Kim
24 36 checks?

25 A. No, not in the beginning.

1 Q. Did you ever see Youmi write any of these
2 36 checks?

3 A. No, ma'am.

4 Q. Did you see Youmi give Tok Kim any of these
5 checks?

6 A. No.

7 Q. And do you know the amount of money that
8 was written on any of these 36 checks?

9 A. No.

10 Q. And do you know what these 36 checks are
11 for?

12 A. I don't know.

13 Q. Did you ever ask Youmi what those checks
14 were for?

15 A. No.

16 Q. Do you have any knowledge about these
17 checks other than what Youmi Cho told you?

18 A. No.

19 Q. And you had also testified that you had
20 helped Youmi place a stop payment on these checks in
21 September of 2021; is that right?

22 A. Yes.

23 Q. And do you know why she wanted to do that?

24 A. Because Mr. Kim threatening her that she --
25 that he would deposit all the checks in the bank.

1 And I guess Youmi thought she was scared because
2 don't have that much money in the bank. She will go
3 bankrupt.

4 Q. And was it your idea for Youmi to put a
5 stop payment on the checks?

6 A. No.

7 Q. Did you encourage Youmi to put a stop
8 payment on the checks?

9 A. No.

10 Q. And why did you need to help your sister
11 put a stop payment on the checks?

12 A. English barrier. She can't speak English
13 well, so I -- she asked me to call so I did.

14 Q. And did Youmi have to give you permission
15 to cancel the checks?

16 A. I'm sorry?

17 Q. Did Youmi have to give you permission so
18 that you could talk to her bank?

19 A. Yes.

20 Q. Did you see Tok Kim yell and threaten Youmi
21 after the stop payment was placed on the checks?

22 A. Yes.

23 Q. And where did this happen at?

24 A. He came to our store. We were busy. I
25 believe it was on Sunday -- one Sunday he came inside

1 the store, yelled at her and screaming, talking
2 really loud while we had the customers. So I asked
3 him not to scream because we have so many customers.
4 You're going to scare our customers away.

5 Q. Okay. And did Tok Kim pay you as an
6 employee in December of 2020?

7 A. December? Yes. Yes.

8 Q. Did Tok Kim pay you in January of 2021?

9 A. Yes. Wait, January. I'm sorry. Yes.

10 Q. In December of 2020 and January of 2021,
11 did you help Youmi with some paperwork for the beauty
12 store?

13 A. Yes.

14 Q. And was this your first time helping with
15 business paperwork?

16 A. Yes.

17 Q. And at this time did you know that you
18 should make copies of original documents to give to
19 third parties?

20 A. I didn't know.

21 Q. And did you help Youmi give paperwork to
22 the landlord at the beauty store around the
23 December 2020 and January 2021 time frame?

24 A. Yes.

25 Q. And how did you get this paperwork?

1 - - -

2 (Off-the-record discussion.)

3 - - -

4 BY MS. THIBAULT:

5 Q. And do you recognize this email that's on
6 the screen?

7 A. Yes.

8 Q. Okay. Make it a little bit bigger. And
9 what's this email?

10 A. It's a business license.

11 Q. Is this an email that you had received from
12 Richland County regarding K&C's beauty license?

13 A. Yes.

14 Q. And do you see the begin date there as
15 4-1-2021?

16 A. Yes.

17 Q. All right. So what was the inventory like
18 when Youmi took over the store in March of 2021?

19 A. The shelves were a lot of empty and a lot
20 of good hair was already sold, so it wasn't that much
21 merchandise in there. The shelves were low.

22 Q. Before Youmi took over the store, did you
23 ask Tok Kim if you could restock the inventory?

24 A. Yes.

25 Q. What did he say?

1 that right?

2 A. Yes.

3 Q. Okay. So if you'll turn to Exhibit 11 now.

4 And then I'll also show you these pictures on the
5 screen as well. Do you recognize this photograph?

6 A. Yes.

7 Q. And what does this picture show?

8 A. That's old hair I never seen even though I
9 start working for Mr. Kim at Two Notch location.
10 This is so old. It's been sitting in the storage
11 room.

12 Q. And what did you do with this inventory?

13 A. Throw it in the dumpsters.

14 Q. Okay. And then this is the next picture.
15 Do you recognize this picture?

16 A. Yes.

17 Q. And what does it show?

18 A. Also old hair.

19 Q. And what did you do with this inventory?

20 A. Threw it in the dumpster.

21 Q. And this is the next picture. Do you
22 recognize this one?

23 A. Yes.

24 Q. What does this show?

25 A. Also old hair that's more than ten years

1 old and possibly 15 or 20 years that Mr. Kim had
2 carried since I've been working.

3 Q. And what did you do with this inventory?

4 A. Threw it in the dumpster.

5 Q. And then do you recognize this next
6 picture?

7 A. Also old. Yes.

8 Q. And what is it?

9 A. It's old hair.

10 Q. What did you do with it?

11 A. Threw it in the dumpster.

12 Q. And do you recognize this picture?

13 A. Yes.

14 Q. What is it?

15 A. Also old hair.

16 Q. What did you do with this inventory?

17 A. Threw it in the dumpster.

18 Q. Do you recognize this photograph?

19 A. Yes.

20 Q. What is it?

21 A. Old hair.

22 Q. And what did you do with it?

23 A. Threw it in the dumpster.

24 Q. And do you recognize this picture?

25 A. Yes.

1 Q. And what does it show?

2 A. Also old hair.

3 Q. And what did you do with it?

4 A. Threw it in the dumpster.

5 Q. Do you recognize this photograph?

6 A. Yes.

7 Q. And what is it?

8 A. Old hair.

9 Q. And what did you do with it?

10 A. Threw it in the dumpster.

11 Q. And do you recognize this picture?

12 A. Yes.

13 Q. What is it?

14 A. Old hair.

15 Q. And what did you do with this?

16 A. Threw it in the dumpster.

17 Q. And do you recognize this picture?

18 A. Yes.

19 Q. And what is it?

20 A. Old hair.

21 Q. And what did you do with it?

22 A. Threw it in the dumpsters.

23 Q. And do you recognize this picture?

24 A. Yes.

25 Q. What is it?

1 A. Old hairs.

2 Q. And what did you --

3 A. And the bottom is the dumpster that halfway
4 full already.

5 Q. So you're saying this up here is old hairs.

6 A. Old hair on the top.

7 Q. And this is the picture of the dumpster?

8 A. Yes.

9 Q. And do you recognize this picture?

10 A. Yes.

11 Q. And what does it show?

12 A. Old hair.

13 Q. And what did you do with it?

14 A. Threw it in the dumpster.

15 Q. And do you recognize this picture?

16 A. Yes.

17 Q. And what is it?

18 A. It's old stockings.

19 Q. What did you do with it?

20 A. Threw it away in the dumpster.

21 Q. And do you recognize this picture?

22 A. Yes.

23 Q. And what is it?

24 A. Old hair.

25 Q. And what did you do with it?

1 A. Threw it in the dumpster.

2 Q. Okay. Thank you.

3 I believe you also took some more picture
4 that are located in Exhibit 12. If we could turn to
5 Exhibit 12 in your binder, and I will also bring them
6 up on the screen.

7 A. Yes, ma'am.

8 Q. Do you recognize this picture?

9 A. Yes.

10 Q. What is it?

11 A. Old hairs.

12 Q. What did you do with it?

13 A. Threw it in the dumpster.

14 Q. And do you recognize this photograph?

15 A. Yes.

16 Q. And what is it?

17 A. Old hair.

18 Q. And what did you do with it?

19 A. Threw it in the dumpster.

20 Q. And do you recognize this picture?

21 A. Yes.

22 Q. And what is it?

23 A. Old hairs.

24 Q. And what did you do with it?

25 A. Threw it in the dumpster.

1 Q. And do you recognize this picture?

2 A. Yes.

3 Q. What is it?

4 A. That's the dumpster that's all the way
5 almost full to the back of where the gate is at on
6 the dumpster.

7 Q. And do you recognize this picture?

8 A. Yes.

9 Q. And what is it?

10 A. Old hairs.

11 Q. And what did you do with it?

12 A. Threw it in the dumpster.

13 Q. Do you recognize this picture?

14 A. Yes.

15 Q. And what is it?

16 A. Old hairs.

17 Q. And what did you do with it?

18 A. Threw it in the dumpster.

19 Q. Do you recognize this picture?

20 A. Yes.

21 Q. And what is it?

22 A. Old hair.

23 Q. And what did you do with it?

24 A. Threw it in the dumpster.

25 Q. Do you recognize this picture?

1 A. Yes.

2 Q. What is it?

3 A. Old hair.

4 Q. And what did you do with it?

5 A. Threw it away in the dumpster.

6 Q. And do you recognize this picture?

7 A. Yes.

8 Q. What is it?

9 A. Old hair.

10 Q. And what did you do with it?

11 A. Threw it in the dumpster.

12 Q. Do you recognize this picture?

13 A. Yes.

14 Q. And what is it?

15 A. Old hair.

16 Q. And what did you do with it?

17 A. Threw in the dumpster.

18 Q. Do you recognize this picture?

19 A. Yes.

20 Q. And what is it?

21 A. Old hair.

22 Q. And what did you do with it?

23 A. Threw it in the dumpster.

24 Q. Okay. Do you recognize this picture?

25 A. Yes.

1 Q. And what is it?

2 A. Old hair.

3 Q. And what did you do with it?

4 A. Threw it in the dumpster.

5 Q. All right. Then if you will turn to

6 Exhibit 13. And do you recognize this picture?

7 A. Yes.

8 Q. And what is it?

9 A. Old hair.

10 Q. And what did you do with it?

11 A. Threw it in the dumpster.

12 Q. And do you recognize this picture?

13 A. Yes.

14 Q. And what is it?

15 A. Old hair.

16 Q. And what did you do with it?

17 A. Threw it in the dumpster.

18 Q. And do you recognize this picture?

19 A. Yes.

20 Q. And what is it?

21 A. Old hair.

22 Q. And what did you do with it?

23 A. Threw it in the dumpster.

24 Q. Do you recognize this picture?

25 A. Yes.

1 Q. And what is it?
2 A. Old hair.
3 Q. And what did you do with it?
4 A. Threw it in the dumpster.
5 Q. And do you recognize this picture?
6 A. Yes.
7 Q. And what is it?
8 A. Old hair.
9 Q. And what did you do with it?
10 A. Threw it away in the dumpster.
11 Q. And do you recognize this picture?
12 A. Yes.
13 Q. And what is it?
14 A. Old hair.
15 Q. And what did you do with it?
16 A. Threw it in the dumpster.
17 Q. And do you recognize this picture?
18 A. Yes.
19 Q. And what is it?
20 A. That's an old hat and old hairs.
21 Q. And what did you do with it?
22 A. I threw it away in the dumpster.
23 Q. And do you recognize this picture?
24 A. Yes.
25 Q. And what is it?

1 A. That's the dumpster that -- hairs that I've
2 been throwing away.

3 Q. And do you recognize this picture?

4 A. Yes.

5 Q. And what is it?

6 A. That's also dumpster that halfway through I
7 took a picture.

8 Q. And do you recognize this picture?

9 A. Yes.

10 Q. And what is it?

11 A. Old hair.

12 Q. And what did you do with it?

13 A. Threw it in the dumpster.

14 Q. And do you recognize this picture?

15 A. Yes.

16 Q. And what is it?

17 A. Old hair.

18 Q. And what did you do with it?

19 A. Threw it in the dumpster.

20 Q. And do you recognize this picture?

21 A. Yes.

22 Q. And what is it?

23 A. Old hair.

24 Q. And what did you do with it?

25 A. Threw it in the dumpster.

1 Q. And do you recognize this picture?

2 A. Yes.

3 Q. What is it?

4 A. That's the storage room that has old hairs
5 that was piled up in the storage room.

6 Q. And did these boxes contain the old
7 products that you were referencing that you were
8 throwing away?

9 A. Yes, ma'am.

10 Q. And do you recognize this picture?

11 A. Yes.

12 Q. And is it the same thing?

13 A. Yes. Old merchandise, old hair that we're
14 trying to clean it up, bring it down. Before I
15 brought it down, I took a picture.

16 Q. And these were also in the back storage
17 area?

18 A. Yes.

19 Q. And do you recognize this picture?

20 A. Yes.

21 Q. And what is it?

22 A. Old hair.

23 Q. And what did you do with it?

24 A. Threw it in the dumpster.

25 Q. Do you recognize this picture?

1 A. Yes.

2 Q. And what is it?

3 A. Old hair.

4 Q. And what did you do with it?

5 A. Threw it in the dumpster.

6 Q. Did you recognize this picture?

7 A. Yes.

8 Q. And what is it?

9 A. Old hair.

10 Q. And what did you do with it?

11 A. Threw it in the dumpsters.

12 Q. Do you recognize this picture?

13 A. Yes.

14 Q. And what is it?

15 A. Old hair.

16 Q. And what did you do with it?

17 A. Threw it in the dumpster.

18 Q. Do you recognize this picture?

19 A. Yes.

20 Q. And what is it?

21 A. Old hair.

22 Q. And what did you do with it?

23 A. Threw it in the dumpster.

24 Q. Do you recognize this picture?

25 A. Yes.

1 Q. And what is it?

2 A. Old hairs.

3 Q. And what did you do with it?

4 A. Threw it in the dumpster.

5 Q. Do you recognize this picture?

6 A. Yes.

7 Q. And what is it?

8 A. Old hair.

9 Q. And what did you do with it?

10 A. Threw it in the dumpster.

11 Q. Do you recognize this picture?

12 A. Yes.

13 Q. And what is it?

14 A. Old hair.

15 Q. And what did you do with it?

16 A. Threw it in the dumpster.

17 Q. Do you recognize this picture?

18 A. Yes.

19 Q. And what is it?

20 A. That's the dumpster that I took a picture
21 of when it was three quarter of the way full.

22 Q. And do you recognize this picture?

23 A. Yes.

24 Q. And what is it?

25 A. Old hair was in that box. I brought it

1 down trying to throw away.

2 Q. And do you recognize this picture?

3 A. Yes.

4 Q. And what is it?

5 A. Old hairs.

6 Q. And what did you do with it?

7 A. Threw it in the dumpster.

8 Q. And do you recognize this picture?

9 A. Yes.

10 Q. And what is it?

11 A. Old hair.

12 Q. And what did you do with it?

13 A. Threw it in the dumpster.

14 Q. And do you recognize this picture?

15 A. Yes.

16 Q. And what is it?

17 A. Old hairs.

18 Q. And what did you do with it?

19 A. Threw it in the dumpster.

20 Q. Do you recognize this picture?

21 A. Yes.

22 Q. And what is it?

23 A. Old hairs.

24 Q. And what did you do with it?

25 A. Threw it in the dumpster.

1 Q. And do you recognize this picture?

2 A. Yes.

3 Q. And what is it?

4 A. Old hair.

5 Q. And what did you do with it?

6 A. Threw it in the dumpster.

7 Q. And do you recognize this picture?

8 A. Yes.

9 Q. What is it?

10 A. It's an old clothing Mr. Kim used to sell
11 years ago before I even start working.

12 Q. And what did you do with it?

13 A. Threw it in the dumpster.

14 Q. And do you recognize this picture?

15 A. Yes.

16 Q. What is it?

17 A. It's old clothes that's been sitting in the
18 storage room for I don't know how many years.

19 Q. And what did you do with it?

20 A. Threw it in the dumpster.

21 Q. And do you recognize this picture?

22 A. Yes.

23 Q. And what is it?

24 A. Old hair.

25 Q. And what did you do with it?

1 A. Threw it in the dumpster.

2 Q. Do you recognize this picture?

3 A. Yes.

4 Q. And what is it?

5 A. Old hair.

6 Q. And what did you do with it?

7 A. Threw it in the dumpster.

8 Q. Thank you. And that's all for those
9 pictures.

10 When Youmi took over the beauty store, did
11 she start restocking inventory?

12 A. Yes.

13 Q. And was she able to restock everything
14 right away?

15 A. No, ma'am.

16 Q. Why not?

17 A. Because it was so many merchandise needed
18 to be ordered and didn't have enough funds.

19 Q. So how long did it take for Youmi to fully
20 restock the beauty store?

21 A. It took quite a long time. I don't know
22 exactly how many months. It's still not even full
23 all the way, but it still took a long time.

24 Q. Okay. And did Youmi make any improvements
25 to the beauty store after she took it over?

1 Q. Okay. Thank you.

2 And so when did you learn about this
3 lawsuit?

4 A. When my sister got served by paper. That
5 somebody brought the paper to the store.

6 Q. And did you discuss the lawsuit?

7 A. No.

8 Q. When Youmi got served the paperwork, did
9 you discuss the lawsuit with Youmi?

10 A. Not really.

11 Q. Did you look at the paperwork after Youmi
12 received it?

13 A. Yes.

14 Q. Okay. So you read the lawsuit?

15 A. Yes.

16 Q. And at the time that Youmi was served the
17 lawsuit, did you learn that Youmi had an oral
18 agreement with Tok Kim to purchase the other beauty
19 stores?

20 A. Yes.

21 Q. And after the lawsuit paperwork was filed,
22 did you contact your sister, Suzi, about the lawsuit?

23 A. Yes.

24 Q. And why did you contact her?

25 A. I was trying to get help.

1 Q. What were you trying to get help with?

2 A. I didn't understand fully, so I was trying
3 to ask what do I need to do.

4 Q. So is it correct that you contacted Suzi to
5 get help with the legal paperwork?

6 A. Yes.

7 Q. And did you text Suzi about the lawsuit?

8 A. Yes.

9 Q. And when you texted Suzi about the lawsuit,
10 were you normally at work?

11 A. Yes.

12 Q. And were you rushed when you were texting
13 Suzi?

14 MR. BROWN: Objection. Leading.

15 MS. THIBAUT: This is cross.

16 THE COURT: This is cross. Okay.

17 Objection overruled.

18 BY MS. THIBAUT:

19 Q. Okay. And so were you rushed when you were
20 texting Suzi?

21 A. Yes.

22 Q. All right. And you were previously shown
23 some text messages, so we're going to pull those back
24 up.

25 And so looking down here at Defendant 119,

1 do you see the first text message in blue?

2 A. Yes.

3 Q. And was this text message sent after the
4 lawsuit was filed?

5 A. Yes.

6 Q. And did you send this text message to Suzi
7 so that she could help you understand the lawsuit
8 paperwork?

9 A. Yes.

10 Q. And did you understand that the lawsuit
11 paperwork stated that there was a verbal agreement of
12 \$250,000 with a down payment that was paid in
13 December?

14 A. Yes.

15 Q. And did you think that the sale of the
16 beauty store was for more than \$250,000 before the
17 lawsuit?

18 A. No.

19 Q. And you were not part of the final
20 negotiations between Youmi Cho and Tok Kim regarding
21 the sale of the beauty store; is that right?

22 A. No.

23 Q. And then you were also previously asked
24 about this text message in blue. Do you see that
25 text message?

1 A. Yes.

2 Q. And was this text message also sent after
3 the lawsuit was filed?

4 A. Yes.

5 Q. And this text message references your dad.
6 Do you know if your dad was a part of the agreement
7 between -- or if your dad witnessed the treatment
8 between Youmi and Tok Kim for the purchase of the
9 beauty store?

10 A. No, he didn't.

11 Q. So your dad wasn't present during that
12 dinner table conversation?

13 A. No.

14 Q. Okay. Do you know if your dad ever talked
15 to Youmi about the agreement to purchase the beauty
16 store?

17 A. No.

18 Q. So is it your understanding that your dad
19 was referring to the legal paperwork?

20 A. Yes.

21 Q. Okay. And you were also asked about this
22 text message in blue. Do you see that?

23 A. Yes.

24 Q. So, again, this text message was sent after
25 the lawsuit was filed. Is that right?

1 A. Yes.

2 Q. And do you know whether -- do you know what
3 Youmi Cho had agreed to pay for the beauty store?

4 A. I don't know.

5 Q. Did you hear Youmi say that she wanted to
6 pay \$500,000 for the beauty store?

7 A. No.

8 Q. Okay. And so if you look at the third blue
9 text on here, on Defendant 132, you were previously
10 asked about this text message. Do you see that text
11 message?

12 A. Yes.

13 Q. And so before the lawsuit, did you know
14 whether there was a verbal agreement between Youmi
15 and Tok Kim to purchase the beauty store?

16 A. No.

17 Q. Okay. And so, again, you sent this text
18 message after the lawsuit was filed?

19 A. Yes.

20 MS. THIBAUT: I'm going to grab an exhibit
21 really fast.

22 THE COURT: Sure.

23 MS. THIBAUT: These are more of the text
24 messages that didn't get entered.

25 May I approach the witness?

1 A. "Uncle kept telling me don't order."

2 Q. What do you mean in this text message?

3 A. He told me not to order any more
4 merchandise.

5 Q. And when did he tell you this?

6 A. Before my sister took over.

7 Q. Okay. If you turn to the next page, which
8 is 114, do you see this second blue text message
9 there?

10 A. Yes.

11 Q. Okay. Can you read that text message?

12 A. "People kept asking me if I was going out
13 of business. That's how bad shelves looked."

14 Q. So what did you mean by this text message?

15 A. The hair care products were -- a lot of
16 them were sold out of shelf or a lot empty, so it
17 didn't look like, I guess to customers, they thought
18 we were going out of business because the shelf was
19 so low on the merchandise.

20 Q. And what time periods were you referring to
21 in this text message?

22 A. That was after the March before when my
23 sister took over the business.

24 Q. Okay. I'm going to have you go to the next
25 page, Defendant 15.

1 he had to write a check to give to UPS, it comes
2 pretty often. Sometimes it could be ten times a
3 month, sometimes it could be eight times a month,
4 sometimes it could be 12 a month. Depends on the
5 inventory, how much he ordered.

6 Q. And so would you say that you are generally
7 familiar with Tok Kim's signature?

8 A. Yes.

9 Q. If I showed you Tok Kim's signature, could
10 you recognize it?

11 A. Yes.

12 Q. So if you turn back to Exhibit 1,
13 Defendant's Exhibit 1, the Business Asset Purchase
14 Agreement. And then you turn to the last page, which
15 is Defendant 55, do you see the signatures down
16 there?

17 A. Yes.

18 Q. Do you see a signature above the Kim
19 Enterprise, LLC, line?

20 A. Yes.

21 Q. And does this look like Tok Kim's
22 signature?

23 A. Yes.

24 Q. If you will turn to Exhibit 2, the Bill of
25 Sale.

1 A. Yes.

2 Q. Have you ever stolen from Tok Kim while you
3 were working at his beauty store?

4 A. No.

5 Q. Have you ever taken any business
6 opportunities from Tok Kim?

7 A. No.

8 Q. Have you ever taken any business
9 opportunities from Kim Enterprises?

10 A. No.

11 Q. Have you ever breached Tok Kim's
12 confidences?

13 A. No.

14 Q. Did you have an agreement with Youmi to say
15 that the purchase price of the beauty store was
16 \$250,000 when you knew that the price was actually
17 800,000?

18 A. I'm sorry, say one more time.

19 Q. Did you have an agreement with Youmi to say
20 that the purchase price of the beauty store was for
21 250,000 even though you knew that the price was --
22 should have been 800,000?

23 A. I'm sorry, I didn't get the question. Can
24 you rephrase?

25 Q. Let me rephrase it.

1 Q. In your answer to this lawsuit, did you
2 claim that the checks were made under duress and not
3 part of a business agreement?

4 MR. PAAVOLA: Objection, Your Honor. I
5 don't think an answer -- it's not an admission
6 that's a part of the record in this.

7 THE COURT: Objection overruled.

8 THE WITNESS: Yes.

9 MR. PAAVOLA: Your Honor, I'm also going to
10 object and that's a legal pleading. There's no
11 foundation what she has knowledge of what legal
12 pleading was supposed to be in there and what is
13 in there. Obviously, that's not part of the
14 record.

15 THE COURT: Objection overruled.

16 BY MR. BROWN:

17 Q. So, Ms. Cho, were the checks made under
18 duress or for the purchase of two stores?

19 A. I signed it for purchasing the two stores,
20 but that was not my will.

21 Q. So is it your testimony that Mr. Kim forced
22 you to supposedly buy his two stores?

23 A. Yes.

24 Q. In your answer, did you also claim that
25 Mr. Kim forced you to sign those checks because he

1 threatened your immigration status?

2 A. Yes. He threatened me also and he --

3 THE INTERPRETER: Clarification.

4 THE WITNESS: And he also tried to persuade
5 me to change my mind. The action he took was --
6 he got angry also. And he said profanity too.
7 And he also threatened. And he told me about
8 his difficult situation.

9 BY MR. BROWN:

10 Q. Okay. So is it your testimony in one
11 conversation that Mr. Kim and you agreed to purchase
12 two of his stores, he threatened you to take your
13 immigration status, you were under duress, and he
14 yelled at you, all in the same conversation?

15 THE COURT: You might want to break those
16 questions down in separate questions.

17 THE INTERPRETER: I think interpreter would
18 like that back, please.

19 MR. BROWN: Let me ask another question.

20 BY MR. BROWN:

21 Q. So is your testimony the 36 checks were for
22 the full price of the two stores, correct?

23 MR. PAAVOLA: Asked and answered.

24 THE COURT: Okay. Overruled.

25 THE WITNESS: For the price of the checks,

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

KIM ENTERPRISES, LLC,
Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOU MI CHO, K&C BEAUTY, LLC,
AND SANG CHO,
Defendants.

_____/

YOU MI CHO AND K&C BEAUTY, LLC
Counterclaim Plaintiffs,

vs.

KIM ENTERPRISES, LLC AND TOK KIM,
Counterclaim Defendants.

T R I A L - VOLUME III
BEFORE THE HONORABLE JOSEPH M. STRICKLAND,
MASTER IN EQUITY

DATE TAKEN: Wednesday, October 23, 2024

TIME START: 10:00 a.m.

TIME END: 4:24 p.m.

LOCATION: Richland County Central Court
2500 Decker Boulevard
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

1 stores, when you filed your counterclaim in this
2 case, why did you not sue him for breach of contract?

3 MR. PAAVOLA: Objection, Your Honor.

4 There's no foundation that she has any ability
5 to opine on the cause of actions in her
6 counterclaim.

7 THE COURT: Sustained.

8 BY MR. BROWN:

9 Q. Before you purchased the Broad River store,
10 did you discuss the Broad River store with Sang Cho?

11 A. I don't know what discussion you are
12 talking about, but I didn't discuss about the store.

13 Q. So prior to purchasing the store, is it
14 your testimony you did not have any discussions with
15 Sang Cho about the Broad River store?

16 A. Before purchasing this store about how much
17 products, I did ask how much untidy products there
18 were.

19 Q. And what did Sang Cho tell you?

20 A. That he doesn't know everything, but -- he
21 said he couldn't check because he's busy.

22 Q. Did Sang Cho tell you that he thought there
23 was inventory -- a lot of old inventory at the store?

24 A. He did not say it like that. He said he
25 cannot know everything.

1 Q. So if Sang Cho testified yesterday that he
2 told you there was a lot of older inventory, would
3 that be a lie?

4 MR. PAAVOLA: Objection, Your Honor.
5 Pitting the witnesses against each other.

6 THE COURT: Sustained.

7 BY MR. BROWN:

8 Q. And you had visited the Broad River store
9 prior to purchasing it, correct?

10 A. Yes.

11 Q. How many times did you visit the store?

12 A. I went outside to give lunch to my younger
13 brother. I was outside. I wasn't able to go inside.
14 I was not able to go inside because of COVID.

15 Q. In May of 2021, you and Mr. Kim exchange
16 one of the checks for \$15,000 in cash, didn't you?

17 A. Yes.

18 Q. And that was cash as partial payment for
19 the beauty store, correct?

20 THE INTERPRETER: Clarification.

21 THE WITNESS: It was cash for one of the
22 stores. Of the rest of the two stores.

23 BY MR. BROWN:

24 Q. In that \$15,000 in cash, did that come from
25 the cash Mr. Kim gave you from the credit card sales

1 THE INTERPRETER: Clarification.

2 THE WITNESS: Attorney, you asked if there
3 is trash still remaining in the dumpster?

4 BY MR. BROWN:

5 Q. No, I'll move on.

6 Did you sell your apartment in Korea to
7 raise money for the purchase of the Broad River
8 store?

9 A. Yes.

10 Q. And what were your net proceeds from that
11 sale?

12 A. It's the price of the store I am operating
13 now.

14 Q. So did you only get \$250,000 from the
15 store -- from the sale of the apartment?

16 A. Yes.

17 Q. Didn't you get about \$330,000 from the sale
18 of the apartment?

19 A. 33,000. I didn't receive the money of
20 33,000.

21 Q. 330.

22 A. I don't have that money in my bank.
23 You are talking about 300,000?

24 MR. BROWN: Can you look at tab 7 of
25 Defendant's exhibits.

1 objection to that same exact question.

2 THE COURT: All right. Sustained.

3 BY MR. BROWN:

4 Q. Did you superimpose Mr. Kim's signature on
5 the Business Asset Purchase Agreement?

6 A. No.

7 Q. And was the purchase price of the Broad
8 River store \$800,000?

9 A. No.

10 Q. And when Mr. Kim and you exchanged the 36
11 checks, was there anybody that witnessed that?

12 A. No.

13 MR. BROWN: Those are all the questions I
14 have. Thank you very much.

15 THE COURT: Thank you.

16 MR. BROWN: Your Honor, we would like to
17 move this financial statement into evidence.

18 THE COURT: It's not already in evidence?

19 MR. BROWN: Defendants objected, so we
20 would like to make this Plaintiff's 14.

21 THE COURT: Okay.

22 MR. PAAVOLA: I still object on relevance
23 grounds, Your Honor. It is post sale. A year
24 past the sale.

25 MR. BROWN: Our position would be like we

1 we discussed that in this kind of condition,
2 there would be a situation in which I could stay
3 in the United States for a longer time.

4 BY MR. PAAVOLA:

5 Q. Did Tok Kim ever ask if you had any assets
6 in Korea that you could sell to buy one of his
7 stores?

8 A. He asked and also he knew that I had an
9 apartment in Korea. And he also asked the price of
10 the apartment. He asked together.

11 Q. Did you tell him to -- you say price. Do
12 you mean value of the apartment? Did you tell him
13 the value of the apartment?

14 A. Yes. He knows roughly what the residence
15 price in Korea is.

16 Q. Did Tok Kim ever suggest that you sell your
17 apartment in Korea and buy one of his stores?

18 A. Yes.

19 Q. And did Tok Kim ever give you any reasons
20 as to why he wanted to sell you a store?

21 A. He said he would retire of old age when he
22 is 70 years old. And he told me he is very lonely
23 because he doesn't have family in the U.S. He told
24 me that he doesn't have family that will know him in
25 the U.S. next to his side.

1 Q. Did these discussions take place before you
2 went back to Korea to sell your apartment?

3 A. Yes.

4 Q. Before you went back to sell your
5 apartment, did Tok Kim ever bring up the idea of
6 selling you more than one store?

7 A. He said many times.

8 Q. All right. But before you went back to
9 Korea to sell your apartment, was it for the purpose
10 of buying one store?

11 A. Yes.

12 Q. And at this time before going back to
13 Korea, had you discussed a price for the one store?

14 A. Yes. Because the price of the apartment,
15 it was known about how much the sales price would
16 come out to be.

17 Q. Okay. So before going back to Korea to
18 sell your apartment, did you have an understanding of
19 whether you could afford to buy one of Mr. Kim's
20 stores?

21 THE INTERPRETER: Clarification. In Korea
22 language, sometimes we take out the subject. So
23 I would insert the subject.

24 THE WITNESS: I have the ability to buy one
25 store for that price.

1 Q. All right. Did you also discuss the
2 purchase of other beauty stores that you do not own
3 today?

4 A. He spoke. I only listened.

5 Q. Okay. What do you recall your uncle
6 saying?

7 A. "When I become 70 years old, I'm going to
8 retire so I would like you to buy all the stores," is
9 what he said.

10 Q. At some point did he initially demand
11 \$800,000 just for the one beauty store?

12 A. At first he did.

13 Q. All right. Was it a change from the price
14 you discussed previously?

15 A. Yes.

16 Q. What price did he previously discuss?

17 A. We discussed it at \$250,000.

18 Q. And your brother Sang Cho was present for
19 part of this conversation, right?

20 A. Yes.

21 Q. Eventually he leaves the meeting, doesn't
22 he?

23 A. That's correct. He went outside to smoke.

24 Q. And why did he leave the meeting?

25 A. I don't know. Because he went outside to

1 smoke.

2 Q. At some point did you ask your uncle why he
3 changed the price or is now demanding 800,000,
4 previously you had talked about 250,000?

5 A. After my brother left, I asked him why do
6 you change as you wish on your own? It's something
7 that already decided upon, and I have already sold my
8 apartment. Why do you keep changing? Then he said
9 it was just his own playful joke.

10 He rather got angry with me instead, saying
11 "Don't you know that I say anything when I am drunk?"
12 And he told me he doesn't remember what he said
13 afterwards.

14 Q. Prior to this day was your brother Sang
15 involved in any conversations about buying the store
16 with you and your uncle?

17 THE INTERPRETER: Can I have that back,
18 please.

19 MR. PAAVOLA: Let me rephrase that.

20 BY MR. PAAVOLA:

21 Q. Prior to this day, was Sang involved in any
22 discussions you had previously with your uncle about
23 the beauty store?

24 A. Could you please clarify what you mean by
25 get involved?

1 Q. Is this the first time Sang is present when
2 you and your uncle are discussing the purchase of the
3 store?

4 A. Yes.

5 Q. Did your uncle also bring up at this time
6 the idea of selling you two other stores?

7 A. Yes.

8 Q. What was discussed about these other two
9 stores? Is there a price discussed?

10 A. He first brought that up and I refused. I
11 said I would think about it. He continued to talk
12 about --

13 THE INTERPRETER: Interpreter would start
14 over.

15 So interpreter will render again.

16 THE WITNESS: First, my uncle brought it up
17 and I refused. I told him I would think about
18 it, but he continued to recommend to me to buy
19 two of his stores. I said -- I only said that I
20 would think about it.

21 BY MR. PAAVOLA:

22 Q. Okay. When you left your uncle's house
23 that night, as regards to the other two stores you
24 told him you would think about it. There's no firm
25 agreement; is that right?

1 Q. The same email from the immigration
2 attorney to yourself, Mr. Andy Kim is referencing the
3 \$250,000 that he will need proof of payment from you
4 for. Do you see that?

5 A. Yes.

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

9 A. Yes.

10 Q. So did you eventually sign both documents?

11 A. Yes.

12 Q. Did your uncle eventually sign both
13 documents?

14 A. Yes.

15 THE INTERPRETER: Interpreter needs to --

16 THE WITNESS: Yes, he signed.

17 BY MR. PAAVOLA:

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

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

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

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

1 Q. Okay. Both documents?

2 A. Yes.

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

6 A. Yes.

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

10 A. Yes, it's correct.

11 Q. Is that your signature for Youmi Cho
12 individually?

13 A. Yes, that's correct.

14 Q. And who signed for Kim Enterprises, LLC?

15 A. Mr. Kim did.

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

18 A. Yes, I see it.

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

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

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

25 A. Yes. I made the checkmark.

1 Q. Do you recognize this document as a copy of
2 the \$250,000 check you gave to your uncle?

3 A. Yes.

4 Q. And that was dated December 1st, 2020?

5 A. Yes, that's correct.

6 Q. And the check is made payable to Tok Kim
7 personally; is that right?

8 A. Yes. He told me to enter his name.

9 Q. If you turn to Exhibit 8 in your binder.
10 Do you recognize these as some portion of bank
11 establishments from K&C Beauty's accounts?

12 A. Yes.

13 Q. And page 2 is a statement from
14 November 2020. Do you see that? I've highlighted it
15 on the screen.

16 A. Yes.

17 Q. Okay. And if you turn to page 3 --

18 A. Yes.

19 Q. -- this shows money coming into that
20 account on November 24th of \$260,000. Do you see
21 that?

22 A. Yes.

23 Q. Okay. These are the funds you used to pay
24 your uncle for the Beauty Store?

25 A. I send \$250,000 to my uncle.

1 Q. If you turn --

2 A. I paid \$250,000 to my uncle.

3 Q. If you turn four -- ahead three pages. Two
4 pages. It's the December 2020 bank statement.

5 A. Yes.

6 Q. And the second page of that statement, that
7 shows the transaction history. Do you see that?

8 A. Yes.

9 Q. This reflects when the money came out of
10 your account -- the check to pay your uncle, right?

11 THE INTERPRETER: For the check to pay your
12 uncle?

13 MR. PAAVOLA: The check to pay her uncle,
14 yes.

15 THE WITNESS: Yes.

16 BY MR. PAAVOLA:

17 Q. And the first line in December 1st, it
18 has -- it shows a Harland check order for roughly
19 \$36. Do you see that?

20 THE INTERPRETER: What check order?

21 MR. PAAVOLA: Harland. Harland Clark.

22 THE INTERPRETER: So could you repeat just
23 the sentence, what you said? What was the
24 question?

25 BY MR. PAAVOLA:

1 this, and he said it will be fine if you just follow
2 me.

3 Q. Did your uncle ever show you how to order
4 products?

5 A. He has not done that at all.

6 Q. Did he ever show you how to manage
7 inventory for the store?

8 A. No.

9 Q. Did he give you a current list of vendors
10 when you took over the store?

11 A. No.

12 Q. Did you receive any other training before
13 you took over the store?

14 A. I didn't get that.

15 Q. And the agreement between Kim Enterprises
16 and K&C Beauty was that Kim Enterprises would pay
17 taxes through June 18th; is that your understanding?

18 A. Yes, and I gave him cash to him on the
19 taxes.

20 Q. When you first got into the store on
21 March 8th, 2021, what did you discover about the
22 inventory that was in the store when you finally got
23 in there?

24 A. I saw totally empty shelves.

25 THE INTERPRETER: Clarification.

1 THE WITNESS: I saw hair pieces that the
2 mice had eaten and made a hole. I saw hair
3 products that had insects clumped together. And
4 there were products that had passed the
5 expiration date. And there were shoes that
6 cannot be worn. And I saw rubber bands that
7 were stretched too much.

8 THE INTERPRETER: Clarification.

9 THE WITNESS: Most of all, I saw totally
10 empty shelves.

11 BY MR. PAAVOLA:

12 Q. Do you have an estimate about how much of
13 the inventory that was left in the store needed to be
14 thrown out?

15 A. When I looked after I entered the store on
16 March 8th, one-third of the items were able to be
17 sold. And the rest, two-thirds of the items, needed
18 to be thrown away.

19 Q. Were you surprised to find that much
20 inventory that needed to be thrown out?

21 A. Of course I'm surprised.

22 Q. Did you talk to your uncle about that?

23 A. I asked him why do you only have products
24 that are old?

25 THE INTERPRETER: So interpreter would like

1 Q. So you define changing a story as adding,
2 correct?

3 A. I'm not changing. I'm adding explanation.

4 Q. I asked you earlier did you read the
5 document, and you told me that you translated it at
6 your uncle's store with Google; is that true?

7 MR. PAAVOLA: Your Honor, he's badgering
8 the witness. I don't think he can raise his
9 tone like that. It's uncalled for.

10 MR. BROWN: Your Honor, the story is just
11 changing so much, and I'm just getting constant
12 change. And I'm just trying to get an honest
13 answer to a question.

14 THE COURT: Objection overruled.

15 MR. BROWN: I'm sorry.

16 MR. PAAVOLA: Perhaps he could ask how she
17 translated it. He hasn't even asked that
18 question.

19 THE COURT: Objection overruled.

20 THE INTERPRETER: Could I have the question
21 reasked, please.

22 BY MR. BROWN:

23 Q. Yes. Earlier, I asked if you had read the
24 document, and you stated you went to Mr. Kim's,
25 Google translated it, and read it together, correct?

1 A. Yes. I read, but I didn't say that I read
2 everything.

3 Q. So how many pages did you now Google
4 translate when you allegedly went to Mr. Kim's
5 office?

6 A. It was not the office. It was the store,
7 and it was in front of the counter. And I don't
8 remember how many pages. In the middle, he told me
9 to do it quickly and go.

10 MR. BROWN: Okay. Thank you. I think your
11 testimony speaks for itself.

12 BY MR. BROWN:

13 Q. My last question is: So you're claiming
14 damages of net profits over a three-month period; is
15 that correct?

16 A. I demand compensation for three months and
17 the four checks.

18 Q. And so the three-month figure is a little
19 over \$150,000; is that correct?

20 A. Yes.

21 Q. So you believe that the profitability of
22 the store you bought is around \$600,000 a year
23 annualized, correct?

24 MR. PAAVOLA: Object, Your Honor. That
25 misstates the testimony.

1 when the vendors or UPS needs to bring back the box,
2 we have to have a check for our merchandise. Only
3 Tok signed the checks.

4 Q. So would you say you have seen Tok Kim's
5 signature a lot?

6 A. Yes.

7 Q. Would you say that you're generally
8 familiar with his signature?

9 A. Yeah.

10 Q. And would you be able to recognize his
11 signature if you saw it?

12 A. Probably so, yes.

13 Q. Okay. If you could switch it over to ours.

14 Okay. So what I brought up on the screen
15 is the Business Asset Purchase Agreement. And then
16 if we go to the last page down here, which is
17 Defendant's 55. Do you see a signature there for Kim
18 Enterprises, LLC?

19 A. I see it.

20 Q. And does that look like Tok Kim's
21 signature?

22 A. It looks familiar.

23 Q. Does it look like Tok Kim's signature?

24 A. I said it looks familiar.

25 Q. Does it look like his signature?

1 A. It looks like his signature, but I'm not a
2 handwriting expert.

3 Q. Okay.

4 A. It just looks like it.

5 MS. THIBAUT: Okay. That's all the
6 questions I have.

7 THE COURT: All right. Any redirect?

8 MR. BROWN: No further questions, Your
9 Honor.

10 THE COURT: Thank you, sir. You may come
11 down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: All right. This is probably a
14 good time to break for the day.

15 How many more witnesses do you have,
16 Mr. Brown?

17 MR. BROWN: We have just one more, and
18 hopefully, that should be quick in the morning.

19 And I do have a question -- I believe
20 Mr. Fletcher is under subpoena -- is he under
21 subpoena for you all, David?

22 MR. PAAVOLA: Yeah. We don't need him.

23 MR. BROWN: So he can be relieved. Okay.

24 THE COURT: So you want him released?

25 MR. BROWN: Assuming they don't object.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

KIM ENTERPRISES, LLC,
Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOU MI CHO, K&C BEAUTY, LLC,
AND SANG CHO,
Defendants.

_____/

YOU MI CHO AND K&C BEAUTY, LLC
Counterclaim Plaintiffs,

vs.

KIM ENTERPRISES, LLC AND TOK KIM,
Counterclaim Defendants.

T R I A L - VOLUME 4
BEFORE THE HONORABLE JOSEPH M. STRICKLAND,
MASTER IN EQUITY

DATE TAKEN: Thursday, October 24, 2024

TIME START: 10:08 a.m.

TIME END: 4:48 p.m.

LOCATION: Richland County Central Court
2500 Decker Boulevard
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

1 MR. BROWN: No objection.

2 THE COURT: Your motion is granted.

3 BY MR. PAAVOLA:

4 Q. Ms. Kim, we were looking at Exhibit 1, the
5 Asset Purchase Agreement. Tok Kim, he's always
6 signed on behalf of Kim Enterprises, signed
7 documents, right?

8 A. He signs -- I'm sorry?

9 Q. He's authorized to sign on behalf of Kim
10 Enterprises?

11 A. Right.

12 Q. And you're familiar with Tok Kim's
13 signature based on your 39-year marriage with him?
14 You're familiar with Tok Kim's signature?

15 A. Yeah.

16 Q. Based on your marriage for 39 years?

17 A. Yes.

18 Q. And business dealings with him as well,
19 right?

20 A. Right.

21 Q. Okay. The last page of this document has a
22 signature block and someone signed for Kim
23 Enterprises, LLC; you see that, right?

24 That's Tok Kim's signature, isn't it?

25 A. That looks like his signature except for

1 Q. To identify how much of the sales actually
2 is under the net income?

3 A. Correct.

4 Q. Okay. Let's go back to the top section.
5 And then we have a row that's called as we see
6 EBITDA; is that right?

7 A. Correct.

8 Q. How did you arrive at that number?

9 A. In this case, the stores do not and have
10 interest expense, taxes, depreciation or
11 amortization. So EBITDA equals net income which also
12 equals, as we discussed earlier, EBITA. So EBITDA
13 and net income are the same in this case. If you
14 apply the 1.94 percent, which is your net income
15 percent, it's a percent of sales, you get EBITDA and
16 for 2020 of \$24,013.

17 Q. Okay. So that breaks down the net income
18 specific to the beauty store, right?

19 A. Specific to the beauty store since you're
20 using the beauty store sales, yes.

21 Q. All right. Okay. And that's \$24,000; is
22 that right?

23 A. Yes.

24 Q. For 2020. The rule of thumb then has you
25 take another step, right?

1 were assuming that the average company had a net
2 income of percent sales of 10 percent. That's why my
3 percent of sales valuation was giving up 60 percent
4 weight and not a higher weight.

5 Q. And we talked about your weight average
6 value chart, correct?

7 A. Correct.

8 Q. You reach an opinion of value of the Beauty
9 Store as of 12-31-2020 to a reasonable degree of
10 certainty for a certified valuation expert?

11 A. Yes.

12 Q. And what is that valuated value?

13 A. Value range is between \$207,968 and
14 \$250,528.

15 Q. Okay. Mr. Bokesch, you prepare business
16 tax returns, you stated that earlier, right?

17 A. Yes.

18 Q. And approximately how many do you prepare a
19 year?

20 A. Business tax returns, probably about 200.

21 Q. And are you familiar with tax reporting for
22 when a business sells part of its assets?

23 A. Yes.

24 Q. Is that something that is required to be
25 reported to the IRS?

1 So in this -- so if inventory is sold at a gain, then
2 that inventory is reported as ordinary income. You
3 have equipment and things of that nature that are
4 capital investments in nature. Those are typically
5 good will and that is a capital asset.

6 Q. If Kim Enterprises is going to sell one of
7 its beauty stores, would you expect that to be
8 something that needs to be reported on the tax
9 returns?

10 A. Yes.

11 Q. Whether it's all up front one year or
12 spread out over multiple years, you still expect that
13 to be reported; is that right?

14 A. Yes.

15 Q. If you look at -- pull up Exhibit 18 in the
16 big binder. Defendant's Exhibit 18. I'll pull it up
17 on the screen as well. Exhibit 18.

18 A. Okay. I'm there.

19 Q. And what is this document?

20 A. This is the Form 1040 for Mr. Kim for 2020.

21 Q. 2020. All right. And have you seen this
22 document before?

23 A. I believe so.

24 Q. Looking through this document, did you see
25 the \$250,000 number reported in this document or any

1 type of sale of assets?

2 A. No, I did not.

3 Q. Do you see a schedule reporting any kind of
4 installment sale?

5 A. I do not.

6 Q. And again, you would expect to see a report
7 of a sale of business assets in the year the assets
8 were sold, wouldn't you?

9 A. Yes.

10 Q. If you would turn to Exhibit 19. Same
11 question for you: If you look at these documents, is
12 there any mention of a sale of assets?

13 A. No, there's not.

14 Q. Mr. Bokesch, if you turn to Exhibit 21.
15 This is the 2021 tax return for Kim Enterprises.

16 A. I'm there.

17 Q. And would you look through and tell me if
18 you see any reporting the sale of assets either
19 possibly \$250,000 or any other sale of assets?
20 \$60,000 or any other number?

21 A. I do not.

22 Q. Any mention of installment sale or
23 installment sale schedule?

24 A. No, there is not.

25 Q. Mr. Bokesch, if you turn to Exhibit 22.

1 The same question: Do you see anything in Exhibit 22
2 that references sale of assets, sale of the beauty
3 store in any amounts related to that?

4 A. I do not.

5 Q. Mr. Bokesch, you were also asked to
6 calculate K&C Beauty's damages in this matter; is
7 that correct?

8 A. Yes.

9 Q. And what do you understand the damages was
10 by K&C Beauty?

11 A. It would be the additional income that
12 Plaintiff received between the time -- the time of
13 the sale and the time of handing over of the -- until
14 they started receiving income. Until the defendant
15 starting receiving income.

16 Q. Did you print a schedule for this?

17 A. Yes.

18 Q. Look on the screen, which is identified as
19 Defendant's Demonstrative D8A. This is the schedule
20 that you prepared?

21 A. Yes, it is.

22 Q. And then just blow it up a little bit so
23 you can see it. The top section -- there's four
24 columns in the top section, correct?

25 A. Correct.

1 Q. What's called dates. And then what's that
2 next column? Where did that information come from?

3 A. This is the gross revenues per the sales
4 tax return for beauty store.

5 Q. Okay. And --

6 A. And these are December 16th through
7 December 30th -- 31st, 2020. We used the credit card
8 actually instead of the sales tax returns because we
9 were looking for daily sales. The sales tax return
10 just has the monthly sales. So by using the credit
11 card, we were able to get the daily sales. Not
12 including cash sales, but to be -- most of the sales
13 nowadays, looks like most of the sales for Kim were
14 done via card.

15 Q. Okay.

16 A. And then January and February were the
17 sales tax returns. And similarly for March 1st
18 through March 6th, '21, we used the credit card for
19 the daily sales.

20 Q. For December and March, were you using the
21 credit card sales. We don't know what cash sales?

22 A. Correct. Being conservative.

23 Q. If there's any cash sales, this would be
24 understated?

25 A. Correct.

1 Q. Now look at the next column. Expenses paid
2 by Kim Enterprises. Where did that come from?

3 A. These are some of the operating expenses
4 that were paid off by the plaintiff on behalf of the
5 beauty store. These do not, however, include the --
6 any purchases of inventory.

7 Q. I'm going to bring this up on the screen
8 before us.

9 A. Yeah. You can see for December the total
10 expenses per the defendants and plaintiff and
11 counterclaim the -- Answers to Defendant Second
12 Request for Production of Documents in December was
13 8,920. Because we're looking at only half of
14 December, we took half of those expenses for
15 December.

16 Q. The expense column came from information
17 provided by the plaintiffs, right?

18 A. Yes.

19 Q. And other than December, I guess also --
20 other than December, you included the full amount of
21 expenses that they identified as being related to the
22 beauty store; is that right?

23 A. Yes.

24 Q. Okay. And then there's a final column on
25 that top section called Net. What does that Net

1 mean?

2 A. That is simply the gross revenues less the
3 expenses paid by the plaintiff.

4 Q. What's the net total?

5 A. So the net total is \$148,860.

6 Q. And then there's a middle section called
7 Checks Cashed by Plaintiff. What is that section?

8 A. These are the checks that Plaintiff
9 received from the defendant. The monthly checks --
10 may, June, July and August for 15,000 each.

11 Q. And you understand that K&C Beauty is
12 seeking to get these checks back, right?

13 A. Yes.

14 Q. That money back. All right.

15 And then did you add these two numbers
16 together?

17 A. Yes.

18 Q. Okay. What is that total?

19 A. So the 148,860 plus the 60,000 is \$208,860.

20 Q. Okay. Did you also calculate interest due
21 in these amounts?

22 A. I did.

23 Q. On the screen, Defendant's Exhibit
24 Demonstrative D8B -- I'm sorry. Here's D8B. And
25 this shows the same amounts but we calculated

1 prejudgement interest; is that right?

2 A. Yes.

3 Q. So what is your total now prejudgment
4 interest on the monthly net sales?

5 A. The interest on the -- for the monthly net
6 sales is \$56,988.

7 Q. And what about the prejudgment interest for
8 the checks that Plaintiff wrote -- K&C Beauty wrote
9 to Kim Enterprises?

10 A. The interest on the 60,000 for the checks
11 received is 20,061.

12 Q. All right. So when we take your previous
13 damages and add prejudgment interest, what is the
14 total amount of damages K&C Beauty is seeking?

15 A. The total damages with interest is
16 \$285,909.69.

17 MR. PAAVOLA: Thank you, Mr. Bokesch. No
18 further questions at this time.

19 MR. BELSER: Your Honor.

20 THE COURT: Yes, sir.

21 - - -

22 CROSS-EXAMINATION

23 - - -

24 BY MR. BELSER:

25 Q. Mr. Bokesch, I would like to start with

1 I've done some work with food document
2 fraud more recently.

3 Q. Are you part of any professional
4 organizations that are specific to handwriting
5 examination and fraud prevention?

6 A. Yes.

7 Q. What are some examples of those
8 organizations?

9 A. I'm a member of the document security
10 alliance. I am a voting member of the American
11 Academy of Forensic Sciences Standards Board. That's
12 the organization responsible for developing the
13 standards that are the generally accepted practices
14 throughout the document exam community.

15 A member of a variety of other
16 organizations that aren't specific to documents but
17 are related to fraud and forensic science.

18 Q. Have you ever served as an expert witness
19 in the field of handwriting analysis identification?

20 A. Yes.

21 Q. And how long have you been doing the work
22 as an expert in this field?

23 A. More than 15 years.

24 Q. Approximately how many cases have you been
25 retained as an expert?

1 A. I don't know. I don't keep track of
2 numbers of how many cases or handwriting I do.

3 Q. In the last decade, five to ten years, do
4 you have any idea how many cases you have testified
5 in trial or been deposed in?

6 A. Yeah. So as for testimony because we keep
7 track of that, it's one of the requirements in the
8 last four years, about 40 testimonies in both
9 federal, state courts, different states in the U.S.

10 But as far as for the number of cases and
11 reports I've read and the number of handwriting
12 samples I've evaluated, I really don't know.

13 Q. So have you been qualified in state courts
14 as an expert in handwriting analysis?

15 A. Yes.

16 Q. And which states do you recall?

17 A. It's outlined on my CV. If I can remember,
18 there have been several. Michigan, here in
19 South Carolina, Colorado, Wyoming, Montana, Nebraska,
20 New Mexico, South Dakota, North Dakota,
21 American Samoa. There might be some others in there.

22 MR. PAAVOLA: Your Honor, at this point we
23 offer Mr. Fenoff up as an expert in handwriting
24 analysis and identification.

25 THE COURT: Okay. Mr. Brown?

1 A. Correct. Yes.

2 Q. Okay. And then question document 2 is the
3 Bill of Sale; is that right?

4 A. Yes.

5 Q. And that is only one page. The question
6 signature is also in that first page, right?

7 A. Yes.

8 Q. All right. And then there's also a K tab
9 in here, 1 through 26 in here, correct?

10 A. Yes.

11 Q. What do the Ks represent?

12 A. So the Ks signify the known comparison
13 writings. So K1 would be known comparison writing 1.
14 K2 would be known comparison 2 and so on.

15 Q. And those examples have been provided to
16 you as part of your assignment, right?

17 A. Yes.

18 Q. You didn't go out and find these. These
19 were provided to you?

20 A. Right. Correct.

21 Q. If you would, Mr. Fenoff, I would like you
22 to -- you to control -- if I might, Your Honor,
23 approach the witness and ask him to control the -- on
24 the screen we've got Defense Exhibit 30 has been
25 admitted into evidence. This is the summary of

1 quality, the speed of the writing, the letter forms
2 the spacing, the lateral expansion, the size and
3 proportion of the letters to each other are
4 consistent throughout the case but it's also
5 consistent when you go back to the Q.

6 And this is important with a signature like
7 this because this isn't something that you could
8 easily simulate. Meaning that if you took a pen and
9 paper and I showed you like, you know, K8, I said,
10 "Simulate that," then what you would do is you would
11 try to copy it. But in order to get it right, what
12 you would have to do is you would have to do it at
13 relatively rapid speed, getting the accuracy, getting
14 the spacing, getting the line quality, getting the
15 placement on the line, all at the same time. And
16 that would be extremely difficult to do.

17 Q. Is there any other steps that you would
18 have taken in your lab or your own analysis outside
19 what you're showing us that is part of your process?

20 A. I'm sorry. Can you repeat that?

21 Q. Is there any other steps that you would
22 have taken at your office or your lab outside of what
23 you just showed us?

24 A. Okay. So just -- I was pointing out some
25 of the characteristics and features that are similar

1 But when you look at the second page 2 -- I
2 didn't turn to this one. I was explaining. But you
3 can see that even through here the consistency and
4 spacing and those features that I pointed out on the
5 first page are also present here.

6 The other thing to notice with that, there
7 is variation. Right. None of these are exactly the
8 same, but there is consistency. But there is some
9 differences between each known signature, which is
10 what we expect to see with natural writing.

11 Q. The signatures here date almost over a
12 20-year period; is that right? '02 to 2020?

13 A. Yes.

14 Q. Did you observe anything about -- over that
15 time period related to the signature?

16 A. The -- other than the fact that the
17 signature remained relatively stable over that period
18 of time. It wasn't a lot of changes between them.

19 Q. Dr. Fenoff, did you have a sufficient
20 number of samples to prepare your analysis in this
21 case?

22 A. Yes.

23 Q. Okay. And are there levels of certainty,
24 you know, that you ultimately provide? Is there some
25 type of a scale that you use to -- you know, for your

1 this and the federal agents and said, "You go create
2 the fake passports and driver's license and do it
3 however you want, but the only rule is you must use
4 things that anyone in the general public, meaning go
5 to Staples and Walmart."

6 So they did this and created these
7 documents. And 99 percent of them got back into the
8 United States.

9 So the technology is very good. It's
10 accessible. And, you know, it's only getting better.

11 MR. BROWN: Great. I appreciate it and
12 safe travels back to Charleston today.

13 THE WITNESS: Thank you, sir.

14 MR. BROWN: Mr. Paavola may have a couple
15 of questions for you.

16 - - -

17 REDIRECT EXAMINATION

18 - - -

19 BY MR. PAAVOLA:

20 Q. Mr. Fenoff, is it common to perform a
21 handwriting analysis when you don't have an original
22 document?

23 A. Yes.

24 Q. In that scenario are you still able to
25 opine as to the likelihood that the questioned

1 document was signed by the same person who signed the
2 known documents?

3 A. Yes. In the vast majority of cases, it's
4 possible to do that.

5 Q. In this case was it possible to do that?

6 A. Yes.

7 Q. Are there any signs that either K1 or K2 --
8 sorry, Q1 or Q2 is a cut-and-paste signature?

9 A. No.

10 Q. Mr. Fenoff, is it your opinion that the
11 author of K1 through 26 did also author Q1 and Q2?

12 A. Yes.

13 MR. PAAVOLA: No further questions,
14 Your Honor.

15 THE COURT: All right. Mr. Brown.

16 MR. BROWN: Just brief redirect.

17 THE COURT: You mean cross.

18 - - -

19 RECROSS-EXAMINATION

20 - - -

21 BY MR. BROWN:

22 Q. Again, just to clarify your testimony with
23 regarding author, I believe in your deposition you
24 started "What we can say is whether or not the
25 person's signature is on the document, but I can't

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2021-CP-40-05596
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Youmi Cho and K&C Beauty, LLC, and	)	DEFENDANTS AND
Sang Cho,	)	COUNTERCLAIM PLAINTIFFS'
	)	SUPPLEMENTAL MEMORANDUM
	)	IN SUPPORT OF ITS
Defendants.	)	POST-TRIAL MOTIONS TO ALTER
	)	OR AMEND THE FINDINGS OF FACT
	)	AND CONCLUSIONS OF LAW; TO
	)	ALTER OR AMEND JUDGMENT;
	)	NEW TRIAL NISI REMITTITUR; AND
	)	NEW TRIAL ABSOLUTE
	)	
	)	
Youmi Cho and K&C Beauty, LLC,	)	
	)	
Counterclaim Plaintiffs,	)	
	)	
v.	)	
	)	
Kim Enterprises, LLC, and Tok Kim,	)	
	)	
Counterclaim Defendants.	)	
	)	

Pursuant to South Carolina Rules of Civil Procedure 52, 59(a), SCRCP, Defendants, Youmi Cho, K&C Beauty, LLC, and Sang Cho (collectively “Defendants”) and Counterclaim Plaintiffs, Youmi Cho and K&C Beauty, LLC (collectively “Counterclaim Plaintiffs”) hereby provide the Court with this Supplemental Memorandum In Support of its Post-Trial Motions and move the Court to “open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and direct entry of a new judgment,” Rule 59(a), SCRCP, to the extent needed on the additional grounds set forth herein.

On February 25, 2025, the Court held a hearing on Defendants’ and Counterclaim Plaintiffs’ post-trial motions. During the hearing, upon the undersigned’s statement that the evidence showed

Youmi Cho saw Tok Kim sign the Asset Purchase Agreement, the Court stopped counsel to indicate that it was not aware that Youmi Cho testified at trial that she saw Tok Kim sign the Asset Purchase Agreement and that the Court believed this was not how Youmi Cho had responded to the Court's questions on this issue. The undersigned read Ms. Cho's testimony into the record at the hearing.

Youmi Cho's testimony on this issue is set forth below, as is the Court's questioning of Ms. Cho on this topic.

I. Youmi Cho Testified that She Saw Tok Kim Sign the Asset Purchase Agreement.

Upon examination by Mr. Paavola, Ms. Cho testified at trial that she saw Tok Kim sign the APA.

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.

THE INTERPRETER: Interpreter needs to --

THE WITNESS: Yes, he signed.

BY MR. PAAVOLA:

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.

(Ex 1, Trial Tr. 424:6-426:19).

At the conclusion of Ms. Cho's testimony, the Court also asked Ms. Cho whether she watched Tok Kim sign the Asset Purchase Agreement and Ms. Cho indicated that she had.

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.

(Ex 1, Trial Tr. 462:8-12).

Ms. Cho consistently testified that she saw Tok Kim sign the Asset Purchase Agreement. To the extent the Court believes any ambiguity still exists on this issue, Defendants urge the Court to open the record and take additional testimony on this issue.

CONCLUSION

Accordingly, Defendants and Counterclaim Plaintiffs request that the Court amended the judgment to find that the only reasonable conclusion supported by the evidence is that Tok Kim signed the Asset Purchase Agreement, and grant other relief as requested in their post-trial motions.

Respectfully submitted,

/s David L. Paavola

David L. Paavola (S.C. Bar No. 100714)

Ashley Thibault (Bar No. 103522)

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Cayce, SC 29033

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thibault@conlaw.com

*Counsel for Defendants K&C Beauty LLC, Youmi
 Cho, and Sang Cho*

February 25, 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

KIM ENTERPRISES, LLC,
Plaintiff,

vs.

C.A. No.: 2021-CP-40-05596

YOUMI CHO, K&C BEAUTY, LLC,
AND SANG CHO,
Defendants.

_____/

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Counterclaim Plaintiffs,

vs.

KIM ENTERPRISES, LLC AND TOK KIM,
Counterclaim Defendants.

T R I A L - VOLUME III
BEFORE THE HONORABLE JOSEPH M. STRICKLAND,
MASTER IN EQUITY

DATE TAKEN: Wednesday, October 23, 2024

TIME START: 10:00 a.m.

TIME END: 4:24 p.m.

LOCATION: Richland County Central Court
2500 Decker Boulevard
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

1 Q. The same email from the immigration
2 attorney to yourself, Mr. Andy Kim is referencing the
3 \$250,000 that he will need proof of payment from you
4 for. Do you see that?

5 A. Yes.

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

9 A. Yes.

10 Q. So did you eventually sign both documents?

11 A. Yes.

12 Q. Did your uncle eventually sign both
13 documents?

14 A. Yes.

15 THE INTERPRETER: Interpreter needs to --

16 THE WITNESS: Yes, he signed.

17 BY MR. PAAVOLA:

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22 signed it, and my uncle signed it.

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

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2 A. Yes.

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5 Agreement between Kim Enterprises and K&C Beauty?

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9 K&C Beauty?

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12 individually?

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20 came to be on this piece of paper?

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22 sign here.

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24 was made by yourself?

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3 document as the Bill of Sale?

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6 asked you to have signed as part of your purchase
7 process?

8 A. Yes.

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

11 A. Yes.

12 Q. Is this your signature for Youmi Cho
13 individually?

14 A. Yes.

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

17 A. Mr. Kim did.

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

19 A. Yes. I saw directly.

20 Q. And, Ms. Cho, you gave your uncle a check
21 for \$250,000 for the purchase of the Beauty Store?

22 A. Yes, I gave it to him.

23 Q. Can you please turn to Defense Exhibit 3 in
24 your binder.

25 A. Yes.

1 MR. PAAVOLA: Your Honor, I think -- you
2 can ask her how she does it. I think it's a
3 phone, but you can ask her.

4 THE COURT: I'm sorry?

5 MR. PAAVOLA: I believe she's talking about
6 a phone, a picture of the phone, but you can
7 ask.

8 THE COURT: All right. Thank you.

9 The Business Asset Purchase Agreement, did
10 you see your uncle sign that document?

11 THE WITNESS: Yes. We both signed it
12 together at his store.

13 THE COURT: Okay. Anything further?

14 MR. PAAVOLA: No, Your Honor.

15 MR. BROWN: No, Your Honor.

16 THE COURT: Thank you so much. Come down.
17 You can come down.

18 Okay. Mr. Brown.

19 MR. BROWN: Could we have a quick recess to
20 get the sequestered witness?

21 THE COURT: Yes. We will stand at ease for
22 a moment.

23 - - -

24 VINCENT FLETCHER, being first duly
25 sworn, testified as follows:

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

Kim Enterprises, LLC,

Plaintiff/Respondent,

v.

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

Defendants/Appellants.

Youmi Cho and K&C Beauty, LLC,

Counterclaim Plaintiffs/Appellants,

v.

Kim Enterprises, LLC and Tok Kim,

Counterclaim Defendant/Respondent.

NOTICE OF APPEAL

Youmi Cho, K&C Beauty, LLC, and Sang Cho (“Appellants”) appeal the Honorable Joseph M. Strickland’s Order and Judgment entered February 6, 2025, attached as **Exhibit 1**. Appellants received notice of entry of the order on February 6, 2025, and filed a Post-Trial Motion

to Alter or Amend the Findings of Fact and Conclusions of Law; To Alter or Amend Judgment; New Trial NISI Remittitur; and New Trial Absolute on February 17, 2025. Appellants filed a Supplemental Memorandum In Support of Its Post-Trial Motions to Alter or Amend the Findings of Fact and Conclusions of Law; To Alter or Amend Judgment; New Trial NISI Remittitur; and New Trial Absolute on February 25, 2025. Appellants' post-trial motions were denied by order dated March 4, 2025, attached as **Exhibit 2**.

s/ David L. Paavola

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March 6, 2025

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Attorneys for Respondents

State of South Carolina	)	
	)	
County of Richland	)	
	)	
Kim Enterprises, LLC,	)	
	)	
Plaintiff,	)	2021-CP-40-05596
v.	)	
	)	Transcript
Youmi Cho, K&C Beauty,	)	
LLC, and Sang Cho,	)	of
	)	
Defendants.	)	Hearing
	)	
Youmi Cho and K&C	)	
Beauty, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Kim Enterprises, LLC,	)	
and Tok Kim,	)	
	)	
Third-Party Defendants.	)	

Date: October 18, 2024

Time: 3:30 p.m.

Location: Richland County Courthouse, 1701 Main Street,
Columbia, South Carolina

Reported by:
Julie Taradash

COPY

APPEARANCES

Presiding: The Honorable Joseph M. Strickland
Richland County Master-in-Equity

For Kim Enterprises, LLC, and Tok Kim:
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Greenville, South Carolina

INDEX

Proceedings: 3

EXHIBITS

No exhibits were proffered.

1 PROCEEDINGS

2 THE COURT: This is Civil Action Number 2021-CP-40-
3 05596, "Kim Enterprises, LLC, against Youmi Cho,
4 and others."

5 Okay. Mr. Paavola, you may proceed.

6 MR. PAAVOLA: May it please the Court, Your Honor.
7 David Paavola on behalf of K&C Beauty, Youmi Cho,
8 and Sang Cho. The first motion is an order of
9 filing as a motion to compel responses to our third
10 request for production.

11 Just to give a -- you know, you've heard
12 background from Mr. Brown already. The plaintiff
13 alleges the sales price was \$800,000. There's no
14 dispute that their client received \$250,000 in
15 December 2020 and \$60,000 in 2021, so there are
16 certain amounts that everyone agrees their client
17 received, but we dispute what those were for and
18 how much the purchase price was, but those amounts
19 we -- we all agree to.

20 And I was going to hand up, Your Honor, just
21 for example, the -- their client's 2020 tax return.
22 If I may approach and hand --

23 THE COURT: Wait. What do you want them to produce?

24 MR. PAAVOLA: What's that?

25 THE COURT: You said this is a motion to compel?

1 MR. PAAVOLA: Yes.

2 THE COURT: And what -- what are you asking them to
3 produce, again? I'm sorry.

4 MR. PAAVOLA: Yeah. Well, I was going to hand up, as an
5 example, their -- the tax return just to show you
6 what I'm asking them to produce.

7 THE COURT: Okay. I'm sorry.

8 MR. PAAVOLA: Yeah.

9 THE COURT: Go ahead. Thank you.

10 MR. PAAVOLA: Your Honor, so just as an example, the --
11 the -- they -- they report the business income on a
12 Schedule C, a tax return, which I've -- I've handed
13 you a document, a 2020 tax return, Kim 38 to Kim
14 50. This is 2020. What we've said is, during
15 discovery, the \$250,000 is not reflected in -- in
16 2020 tax return, but we -- we -- we assert and
17 we've asked people about that, but they've
18 contended, at least in questions during
19 depositions, that the sales price is perhaps buried
20 in the gross sales numbers, so what I asked during
21 discovery was, "Produce documents that reflect how
22 you got to, in this case, \$4 million so that I can
23 determine whether the sales price is -- is reported
24 in sales numbers or not." And that -- so that's
25 what -- that was the outstanding motion we have to

1 compel, so that they're not able to assert that,
2 "Well, it's buried in this number, and it could be
3 buried in there. It's hiding."

4 THE COURT: Mr. Brown?

5 MR. BROWN: Thank you, Your Honor. I guess, first of
6 all, our objection and kind of my confusion to what
7 he's asking is that's, number one, not relevant in
8 the case, and -- and -- and Mr. Paavola said, I
9 guess, "I asked some questions, tangentially, in a
10 deposition regarding where the income was buried."
11 There's no dispute that my client received the
12 \$250,000, and whether it's in this or not, I don't
13 really understand how that goes to the heart of any
14 issue in the case. I'm really confused on like
15 what -- what relevance it has and what I can even
16 provide, because we've already provided the
17 documentation regarding the sales. He's deposed
18 the accountants. And, again, I -- I'm not going to
19 make any allegations or -- or -- or note where the
20 250 went, whether it was in the gross sales, so I'm
21 -- I'm kind of perplexed on really how to argue
22 against this because it just has absolutely no
23 relevance, and -- and, again, I'm -- I'm kind of
24 confused.

25 THE COURT: Well, could it -- could it lead to the

1 discovery of relevant evidence?

2 MR. BROWN: I don't know, unless -- and, I mean, like I
3 said, unless the -- Mr. Paavola's trying to, I
4 guess, get into IRS issues and reporting of income
5 and -- and which is, again, irrelevant. So my
6 client received \$250,000; nobody disputes that.
7 And whether it was put in this account -- this tax
8 return or it's on another tax return or it's on no
9 tax return, that has nothing to do with whether the
10 price of the business was 800 or 250. So, again, I
11 -- I'm just kind of confused on -- on what --
12 what's being asked. And, again, I'm -- I'm being
13 told that it's because I asked a question about
14 where it could be related in a deposition of an
15 accountant. And, again, as Your Honor knows, like
16 when we take depositions, we ask lots of questions,
17 but I -- I mean, I can stipulate that I'm not going
18 to make any assertion regarding where the money
19 went. I mean, we -- we got the money, and I don't
20 really know what I can give.

21 THE COURT: (To Mr. Paavola) Go ahead.

22 MR. PAAVOLA: Yeah. Your Honor, on relevancy, you know,
23 any evidence is relevant if it tends to make a fact
24 of issue more or less likely. So let's say he had
25 reported a sales price to their accountant and it

1 had been reflected in tax returns, well, that would
2 tend to make it more likely. So the opposite would
3 be true; if it's not reported to the accountant, if
4 it's not reflected in tax returns, it may make the
5 -- their -- their price less likely to be true. So
6 that's the relevance of it. And what I can't have
7 is questions on the stand to somebody's saying
8 -- if I asked, "Is the \$250,000 reflected in the
9 tax returns," if someone says, "No," I say, "Well,
10 could it be buried in the gross sales?"

11 "It could be. I don't know." So that's what
12 I can't have happen during trial. That's why I
13 asked for it.

14 THE COURT: Okay. (To Mr. Brown) Do you -- do you have
15 the information he's asking for?

16 MR. BROWN: I have -- my client gave me some -- well,
17 he's been given the -- the numbers from my client
18 that -- that show that she reported \$4,330,251 for
19 the gross sales. But, again, like I -- I don't see
20 -- whether that was reported on the tax return, how
21 does that tend to prove or disprove whether the --
22 the sale of the business was 800 or 250? Like, we
23 received the \$250,000; there's no dispute.

24 THE COURT: Do you have the information he's asking for?

25 MR. BROWN: I have -- I have some for -- the problem is

1 -- or one issue that's complicated is the --
2 they're -- there's four beauty supply stores, and
3 they're not broken out by each one. So I have -- I
4 have -- the client sent me some sales tax forms
5 that -- that I -- that I'd be happy to provide.
6 She just e-mailed -- or I just got them like an
7 hour ago. But, again, I'm not going to be --
8 there's not going to be any questioning regarding
9 where the money was reported to a taxing authority.
10 But yes. I can e-mail -- I can e-mail. My client
11 just sent me some sales tax forms, but I think it
12 may be for one of the stores at issue, and -- and
13 not their other stores.

14 THE COURT: Can you -- can you get the information he's
15 requesting by Monday?

16 MR. BROWN: I believe -- I believe I -- my client can do
17 the other three stores. I -- I told her
18 specifically, "Just go ahead and e-mail me all
19 four," and I think she just sent one.

20 THE COURT: Okay. Motion to compel is granted.

21 MR. PAAVOLA: Thank you, Your Honor.

22 THE COURT: You need an order? You -- he doesn't need
23 an order, does he, Mr. Brown? He doesn't need an
24 order, does he?

25 MR. BROWN: No, no. Like I said, I'm going to -- I'll

1 -- I'll get the other store.

2 THE COURT: Okay.

3 MR. PAAVOLA: And just --

4 THE COURT: All right.

5 MR. PAAVOLA: -- for the record, what I'll say is we

6 have the -- we found in our records the 2021 sales

7 tax returns for four stores. I added them up.

8 They don't add up exactly to the number, but

9 they're like within a hundred and something

10 thousand dollars, but we have 2021, some of it, so

11 . . .

12 THE COURT: All right.

13 MR. PAAVOLA: If they're able to find a number that adds

14 up to the actual reported amount, that would be

15 helpful.

16 THE COURT: All right. Next motion, please.

17 MR. PAAVOLA: Yes, Your Honor. Our next motion is a

18 motion for partial summary judgment. The

19 plaintiffs have asserted nine causes of action in

20 this case. The first two relate to breach of

21 contract by our client and breach of contract

22 accompanied by fraudulent act. The sixth cause of

23 action is a breach of fiduciary duty as to our --

24 Sang Cho, which is our client's -- K&C Beauty is

25 owned by Youmi Cho. Her brother is Sang Cho. He

1 works at the beauty store. They've alleged a
2 breach of fiduciary duty as to Sang Cho and aiding
3 and abetting a breach of fiduciary duty against his
4 sister, our client, and then tortious interference
5 with a contact as to Sang Cho, the brother.

6 So, first, we -- we believe that breach of
7 contract cause of action should be dismissed on the
8 statute of frauds grounds. The statute of frauds
9 requires a signed writing, evidence in the
10 -- the terms of the agreement for a contract that's
11 longer than one year. Here -- without resort to
12 parol evidence. Here, the plaintiff alleges that
13 there was an oral contract between himself and his
14 niece for \$250,000 down payment and for \$15,000 a
15 month. That would be cash for -- each month for
16 three years. And in their pleading, they've
17 asserted there was no writing. In deposition
18 testimony, they said it was an oral contract to
19 take place over three years. So they have to have
20 a signed writing in order to meet the statute of
21 frauds that establishes the -- the essential terms
22 of agreement. They don't have that. So we believe
23 that it should be -- should be dismissed on that
24 ground.

25 They argue that our actions removed this case

1 from the statute of frauds because of partial
2 performance, but even under partial performance,
3 they have to show clear evidence of an oral
4 contract, the agreement the parties partially
5 executed and the party requested -- the party that
6 is requesting fulfilled his part, so -- I'm sorry.
7 As to Prong 1, they have to show that there's clear
8 evidence of an oral contract. And in the Fesmire
9 case we've cited in our brief -- you know, their
10 evidence of an oral contract is with their own
11 client. In the Fesmire case, we cited the
12 testimony of the -- their own testimony of -- of
13 that's what the agreement is is not sufficient to
14 satisfy clear evidence of an oral contract. They
15 have to have something else, not just the testimony
16 of their own client.

17 They also cite the checks as being evidence of
18 the oral agreement, but, in this case, the checks
19 themselves are not evidence. The -- there's -- the
20 checks just have amounts, who it's payable, they
21 don't say what it's for or anything like that.

22 Our client has testified the \$250,000 was to
23 buy one store; that was completed. The additional
24 checks that they've identified -- they may have
25 brought, and we'll have a copy for Your Honor, as

1 well -- those were for a subsequent agreement for
2 additional stores.

3 They also cite Sang Cho's text messages as
4 evidence of the oral agreement. These text
5 messages took place a year after the contract was
6 entered, and so those can't relate back to the --
7 the terms of the agreement.

8 They also -- in order to satisfy the partial
9 performance exception, they have to show that the
10 agreement was partially performed. And courts have
11 held that payment of purchase price is not
12 sufficient -- a partial purchase is not sufficient
13 to take it out of the -- of the statute of frauds.

14 Again, the payment of my client, the \$250,000
15 check and the other checks are consistent with her
16 -- her version of what the contacts were at issue.
17 So simply giving a \$250,000 check and subsequent 36
18 checks, that doesn't necessarily support their
19 version of the contract. It can also just as
20 easily support our version. Under the Fesmire
21 case, it's not sufficient, again, to pull out of
22 the statute of frauds. It's why we have the
23 statute of frauds, to prevent this type of
24 situation where you have some agreement supposed to
25 be performed over three years and no one knows what

1 the terms are.

2 And they've also alleged that we should be
3 estopped from raising the statute of frauds.
4 Again, there's -- they have to have competent proof
5 of existence of an oral contract. They don't have
6 that here. We've already identified that. And
7 they cite Sang Cho's text messages as reasons why
8 they should be estopped, as well. Those text
9 messages are a year after the contract. They don't
10 relate to it.

11 So for those reasons, we -- we think their
12 breach of contract cause of actions fail on summary
13 judgment, and they should be -- they should be --
14 summary judgment should be granted in our favor on
15 the statute of frauds grounds on their breach of
16 contract causes of action.

17 Additionally, they -- you know, after -- two
18 years after the lawsuit began, they -- they then
19 amended their complaint, sued Sang Cho, alleged a
20 whole bunch of causes of action against him that we
21 don't think have any basis. They've alleged a
22 breach of fiduciary duty, tortious interference
23 with contact, and, of course, aiding and abetting
24 by our client.

25 First off, Sang Cho is not a fiduciary. Sang

1 Cho was -- he ran the beauty supply store. He --
2 he's the main person in charge, but in order to
3 prove a fiduciary relationship exists, you know,
4 they have to show that one person reposes special
5 confidence in another, that the latter, in equity
6 in good conscious, is bound to act in good faith
7 and with due regard to the interest of the one
8 reposing confidence. The existence of a -- of
9 fiduciary duty is a question of law for the Court.

10 In the employment context, there's no
11 fiduciary duties of loyalty owed -- owed to a -- by
12 a non-contractional/non-fiduciary employee. The
13 only examples we could find in the
14 employer/employee context of a fiduciary
15 relationship relate to an employee directly
16 competing with his employer, an employee
17 misappropriating employer's profits, property, or
18 business opportunities, or an employee breaching an
19 employer's confidences.

20 Here, there's no allegations or evidence that
21 Sang Cho's done any of these actions. So he
22 managed the store -- pricing was set by Tok Kim --
23 he managed some inventory, but there's no
24 allegations of bad acts arising out of his
25 employment that would rise to make him, one, a

1 fiduciary and, two, having breached a fiduciary
2 relationship.

3 So we think the -- the breach of fiduciary
4 duty cause of action fails. And for the same
5 reason, the aiding and abetting cause of action
6 also fails.

7 And then finally, Your Honor, they allege that
8 Sang Cho tortiously interfered with the contract
9 between Kim Enterprises and K&C Beauty. The
10 elements of a tortious interference are existence
11 of a contract, knowledge of the contract,
12 intentional procurement of its breach, absence of
13 justification, and resulting damages. So even
14 assuming that a contract is -- is what Plaintiff
15 alleges, which we obviously disagree with, all the
16 parties have testified, their client, our client,
17 and Sang Cho, that he was not present at the final
18 negotiations. He's testified he was not familiar
19 with the final terms of the agreement. He did not
20 know what the purposes was for these 36 checks, and
21 so he does not have the requisite knowledge of the
22 contract. The breach that they claim our client
23 committed was stopping payment on the 36 checks.
24 Sang Cho assisted his -- helped his sister, because
25 she speaks Korean, to stop payment, but it wasn't

1 his idea. It wasn't his -- you know, he wasn't the
2 one that stopped the payment. And their client
3 even testified it was her, not him.

4 So they also -- they cite Sang Cho's testimony
5 in his deposition as conduct that qualifies as a
6 tortious interference. Again, that's conduct after
7 the breach. That can't -- can't qualify as helping
8 procure the breach, so I think that in viewing the
9 evidence likely most favorable to them, as you have
10 to do in summary judgment, Sang Cho is not
11 fiduciary duty, he did not tortiously interfere
12 with the contract in any manner, and those causes
13 of action against him should be dismissed.

14 THE COURT: Okay. Mr. Brown?

15 MR. BROWN: Thank you, Your Honor. I -- I have a copy
16 of -- of our response in opposition. Would you
17 like a copy?

18 THE COURT: I've read it.

19 MR. BROWN: Oh, you've read it, okay.

20 THE COURT: Yeah.

21 MR. BROWN: Well, thank you, Your Honor. So, I guess,
22 the -- the first thing we would like to note is, I
23 guess, you know, once I received the reply today --
24 and I have a copy of the Fesmire case if -- if Your
25 Honor would like.

1 THE COURT: Tell me about it.

2 MR. BROWN: A copy. Yeah. So this is, you know, what
3 they use to support their -- I guess, their kind of
4 rule statements about taking an oral agreement and
5 removing it from the statute of frauds. And in
6 this case, the -- the -- the -- I guess, the
7 allegation was that somebody took \$20,000 in a
8 cigar box of hundred-dollar bills and allegedly
9 gave it to a dying woman, of cancer, and that was
10 the evidence. And that's probably like the most
11 opposite of the factual situation we have here,
12 where not only did we get a \$250,000 check, we were
13 given 36 pre-signed checks, which I have 32 of them
14 right here. Then over a period of months, there
15 was a exchange of each check for cash. There was
16 no issue at all until, as we kind of put in our
17 pretrial brief, there was some, I guess, concern
18 regarding my client's refusal to commit or -- or
19 attest that Sang Cho worked for my client when he
20 did not.

21 And then we have, like, the -- the -- the text
22 messages, as well, from Sang Cho, as soon as he was
23 served a copy of the lawsuit, writing that the
24 terms were verbal and -- and matched what my client
25 said. So I guess regarding the -- of the three-

1 part test, there's evidence of the oral agreement.
2 We're the only party that actually has an original
3 document to prove that the deal transpired. The --
4 what we call "the fake purchase agreement," after
5 three years, it's been unable to be located, and
6 there's been no evidence that there's been any
7 effort to locate it and that it actually exists, so
8 the best evidence we have right here of the
9 agreement is in my hand. And, Your Honor, I can
10 enter these into evidence if you'd like.

11 THE COURT: Hold on to it.

12 MR. BROWN. Hold on to it.

13 THE COURT: Yeah.

14 MR. BROWN: And, second, the agreement's been partially
15 executed because 310 of 800,000 has been paid, and
16 as a third prong, my client who's requested
17 performance, has been willing to compete it. So,
18 again, you know, the Fesmire case that was cited by
19 Defendants is good for a rule statement, but if you
20 actually read the case, you'll see the tremendous
21 difference between the two, and -- and -- and this
22 is exactly why there are tests, so that somebody
23 cannot create -- or that somebody cannot create a
24 fraudulent document to get around the -- an -- the
25 performance of an oral contract.

1 THE COURT: In your -- in your reply or your response to
2 the motion, you listed issues of fact, genuine
3 issues of material fact. Could you go through that
4 for the record?

5 MR. BROWN: Yeah. Yes. For the record -- I mean, the
6 -- the material fact is, you know, we have --
7 number one, we have the -- the \$250,000 check, but
8 the biggest thing is we have these 36 checks, and
9 within those 36 checks, there's a question of the
10 four checks that were exchanged for cash or either
11 deposited, were those partial performance, were
12 those acts as part of the payments leading up to
13 eventually getting to the \$800,000.

14 So, again, the -- in the -- and I believe in
15 the reply, it also, I think, flipped the summary
16 judgment standard on its head by saying, "Well,
17 because their client says it, then it must be
18 true." No. The -- the reasonable inference that
19 when you give somebody 36 checks for \$15,000 and
20 that totals up to 790,000, leaving room for a
21 10,000 payment, and then you go month, after month,
22 after month of exchanging them, and then on top of
23 the fact that I believe there was reference to
24 Youmi Cho attesting they were for other stores, as
25 we noted in our pretrial brief, that was a

1 fabrication, a kind of a new theory of the case
2 that came up in her deposition 14 months into the
3 case. So, again, the -- there's a question of fact
4 of whether the actions -- the actions of the
5 parties removed it from the statute of frauds.

6 And then kind of the -- the -- the alternative
7 -- the alternative argument from like an estoppel,
8 is, you know, the -- the purpose of the statute of
9 frauds, and I cited a case that, again, it -- it's
10 a Fourth Circuit, citing Virginia law -- the
11 purpose of the statute of frauds is to prevent
12 fraud and not enable it. And, you know, what our
13 client contends is Youmi Cho's actions -- this is
14 like a -- this is a like a playbook for if you want
15 to commit fraud and you want to take a deal that
16 was verbal, but also had a component of checks and
17 payments and -- and -- and actions -- if you want
18 to try to, you know, create a false document and
19 try to get around that verbal agreement that's
20 partially performed, Youmi Cho has -- has done
21 quite a -- quite a good playbook for that.

22 And then alternatively, you know, the -- even
23 though we call it a verbal agreement, it really is
24 a written agreement because there's 37 checks. In
25 essence, the agreement we say happened, Youmi Cho

1 signed a contract 37 times. She signed it first
2 with the \$250,000 payment and then 36 more times
3 when she signed the checks. And so that's --
4 that's our argument, that, again, there -- it's a
5 question of fact of whether there's been partial
6 performance.

7 And, again, I submit -- I believe in the reply
8 that they try to knock us down on saying there's no
9 clear evidence of an oral argument, and they cite
10 the -- the Fesmire case. I believe that case
11 actually is very supportive of us because, unlike
12 in that case where there was an alleged cigar box
13 with \$20,000 in hundred-dollar bills, here we not
14 only have a \$250,000 check, we have 36 \$15,000
15 checks, then we have four months of exchanging the
16 checks until an event of -- that, I guess, caused
17 the -- the relationship to fray. So -- so that's
18 my argument regarding the statute of frauds.

19 And regarding the -- the fiduciary
20 relationship, I -- I believe, Mr. Paavola said Sang
21 Cho minded the -- minded the store. I -- I would
22 -- I would submit that that's clearly language of a
23 fiduciary. I cited various deposition transcripts
24 where Sang Cho -- again, he's just not a random
25 employee making 12 bucks an hour. He's Tok Kim's

1 nephew. And I believe they cite the Island Car
2 Wash case that, again -- where they found a
3 fiduciary relationship. The fiduciary
4 relationship, you know, there was a familial -- a
5 familial angle. Tok Kim allowed Sang Cho to live
6 in a house for free for -- for several years. Sang
7 Cho had the authority to fire. He had the
8 authority to order inventory, and, I believe, if
9 the -- again, it's up to the Court to decide --
10 it's an equitable issue whether there's a fiduciary
11 relationship, and I believe that there is one.

12 And -- and, like I said, we've already
13 established that he was minding the store and had
14 those fiduciary relationships. And going to how he
15 breached the fiduciary duty, you know, the -- the
16 -- there was an original complaint filed and then
17 after Sang's deposition testimony, there was an
18 amended complaint, so I feel like what the reply of
19 Defendants doesn't really take into account and
20 tries to misdirect the Court is that we're
21 operating off the amended complaint. And the
22 allegations in the amended complaint are that Sang
23 Cho, in his deposition testimony, lied to
24 perpetuate a fraud. And even though at the time of
25 the deposition testimony, Sang Cho was not employed

1 by Tok Kim, your fiduciary duties do not end
2 exactly when you leave -- when you leave work.
3 Trying to post his employment, sabotage a deal, and
4 perpetuate a fraud to defraud his former employer,
5 we submit that that's a breach of fiduciary duty.

6 And -- and kind of the third point, again,
7 with the -- with the tortious interference, this
8 wasn't a contract that was simply going to be
9 completed with one action. When Sang Cho -- when
10 we -- when we submit that he perjured himself in
11 his deposition testimony, there were payments that
12 were due before that deposition and after that
13 deposition, so really the -- if you look at the
14 elements of the tortious interference, you clearly
15 have a valid contract, which is just a dispute over
16 what is the amount. Sang Cho not only knew what it
17 was -- and there's a question of fact whether he's
18 procuring the breach because he's trying to help
19 out his sister by saying something he doesn't know.
20 And in -- and in my deposition testimony, and I
21 think the big push of Defendants to try to get Sang
22 Cho out is -- I mean, it was clear -- and, again,
23 you can read his deposition testimony -- is when
24 he's presented with these text messages, he -- he
25 has no explanation for why he wrote what he wrote

1 other than to say, "Oh, I -- I mistyped an epistle
2 of text messages."

3 So we believe that there are questions of fact
4 regarding the tortious interference and that that
5 should be -- that the motion should be denied. So,
6 again, at the summary judgment stage, looking at
7 the inferences about how all these pieces of the
8 puzzle fit together, we believe that each of
9 Defendant's arguments should be rejected. Thank
10 you.

11 THE COURT: All right. (To Mr. Paavola) Any response?

12 MR. PAAVOLA: Your Honor, this is the same -- this is
13 the story you're going to be hearing all week from
14 them, which is this: We invented some elaborate
15 fraud to trick them out of the purchase price. So
16 this is -- it's quite ridiculous, but you'll hear
17 it and that's what we have testimony for, that's
18 what we have trials for, and we have witnesses. So
19 I look forward to presenting all of them to you to
20 really -- it's quite the -- the assertions of
21 Counsel that continually cast our client in a poor
22 light.

23 As far as the statute of frauds goes, the
24 checks themselves can't -- are insufficient to
25 establish essential terms of an agreement. And I'm

1 -- I'm happy to hand you up a copy of what we have.
2 We don't have the originals, but I'm happy to hand
3 up, at least, the 36 checks to Your Honor just so
4 you can look at them, but -- if -- if I might.

5 THE COURT: All right. Thank you.

6 MR. PAAVOLA: Your honor, and -- and this is just -- I
7 assume it's a copy of what Mr. Brown has in his
8 folder, but I do not know, but I assume they are.
9 And so we've got a check. We've got the -- the
10 payee, K&C Beauty, LLC. We have no date. We have
11 it payable to Tok Chin Kim, 15,000, her signature,
12 and nothing on the memo line.

13 So, you know, what would be essential terms of
14 a contract? Maybe a description of what was being
15 purchased, maybe a total amount and the terms of
16 payment, maybe the time period for payment, maybe
17 who the parties are. This doesn't even identify
18 the owner of the beauty store as Kim Enterprises,
19 LLC. So this is not sufficient to establish a -- a
20 writing for the purpose of the statute of frauds.
21 In the -- on -- on the part performance, the issue
22 of the facts my case brings out, is that when facts
23 -- the only -- only facts they have to support a
24 oral agreement, they all align with, also, our --
25 they could just as easily align with our story, if

1 that makes sense. So one check for 250, 36 checks
2 for 15,000 easily align with our testimony that it
3 was one store consummated, subsequent agreement for
4 additional stores. Okay. So that's -- because
5 that's the case, that's not sufficient on the -- on
6 the statute of frauds.

7 As to the fiduciary duty, again, there's no
8 case law. They've not shown any basis to -- to
9 make Sang, manager of the beauty store, a fiduciary
10 to Kim Enterprises. He's an employee. There has
11 to be something more. And Your Honor knows that a
12 fiduciary is a higher level. We're talking
13 accountants, lawyers. Those are fiduciaries. And
14 he -- also, it's not a one-way thing. He can't
15 just talk Kim -- or Kim Enterprises can't just make
16 Sang a fiduciary because they say he is, but has to
17 be a mutual understanding of a fiduciary
18 relationship. The only three limited circumstances
19 where an employee is found to be a fiduciary, when
20 they directly compete with their employer, they
21 misappropriate profits or property or business
22 opportunities -- none of that's happened here --
23 where they breach the confidences. Again, none of
24 -- there's no allegations that any of that happened
25 here. What they're mad about is that he's not --

1 he's not saying something that agrees with their --
2 their version of the story. And that's not a basis
3 to hold him as -- as a fiduciary.

4 Again, the tortious interference with the
5 contract, we've already -- we've cited numerous
6 depositions and cites. He didn't know the terms.
7 He didn't procure the breach. The breach is the
8 stop payment. He didn't -- that was not his idea.
9 They weren't even his checks. So he can't have
10 interfered with the contract. So -- and for the
11 reasons we -- we think those -- all those causes of
12 action should be dismissed at this stage. There's
13 no evidence of it.

14 THE COURT: Mr. Brown?

15 MR. BROWN: I just want to add I think the first, like,
16 several sentences of -- Defendant's counsel
17 referenced, the fact that this is why evidence, and
18 this is why we have testimony, I agree, and that's
19 why this motion for summary judgment should be
20 denied. And again, you know, a lot of time was
21 spent addressing kind of my second alternative
22 argument about -- about the writing. Again, I'll
23 just refer -- again, I have a blank copy of this
24 Fesmire case. All there was was an allegation of a
25 cigar box with \$20,000 in hundred-dollar bills that

1 I -- I guess disappeared. There is so much more
2 here. And -- and, really, the -- the -- going back
3 to what the checks were for -- and I think I talked
4 about this in my pretrial brief in -- in reference
5 to discovery, is for 14 months it was, "We had
6 these checks because she was under duress. There
7 was threats to mess up her immigration." Which I
8 don't really know how Tok Kim could. And then, in
9 the deposition 14 months later, it was, "Well, here
10 these checks were to buy other stores."

11 And -- and, again, I can get a copy of Youmi
12 Cho's deposition. She couldn't even explain
13 whether it was two or three stores. And -- and I
14 guess the ultimate irony of it is, is the argument
15 they're using about the checks is an oral -- is --
16 is a verbal agreement. So, you know, we've kind of
17 got this cake and eat it, too, where, "Well, we've
18 got this contract. The verbal agreement doesn't
19 matter. But as part of our defense, we want to use
20 a verbal agreement to buy other stores to explain
21 the checks which we can't explain," because for
22 four months they gave them to -- they exchanged
23 them without issue. And, again, all I'll just say
24 is -- again going back to kind of from a policy
25 argument, is, you know, not everybody puts things

1 in writing. And that's why we have exceptions to
2 the statutes of fraud. And what we don't want to
3 have happen is have individuals that, you know,
4 partially perform a contract, whether it be verbal
5 or there's some component, and then you have a
6 fraudster create a document and try to use that to
7 undermine the process. And this is why we have a
8 trial. This is why we're going to have testimony.
9 And I think that that is, again, a key reason why
10 the motion for summary judgment should be denied.
11 We're flying an interpreter in from California.
12 We've got a transcriber that'll be here all next
13 week. Let's argue the facts. Let's see what the
14 facts show, and then we'll have -- Your Honor will
15 make a decision. And that's why I believe the
16 motion for partial summary judgment should be
17 denied and we should go into the fact-finding phase
18 of this trial.

19 THE COURT: All right.

20 MR. PAAVOLA: Your Honor, just -- just briefly.

21 THE COURT: Yes, sir.

22 MR. PAAVOLA: There's nothing new. What he's saying is
23 he deposed my client 14 months after the case
24 started and got her story, and that's -- nothing's
25 changed. So I just want to say that. That's --

1 that's what he's saying. He's deposed her, and he
2 found what the story was, and he's upset at --
3 nothing changed about that.

4 And, two, we're not using a subsequent oral
5 agreement on different stores. We're not trying to
6 enforce it. That's -- that's completely opposite
7 of what the statute of frauds is. If we were
8 trying to, that would be problematic for us, but
9 we're not trying to. It's just evidence of what --
10 you know, it's evidence of what the agreement was.

11 And the duress, I mean, you're going to hear
12 that. That's -- that's still the case. And we're
13 still going to show evidence of -- that was given
14 under duress. But it doesn't change the fact we're
15 not -- we're not using that to force an agreement.
16 So it doesn't -- it doesn't apply. I appreciate
17 it, Your Honor.

18 THE COURT: The motion for partial summary judgment is
19 denied. All right. Do you need an order for that?

20 MR. PAAVOLA: No, Your Honor.

21 THE COURT: All right. All right. Now you had a motion
22 in limine?

23 MR. PAAVOLA: Yes, Your Honor. Does Your Honor need a
24 copy of it or --

25 THE COURT: No.

1 MR. PAAVOLA: Okay. So our motion in limine, this
2 concerns a trial order. And the reason I'm
3 bringing it up today is because if the Court is
4 inclined to -- to, you know, change the typical
5 order of a trial in this case, it would require one
6 of our experts to come on Monday. So we have --
7 their side has been saying, you know, "It's a oral
8 agreement, oral agreement," you know. We have a
9 written agreement that shows, like, a sales price
10 at \$250,000, signed by the parties. I think we
11 attached a copy of our -- the motion for partial
12 summary judgment. So I think it's -- you might
13 have seen it already. So we have a contract. And
14 what we would say is -- you know, what they want to
15 get into is all parol evidence, that contract.
16 That contract establishes the agreement of the
17 parties. Anything they want to talk about is -- is
18 before that contract was -- was put in place.

19 The way they're attempting to get around the
20 contract is to say, "Well, it's fake. She forged
21 his signature. It's not a real signature. She
22 must've done something to get it on there." Okay.
23 So because that is their position, we think if --
24 if -- we think that question should be asked first.
25 That is, is this his signature? I mean, she admits

1 that her signature -- is this Tok Kim's signature?
2 If that's the case, then all the parol evidence,
3 all the information and testimony about what --
4 what we talked about before the contract was
5 signed, all the negotiations, that shouldn't come
6 into evidence. We can save a lot of time in the
7 court. So we think that issue should be heard
8 first. If the --

9 THE COURT: Do you have --

10 MR. PAAVOLA: If the Court finds it's -- it's a -- it is
11 his signature, then we don't need to get into all
12 the parol evidence.

13 THE COURT: Do you have a handwriting expert?

14 MR. PAAVOLA: We do have a handwriting expert, and he's
15 the one that would have to come Monday if you want
16 to hear that information.

17 THE COURT: Is he local?

18 MR. PAAVOLA: He's in Charleston.

19 THE COURT: He's in Charleston, so --

20 MR. PAAVOLA: So he can get here. He can get here in, I
21 think he said, a couple of hours. But -- well, you
22 know.

23 THE COURT: Does he -- why can't he come Monday? I
24 mean, why --

25 MR. PAAVOLA: Well, it's -- it's their case. I'm not --

1 I'm not going to call him -- I'm not going to be
2 able to call him -- it's their case -- first.

3 THE COURT: Mr. Brown, are y'all going to call him?

4 MR. BROWN: Thank you, Your Honor. We do not anticipate
5 to call him. But I -- I think I have some
6 information that will make this a little clearer.
7 But I don't want to interrupt Mr. Paavola.

8 THE COURT: Okay. Well, go ahead. Go ahead and
9 interrupt him.

10 MR. BROWN: Okay. Well, you know, so -- so the key
11 premise -- and I will say, Dr. Fenoff, great guy,
12 the handwriting expert, and I've learned a lot.
13 And -- and I have a copy of his deposition. Could
14 I hand it to the Court?

15 THE COURT: Sure.

16 MR. BROWN: Yeah. And -- and I have a copy for David,
17 with it marked. So what's really interesting that
18 we learned from Dr. Fenoff, and I -- and I marked
19 copies of the deposition transcript, is that he can
20 only testify that he believes, based on looking at
21 samples, that that's Tok Kim's signature. What he
22 cannot testify to is that it was superimposed. So
23 the entire premise of this motion, which not only
24 did we receive today, but we had to meet and confer
25 -- and this was not brought up at all. So -- so

1 besides this kind of ambush the day before trial,
2 the -- the key premise of their motion is that
3 somehow Dr. Fenoff can solve this issue of whether
4 Tok Kim physically signed the contract. And what
5 you'll see from the actual deposition testimony is
6 that he cannot do that because original cannot be
7 found. And for three years we have been asking,
8 "Where's the original? Where's the original?
9 Where's the original?" So, I mean, I guess as an
10 initial matter, we're the plaintiff. I believe
11 we're entitled to have our case. But as you'll see
12 from the -- I mean, I'm -- I'm not hiding the ball.
13 Like, Dr. Fenoff, it's going to be a pretty short
14 and sweet cross-examination when -- when he cannot
15 say that Tok Kim signed that. He can only say,
16 "That is -- I believe that's his signature. But
17 the technology is so good that it's impossible for
18 me, without the original, to see whether it is
19 superimposed."

20 THE COURT: How long is he going to be on the stand for
21 direct testimony?

22 MR. PAAVOLA: I think he'd probably be -- I'd say two
23 hours would be the -- I feel like that's probably
24 the max on direct. I feel like that may even be
25 high. I don't -- I'm trying to think of -- but,

1 yeah, maybe a couple of hours.

2 MR. BROWN: Would he not be available on Tuesday? I

3 mean, you know, our position is we -- we -- we

4 don't think --

5 THE COURT: (To Mr. Paavola) He can't come on Tuesday?

6 MR. PAAVOLA: He's actually not. He's actually

7 available Monday -- he teaches at The Citadel.

8 THE COURT: Uh-huh.

9 MR. PAAVOLA: He's available Monday, Wednesday, and

10 Friday. I assumed if -- if he didn't go Monday, he

11 could come Wednesday. But because we think it's a

12 threshold issue of how the -- how the trial goes,

13 if the Court finds -- agrees it's his signature, I

14 think the witnesses can -- so I guess the -- the

15 idea would be that the witnesses can testify as to

16 the signing of the contract alone. The Court

17 decides it, and then, if you decide one way or the

18 other, that's how the rest of the case proceeds.

19 THE COURT: He's your witness?

20 MR. PAAVOLA: He's our witness.

21 THE COURT: He's your witness?

22 MR. PAAVOLA: Yes.

23 THE COURT: (To Mr. Brown) And you're going to call

24 him?

25 MR. BROWN: No. We're not. And that's what I think is,

1 like, kind of --

2 THE COURT: Oh, okay.

3 MR. BROWN: -- bizarre about this, is he's trying to
4 dictate -- defendants are trying to dictate how we
5 do the case. And again -- and defendants, I don't
6 think, have really understood what Dr. Fenoff can
7 actually testify to. They make it seem that if Dr.
8 Fenoff comes here, he can definitively say that Mr.
9 Kim signed the contract. And actually, he not only
10 cannot do that, he's testified to that. And I'm --
11 because we believe this is such kind of a clear --
12 clear-cut case, Wednesday will be fine. I don't
13 think we'll take that long because --

14 THE COURT: All right. (To Mr. Paavola) Is that -- you
15 say he teaches Monday, Wednesday, and Friday -- or
16 he's available Monday, Wednesday, and Friday?

17 MR. PAAVOLA: Yes, Your Honor. But because -- because
18 you don't have to get into parol evidence. If this
19 contract -- if you -- if you find this contract is
20 -- is real, the party signed it, parol evidence
21 doesn't come in unless there's an ambiguity.
22 There's no -- been no allegations that it's
23 ambiguous, just that it's a fake. If the Court
24 finds that it's not fake, that it's genuine, then
25 all of the pre-contract they want to get into

1 doesn't come into evidence because it's not
2 relevant. You know, I mean, it can't come in
3 because of parol evidence. So that's why it's a
4 threshold issue.

5 THE COURT: Okay. Motion in limine. So what exactly
6 are you asking for? You said -- you said he'd have
7 to come on Monday.

8 MR. PAAVOLA: I mean, what I'd ask for would be the
9 Court to -- to hear testimony on this signature of
10 the -- of the -- of the contract. Which is their
11 client can testify to it, our client can testify to
12 it, Mr. Fenoff can testify to it. I think those
13 are probably the three people that can testify to
14 the signature on the -- on the contract, whether
15 it's real or not.

16 MR. BROWN: Your Honor, I just feel my client would be
17 very prejudiced if -- if now defendants can dictate
18 how I put on my case in chief. And -- and --

19 THE COURT: Okay. Yeah. I -- I don't -- I'm not
20 comfortable with that. Let the plaintiff put their
21 case up, call his witnesses. You put your case up,
22 call your witnesses after cross-examining his
23 witnesses. And we'll probably get a motion for --
24 for a non-suit at some point. And, I think, let's
25 do it the old-fashioned way. Just have the opening

1 statements, plaintiff calls his witnesses, any
2 pretrial motions that are left over. And we've
3 blocked out the whole week for -- for this. So
4 that should give us some flexibility.

5 MR. PAAVOLA: Thank you, Your Honor.

6 MR. BROWN: Thank you, Your Honor. And then one thing,
7 if -- if -- Your Honor, we wanted to address,
8 though, and we brought it up in our brief, is, you
9 know, I guess we -- since they made this motion a
10 couple of hours ago, we can make a motion to
11 exclude what we deem to be the -- the fraudulent
12 business asset purchase agreement under the best
13 evidence rule. And I have a copy of my pretrial
14 brief and can kind of go over why we think that
15 that even shouldn't be allowed into evidence, or we
16 could do that Monday.

17 THE COURT: Okay. Let's do that before the trial on
18 Monday.

19 MR. BROWN: Okay.

20 THE COURT: All right. We'll start -- building opens at
21 8:30. I don't know if you're going to be that
22 early, but we start about ten. We'll work until
23 about 12:30, break for about an hour for lunch,
24 come back at -- at 1:30, and that'll be our daily
25 routine. And be prepared for opening statements.

1 And let your witnesses be here around ten o'clock.

2 MR. BROWN: Thank you, Your Honor.

3 THE COURT: Do you want to sequester any witnesses?

4 MR. BROWN: I -- I don't think so.

5 THE COURT: (To Mr. Paavola) You don't need to
6 sequester any of your witnesses, either?

7 MR. PAAVOLA: I don't know if we're going to have
8 anybody -- it may depends who's -- well, yeah. I
9 mean, depends who's here. But yeah, may want to
10 sequester.

11 THE COURT: Okay. We'll deal with that Monday then.

12 MR. PAAVOLA: Yeah. I'll have to think about that, Your
13 Honor.

14 THE COURT: Yes, sir, Mr. Belser?

15 MR. BELSER: Yeah. Just one -- just one question that's
16 -- how late do we normally go? And the reason I
17 ask is we have -- it's just a personal family
18 matter. We have two foreign exchange students
19 staying with us for two weeks. And I just need to
20 tell my wife what time she can expect me.

21 THE COURT: Oh, we don't -- they -- they kick us out at
22 five in the building, so --

23 MR. BELSER: Okay.

24 THE COURT: Yeah. They -- they made me promise to never
25 -- never work past five o'clock.

1 MR. BELSER: Well, I was looking for a reason to, like,
2 miss, like, some activities, so, you know -- no.

3 THE COURT: Yeah. That's fine. We're flexible.

4 MR. BELSER: Thank you, Your Honor.

5 THE COURT: Yeah. We're flexible.

6 MR. BROWN: Oh, and -- and, Your Honor, one more thing.
7 We sent a deposition designation. And I told
8 Delores we have Andy Kim's deposition. I have a
9 sealed copy. I don't know if Your Honor wanted
10 that.

11 THE COURT: Hold on to to that until the time you want
12 to introduce it.

13 MR. BROWN: Okay. Thank you.

14 THE COURT: Yeah. Hold on. I'll break the seal and put
15 on the record that we broke the seal --

16 MR. BROWN: Okay.

17 THE COURT: -- and we'll keep the deposition.

18 Okay. Thank you. We stand in recess.

19 MR. BROWN: Thank you, Your Honor.

20 MR. PAAVOLA: Thank you, Your Honor.

21 MR. BELSER: Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 (Whereupon, the hearing was
24 concluded at 4:11 p.m.)

25 (*This transcript may contain quoted material.

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2 by the speaker.)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATE

Be it known that Julie Taradash took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large and that by virtue thereof I was duly authorized to administer an oath;

that the deponent/witness, if any, was first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Julie Taradash

Date: 6/20/2025

Notary public for South Carolina

My commission expires September 15, 2025

*Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No.: 2021-CP-40-05596

KIM ENTERPRISES, LLC,
Plaintiff,

v.

YOUMI CHO, K&C BEAUTY, LLC,
and SANG CHO,
Defendants.

_____/

YOUMI CHO AND K&C BEAUTY, LLC,
Counterclaim Plaintiffs,

v.

KIM ENTERPRISES, LLC and TOK KIM,
Counterclaim Defendants.

T R I A L - VOLUME I
BEFORE THE HONORABLE JOSEPH M. STRICKLAND,
MASTER IN EQUITY

DATE TAKEN: Monday, October 21, 2024

TIME START: 10:21 a.m.

TIME END: 4:22 p.m.

LOCATION: Richland County Central Court
2500 Decker Boulevard
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

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P R O C E E D I N G S

- - -

THE COURT: This is Civil Action Number 2021-CP-40-5596. Kim Enterprises, LLC, against Youmi Cho and others.

The pleas indicate that this is a breach of contract action. I understand there's some motions before we start the hearing on the merits.

All right. The first motion, please, by the plaintiff or by the defendant?

By the plaintiff?

MR. BROWN: Yes, Your Honor. And I have a verbal motion. I did not file anything. But we would like to make a motion in limine to exclude the introduction or reference to the alleged APA under best evidence rule.

May I be heard?

THE COURT: What's the APA?

MR. BROWN: The Asset Purchase Agreement, the eight-page document that the defendants refer to as the contract in this matter.

THE COURT: All right. Please proceed.

MR. BROWN: Thank you, Your Honor.

1 In our pretrial brief, we addressed that --
2 again, we refer to it as the APA. I believe
3 it's entitled Business Asset Purchase Agreement
4 should be excluded under the best evidence Rule
5 1002.

6 The best evidence rule is really tailor
7 made for this situation and provides that when
8 the contents of the writing are thought to be
9 provided, the original must be produced unless
10 some reason can be shown for its unavailability.

11 And we submit that Youmi Cho has provided
12 no valid reason for the purported Purchase
13 Agreement disappearance other than a
14 self-serving assertion that it was provided to
15 an unnamed individual at an unnamed real estate
16 agency. And the unnamed individual at the
17 unnamed real estate agency will not return her
18 or her counsel's request for the original.

19 So not only has my client been begging for
20 three years to see this original agreement, but
21 I think the pretrial brief that Defendant sent
22 on Friday evening is I think the best evidence
23 of the lack of the APA's existence.

24 The defendants, in their brief, solely say
25 it's their position there's sufficient evidence

1 of its authenticity and reliability.

2 I mean, clearly based on all of the
3 pretrial motions that have been filed, a lot of
4 time defendants have spent on this case but that
5 there's no reference undertaken that they tried
6 to find this original agreement.

7 If the APA did exist, there would have been
8 some identification at the bare minimum of who
9 this alleged person was, who this alleged real
10 estate entity was. But defendants didn't do any
11 of those things in the last three years or the
12 last week.

13 And if it would help, Your Honor -- I have
14 some examples of -- I have a nearly
15 three-year-old email where counsel for Kim asked
16 counsel for Cho for the original. I have a
17 two-and-a-half-year-old discovery response from
18 defendants saying that they are searching for
19 it. And I have a year-and-a-half-old deposition
20 testimony from Defendant Youmi Cho saying she's
21 looking for it.

22 So I just submit that the Court cannot
23 reward this behavior under the best evidence
24 rule. I understand that precluding the document
25 would seem harsh, but defendants have not even

1 taken a modicum of interest or desire to try to
2 find this purported agreement or even just tell
3 us who it was given to or identify that person
4 to come speak today or speak in a deposition.

5 And also --

6 THE COURT: For clarity of the record, what
7 is the best evidence rule?

8 MR. BROWN: The best evidence rule that is
9 1002 that provides to prove the content of a
10 writing, recording, or photograph, the original
11 is provided -- the original will be provided.
12 And I cite a case that -- the case law that
13 provided is at Penton v. J.F. Cleckley, 326 SC
14 275. Unless some reason is shown for its
15 unavailability.

16 And there's just been -- it's not only been
17 no reason shown, it's been kind of, you know,
18 trying to take a knee until the trial and hope
19 that the Court just allows it.

20 And, again, it would greatly simplify so we
21 wouldn't need to get into the creation of the
22 document and immigration paperwork. And then we
23 wouldn't need Dr. Fenoff to come here and
24 testify as to the signature. We wouldn't need
25 the accounting expert to testify. His testimony

1 is basically just that it matches up with the
2 purported number of the agreement. And then we
3 wouldn't need our rebuttal witness.

4 So under the best evidence rule, I mean,
5 this trial should be done today, maybe tomorrow,
6 because it would greatly simplify these matters.

7 So, again, under the best evidence rule
8 that we believe that the contract should not be
9 entered into evidence and any discussions of it
10 because there's no reason for its
11 unavailability.

12 And like I said, I have copies of those
13 various emails and interrogatory answers and the
14 deposition testimony, if Your Honor would like
15 to see them. Just kind of the last three years
16 of us trying to find out where this supposed
17 agreement exists and who has it. I can bring
18 those up if you would like, Your Honor.

19 THE COURT: No, that's fine.

20 Mr. Paavola.

21 MR. PAAVOLA: My client does not have the
22 original document. We made that clear in
23 discovery. My client also explained in her
24 deposition that they tried to obtain the
25 original. Believes it was given to the landlord

1 in the process of assigning the lease from Kim
2 Enterprises to K&C Beauty.

3 THE COURT: Where did the copy come from?

4 MR. PAAVOLA: They have a copy. I mean, in
5 the records they obviously kept a copy, had a
6 copy, but I believe the landlord required the
7 original to be given to the landlord. And
8 ultimately the landlord has changed multiple
9 times over the course of -- as they do with
10 commercial -- this is a commercial strip mall.
11 It has changed, and they haven't been able to
12 get it.

13 So we think under Rule 1004, if original is
14 lost or destroyed, that duplicates can come in.
15 We also have -- there's two documents. There's
16 the asset purchase agreement, which Mr. Brown
17 referred to. There's also the Bill of Sale.
18 Those go hand in hand. So they admit they
19 signed the Bill of Sale. That was in a
20 document. So it would make no sense to exclude
21 the agreement and keep the Bill of Sale. They
22 go hand in hand.

23 The original here, again, it's been lost.
24 We don't have it. It's not required.

25 Also under the rules, under South Carolina

1 Code 19-5-510, Uniform Business Records Act as
2 evidence: A record of an act, condition, or
3 event, insofar as relevant, shall be competent
4 as if the custodian or other witness testifies
5 to its identity and the mode of its preparation,
6 if it was made in the course of business.

7 So our client will be able to testify as to
8 how it was created and how it was made and it
9 was kept as a business record of the purchase.

10 So for those reasons it should come in.
11 Obviously, we'll have to lay the foundation.

12 We also have a handwriting expert who's
13 going to come in and will say -- analyze -- they
14 say it's a fake signature. We'll have a
15 handwriting expert says that it's not fake.

16 So there's plenty of evidence to, you know,
17 authenticate the document and admit it. I mean,
18 it would be highly prejudicial to exclude it.

19 And I have a brief, Your Honor. I'm happy
20 to hand up an original contract and what the
21 rules are to Your Honor.

22 THE COURT: Hold on a minute.

23 MR. BROWN: Thank you, Your Honor.

24 I don't think this would be considered a
25 business record. This is a record of what

1 they're saying is a contract. And I point also
2 to Rule 1003 that says, you know, duplicate is
3 admissibility to the same extent as the original
4 unless the genuine question is raised as the
5 authenticity of the original.

6 And, again, I think the statement that
7 Dr. Fenoff is somehow going to prove
8 originality, that that's just not true.

9 Dr. Fenoff, I believe I handed up his
10 deposition transcript last Friday, cannot speak
11 to whether Tok Kim physically signed that
12 document.

13 And, again, I just go back to the
14 prejudice. There is no evidence they made any
15 effort. So to intentionally avoid making any
16 effort so they can come down to trial and use
17 what we say is a fraudulent document, that only
18 wreaks of bad faith and will encourage the type
19 of unscrupulous business behavior in other
20 circumstances.

21 Again, the defendants had the right to
22 identify the person who they gave it to. They
23 could have said, "Here's who we talked to." We
24 could have deposed that person. They could have
25 even given an affidavit. They could have called

1 him as a witness today. But, again, trying to
2 undertake no effort for three years flies in the
3 face of equity and fairness. And, again, it's
4 why we have these rules, 1002 and 1003.

5 I just submit that, again, although it
6 might seem like a harsh result, my client did
7 not create the issue, but my client, at the same
8 time, cannot tell defendants how to prepare
9 their case.

10 And we submit that allowing a document in
11 under these circumstances would be violative of
12 Rule 102 and 103. Thank you.

13 THE COURT: Okay. Your motion is denied.
14 Okay. Any other motions in limine?

15 MR. PAAVOLA: Yes, Your Honor. We have
16 several.

17 Yes, Your Honor. For the record, we have
18 several stipulations of the parties agreed to
19 pretrial, so we have written stipulations. I
20 just wanted to make sure they're in the record
21 and seek your guidance on how best to do that.

22 THE COURT: Okay. We'll just poll the
23 opposing side to see if they really did
24 stipulate to that.

25 MR. PAAVOLA: Yes. We have signed

1 documents here.

2 The first stipulation is -- and I think it
3 will -- we'll cover this fine -- authenticity
4 for recorded documents, the rules would suggest
5 you need an original of the recorded document
6 from the Register of Deeds office. They agreed
7 to stipulate that you don't need -- the original
8 copies are okay. So I'm happy to hand that up
9 to Your Honor.

10 THE COURT: All right.

11 MR. PAAVOLA: It's signed.

12 The second stipulation is a number of --
13 because we're getting into handwriting evidence,
14 and there's at least 26 or 27 documents that
15 relate to Mr. Kim's signature, a number of the
16 documents he already admitted to signing. So
17 the ones he admitted to signing, to save time in
18 trial for me asking him, we're going to
19 stipulate to the documents he's already admitted
20 to sign so I don't have to ask him these
21 questions during trial.

22 THE COURT: All right.

23 MR. PAAVOLA: There's a list of documents
24 on the stipulations. And so I'm happy to hand
25 those to Your Honor.

1 THE COURT: All right. Any objection?

2 MR. BROWN: No objection yet. We've agreed
3 to speed things along.

4 THE COURT: All right. Thank you.

5 MR. PAAVOLA: Next, Your Honor, we have a
6 motion in limine on parol evidence.

7 And, Your Honor, we touched on this Friday,
8 and I just wanted to raise it to your attention
9 again. The fact that we have a signed agreement
10 contract we can look at this morning, it
11 excludes any, you know, discussions,
12 negotiations, facts, testimony about the
13 negotiations in the contract prior to the signed
14 agreement.

15 So we say for parol evidence, anything to
16 do with the negotiation of what the deal was
17 prior to being signed should be excluded under
18 the parol evidence rule. And so we read that
19 from Friday. There's no exception to that, and
20 we have a -- hand you a copy of the file. I'm
21 happy to give you a copy of the filed motion in
22 limine to exclude parol evidence but because
23 there's a writing, it's inadmissible. It's not
24 just you can hear it and weigh it, it's actually
25 inadmissible evidence.

1 THE COURT: Thank you.

2 Mr. Brown.

3 MR. BROWN: Thank you, Your Honor.

4 We reincorporate all the arguments that we
5 made on Friday regarding this issue. And again,
6 our position is since -- that we contend this is
7 a fraudulent document and that my client did not
8 sign it, using a merger clause to prevent
9 vindication of whether that was signed would
10 lead to crazy results, whether you have verbal
11 agreements like this or even written agreements.

12 So, again, we reincorporate our arguments
13 from Friday that the motion should be denied for
14 that reason.

15 THE COURT: Okay. Motion is denied.

16 MR. PAAVOLA: Thank you, Your Honor.

17 We also have filed a motion in limine to
18 exclude evidence regarding Youmi Cho's
19 immigration matters.

20 Other than the general background of how
21 she arrived in the United States and what she's
22 here under, we think any questioning evidence,
23 the documents that related to the form she
24 filled out, or allegations of immigration fraud
25 all should be excluded. They're not relevant to

1 this case and would be highly prejudicial.

2 So for those reasons, we think any -- other
3 than just background because we have to
4 understand how she's in the United States. But
5 any of the other information, insinuations about
6 fraud should be excluded under the -- as
7 irrelevant and prejudicial, Your Honor.

8 THE COURT: All right.

9 Mr. Brown.

10 MR. BROWN: Thank you, Your Honor.

11 Defendants' entire case rests on a document
12 that was created as part of the immigration
13 process, and so if the APA is allowed into
14 evidence, which it has been, Your Honor, the
15 questions regarding that process should be
16 allowed.

17 And also, Youmi Cho's immigration matters
18 are extremely relevant because our position is
19 the entire reason that these falsehoods are
20 being perpetrated is so that she can remain in
21 this country. That's why we're faced with
22 things like Sang Cho's texted messages and
23 irrefutable evidence that the position is
24 incorrect. The why that she is perpetuating,
25 what we contend is falsehoods, is extremely

1 relevant.

2 Defendants in the motion in limine state
3 that testimony is not relevant because it does
4 not have any tendency to make the determination
5 of a fact or consequence of the purchase price
6 more or less probably. We contend that that's
7 not true in the slightest.

8 The immigration process explains by the APA
9 was created as well as demonstrates that Mr. Kim
10 was not involved in its creation. That's what
11 Andy Kim's deposition testimony will say.

12 Youmi Cho's immigration process shows that
13 the APA was created solely to perpetuate
14 immigration fraud, not to memorialize the terms
15 of the agreement. That's what we contend.
16 That's why the agreement was created, which
17 is -- that dispute is the entire issue of the
18 case.

19 And also, again, the immigration matters go
20 to Youmi Cho's motivation to stick to the story
21 regardless of what comes to light. And most
22 telling, Defendants contend in their motion that
23 if this is allowed, that Youmi Cho could be
24 required or could grant her Fifth Amendment
25 right to self-incrimination, which, again, is

1 not only telling, but she has that right and she
2 can assert it, if she would like to, during this
3 trial.

4 So the fact that it's not helpful
5 information to Defendants' case is not a reason
6 to exclude it, and that's why we believe that
7 motion should be denied.

8 THE COURT: All right.

9 MR. PAAVOLA: Your Honor, if I might.

10 THE COURT: Yes, sir.

11 MR. PAAVOLA: We have designated testimony
12 from Andy Kim, immigration attorney, on this
13 issue. And I think what we said in our motion
14 is we are not objecting to the question that is
15 if the price was 800,000, would 250,000 have
16 been enough to qualify under immigration? We're
17 not objecting to that.

18 But I think when you get beyond that,
19 you're getting way outside this breach of
20 contract, and there's some alleged fraud and
21 scheme, I think that's highly prejudicial and
22 very outside of this case, which is what was the
23 price for the beauty store?

24 THE COURT: Your motion is denied.

25 Any other pretrial?

1 MR. PAAVOLA: Two more, Your Honor.

2 MS. THIBAUT: May it please the Court,
3 Your Honor.

4 THE COURT: Yes, ma'am.

5 MS. THIBAUT: The defendants also filed a
6 motion in limine to establish admitted facts. I
7 can pass up a copy, if you need.

8 THE COURT: You've already passed them up.

9 MS. THIBAUT: Okay. And this motion is
10 just to establish the admitted facts under Rules
11 103 and 104 of the South Carolina Rules of
12 Evidence and under Rules 8 and 36 of the
13 South Carolina Rules of Civil Procedure.

14 So on June 16th of 2022, Plaintiff answered
15 Defendants' first request for admissions and
16 made certain admissions of fact. And then again
17 on April 26, 2023, Plaintiffs answered
18 Defendants' second request for admissions and
19 made additional assertions of facts. And both
20 of those are attached to the motion in limine.

21 So we're just seeking that under Rule 36(b)
22 of the Rules of South Carolina Civil Procedure,
23 that any matter admitted under this rule is
24 conclusively established unless the Court, on
25 motion, permits withdraw or amendment of the

1 admission.

2 Here Plaintiffs haven't made any such
3 motion, so as such they should be bound to these
4 admissions. And we request that the Court
5 conclude that any evidence that contradicts
6 Plaintiff's admissions during the trial be
7 excluded.

8 THE COURT: Okay. Mr. Brown.

9 MR. BROWN: We do not object to this
10 motion, and we do not intend or will not take an
11 inconsistent position with the facts we've
12 admitted. Thank you.

13 THE COURT: All right. The motion is
14 granted.

15 MS. THIBAUT: One last one, Your Honor.

16 Defendants also filed a motion in limine to
17 exclude evidence regarding Sang Cho's employment
18 verification and his mortgage application. And
19 we want this excluded pursuant to Rules 401,
20 402, and 403 of the South Carolina Rules of
21 Evidence.

22 Basically this case is over the sale of a
23 beauty store and the parties' disagreement of
24 whether that was for an oral agreement for 800-
25 or a written purchase agreement of 250,000. And

1 Sang Cho's mortgage application and employment
2 verification isn't relevant to those admissions.
3 The employment verification requests were
4 prepared in August of 2021. That's well after
5 the alleged oral contract that would have
6 occurred in December of 2020. So, therefore, we
7 don't believe this is relevant.

8 And then as to any other of the causes of
9 actions against Sang Cho, this evidence doesn't
10 make it more or less likely that he was a
11 fiduciary to Kim Enterprises because he was not
12 an employee there at that time. And it has
13 nothing to do with tortious interference of a
14 contract. So as such, we ask that this
15 information be excluded.

16 THE COURT: Okay. Mr. Brown.

17 MR. BROWN: Thank you, Your Honor.

18 Just to clarify, the defendants' motion in
19 limine appears to argue their version of events
20 regarding the contract being a singular point in
21 time based on the -- what we call the purported
22 business agreement. As we allege, the contract
23 was to occur the payments over a three-year
24 period.

25 So we disagree with the contention that the

1 verification form was something that incurred,
2 you know, outside the bounds of time of the
3 agreement. The issue with the verification form
4 occurred while the contract was in process, and
5 we believe that the creation of this form
6 creates a question of fact. Whether it served
7 as a catalyst as to Defendants undoing the
8 agreement with my client.

9 And we submit that it's kind of the straw
10 that broke the camel's back. And this is a
11 question of fact that the Court can take under
12 advisement being it's a bench trial.

13 THE COURT: Okay. The motion is denied.

14 Okay. Are we ready for opening statements?

15 MR. BROWN: Yes, Your Honor.

16 MR. PAAVOLA: Yes, Your Honor.

17 THE COURT: All right. The plaintiff may
18 proceed.

19 MR. BROWN: Your Honor, is it okay -- I
20 have my laptop opening here. Can I address the
21 Court opening here instead of the podium?

22 THE COURT: Yes.

23 MR. BROWN: Thank you, Your Honor.

24 May it please the Court. Creston Brown for
25 plaintiff Kim Enterprises, LLC, and counterclaim

1 defendants Kim Enterprises, LLC, and Tok Kim.

2 I appreciate your time this morning, and
3 I'd like to just go over a few slides evidencing
4 what we intend to show at this trial.

5 So this lawsuit is about the sale of the
6 Beauty Supply Store that we refer to as the
7 "Broad River beauty store" today.

8 Really the issue in this case is was the
9 sales price \$800,000 or \$250,000?

10 So just to kind of lay the stage of kind of
11 the main characters involved, who are all family
12 members, is my client, Tok Kim. He's the owner
13 of the plaintiff, and he's the counterclaim
14 defendant. He owns Kim Enterprises, LLC, which
15 is an LLC engaged in the hair and beauty supply
16 business.

17 And so he previously -- this is my client
18 Mr. Kim.

19 Thank you.

20 And he previously had four stores in
21 Columbia and sold the one at issue, the Broad
22 River store, so now he has three. He is the
23 uncle of defendants Youmi Cho and Sang Cho. And
24 he speaks Korean and will require an
25 interpreter.

1 Youmi Cho, she is a defendant and
2 counterclaim plaintiff. She is Tok Kim's niece.
3 Her mother is Tok Kim's sister. She was raised
4 and lived in South Korea until 2019 and came to
5 the U.S.A. on an F-1 academic visa in 2019. And
6 then part of that, she brought her mother, who
7 is Tok Kim's sister, and her children to the
8 U.S.

9 We will show that she did not like
10 schooling and she wanted to own a business like
11 her uncle. And she agreed to purchase the
12 Broad River store from Tok Kim, and to do that
13 she was able to get an E-2 investor visa, which
14 does not really have a sunset like an F-1. It
15 can be -- we will show testimony from the
16 immigration attorney, you know, renews every two
17 years as long as the business is showing that it
18 has viable economic impact.

19 And she speaks Korean and will also require
20 an interpreter.

21 The third character is also a defendant,
22 Sang Cho. He's Youmi Cho's brother and Tok
23 Kim's nephew. He came to the U.S.A. when he was
24 16 years old and was taken care of by his aunt
25 and uncle, Tok Kim and Patricia Kim.

1 He started working for Kim Enterprises in
2 2011 and started working at the store at issue
3 and has been there since January 1st, 2013,
4 almost 12 years ago.

5 He speaks English fluidly, and he worked
6 for his sister once she purchased the
7 Broad River store. And he is heavily dependent
8 on his sister, Youmi Cho.

9 So the agreement of -- how did this
10 agreement come to be? What we will show is that
11 Youmi Cho was in the U.S. on a limited F-1
12 student visa. She did not want to continue her
13 schooling. And we will show that she asked her
14 uncle if she could buy one of his four beauty
15 supply stores and obtain an E-2 visa.

16 So we will show that the \$800,000 purchase
17 price agreed upon was verbal but also
18 memorialized with a \$250,000 down payment and 36
19 checks for \$15,000 monthly payments. And the
20 checks, which we have and will enter into
21 evidence, we have 32 of the 36 left. And the
22 only thing -- the only I guess check that was
23 not written was for that final 10,000, which
24 would have been a cash payment.

25 And we will show -- and based on Andy Kim's

1 testimony that Tok Kim recommended Youmi Cho
2 contact Andy Kim, an immigration lawyer, for
3 application. And interestingly a vendor of his
4 named Andy Kim had used the Andy Kim lawyer
5 before, and that's how Youmi Cho got hooked up
6 with Andy Kim, the lawyer.

7 Like I said, we're going to be the only
8 party in this case that will produce an actual
9 original document evidencing the deal. And
10 while it started out with 36 checks, three of
11 the checks were exchanged for cash and one was
12 deposited. And so we have 32 checks at our
13 table here today.

14 So there was partial performance. We will
15 show that Mr. Kim got a \$250,000 down payment in
16 December of 2020. The first \$15,000 payment
17 went without issue in May of 2021. The second
18 \$15,000 payment occurred in June. The third
19 occurred in July, and the fourth occurred in
20 August. And the fifth monthly payment stopped.

21 So Youmi Cho has paid her uncle \$310,000
22 and is still owed \$490,000 as a balance.

23 So we will show evidence that the Business
24 Asset Purchase Agreement provided by Youmi Cho
25 is a fraudulent document. Mr. Kim had never

1 seen it before. It listed a \$250,000 purchase
2 price. And Youmi Cho, in her deposition,
3 testified she never read it before. You see
4 right here, she said she looked for two things:
5 She said it was for K&C and confirmed what she
6 thought was a dollar amount. And so in the
7 beginning we were wondering why did this
8 document -- how did it come to be? And we
9 learned it was used in the E-2 investor visa
10 application.

11 Again, as we contend and is kind of
12 evidence of just being used for that purpose and
13 not to memorialize the terms of the sale has an
14 Alaska venue provision, and we do not contend
15 this document is -- was created for the purpose
16 of memorializing the terms of the sale.

17 So we will show how did this come to be?
18 So Andy Kim's deposition, you will hear her
19 immigration attorney will speak to how the E-2
20 investor visa process works. And we will
21 show -- or Mr. Kim will testify that he did not
22 sign this agreement.

23 And Defendant's own handwriting expert will
24 testify that cut and paste technology is so
25 advanced, he cannot testify whether Mr. Kim's

1 signature was cut and pasted on the document.

2 We will also show that little to no effort
3 has been undertaken by Defendants to try to find
4 this document. And I would like to state that
5 there is no evidence that Andy Kim knew of this
6 purported immigration fraud. Andy Kim testified
7 he never would have assisted Youmi Cho if he
8 knew what the agreement was for.

9 So just a little bit about the -- we will
10 show the E-2 investor visa application. So
11 again, it's managed by the U.S. Department of
12 Homeland Security and allows entrepreneurs from
13 treaty countries, like South Korea, to come to
14 the U.S.A. if they want to make an economic
15 impact.

16 So again, it's an economic development
17 initiative. But one of the key terms is each
18 investor must make at least a 50 percent
19 investment in the business. And so as you can
20 imagine, it's supposed to ensure skin in the
21 game and supposed to prevent abuse. Again,
22 supposed to, but sometimes things slip through.

23 So just kind of -- you'll see in Andy Kim's
24 testimony is the reason these documents, the
25 Business Purchase Agreement that was created by

1 Andy Kim so he could submit to the Department of
2 Homeland Security and say, yes, based on what my
3 client is telling me, this is a legit
4 transaction. And you'll also see emails from
5 Andy Kim saying, you know, to send back a copy
6 of the down payment, \$250,000 check, again
7 showing evidence of the deal as shown by Youmi.

8 So just, again, a quick illustration. So
9 if you want to purchase a business for \$800,000,
10 you've got to put 400- down. So 250,000 will
11 not work.

12 So what did Youmi Cho tell the Department
13 of Homeland Security? We will show that she
14 showed she purchased the entire business for
15 \$250,000. As I said earlier, we will also show
16 that Youmi Cho testified she didn't even read
17 the entire agreement.

18 And we will learn from Andy Kim's testimony
19 that he never spoke to Tok Kim about the
20 \$250,000 price. And as to particulars, he
21 communicated exclusively through Youmi Cho. And
22 he never would have agreed to assist Youmi Cho
23 if he knew that the purchase price was really
24 \$800,000.

25 So really kind of another piece of the

1 puzzle -- and I kind of call these the bombshell
2 text messages that were provided shortly before
3 Sang Cho's deposition, they confirm the terms.
4 And again, we will show that Sang Cho is not
5 only a defendant in this case, he's Youmi Cho's
6 brother, her confidante, and he relies on her
7 for his way of life.

8 And in Sang Cho's messages, we will show
9 that as soon as he got a copy of the first
10 lawsuit, he texted his aunt, who is in the room
11 here today, and stated that he would buy the --
12 that the sales price was \$800,000. There is a
13 verbal agreement of 250,000 down payment in
14 December. Talked about the checks being
15 \$15,000.

16 And what you're really going to hear, you
17 will have to suspend your belief, is that this
18 text message will also tie in with testimony
19 that we will show during the prices negotiation,
20 they wanted to lower the price from 500- to 800-
21 [sic]. And you will hear testimony from
22 defendants, both of them, that Tok Kim got angry
23 and said "hell no" to \$500,000.

24 And so we will show that Defendants
25 believed that after Tok Kim said "hell no" to

1 \$500,000, he magically agreed to \$250,000.

2 So Sang Cho, during his deposition, refused
3 to acknowledge the validity of these text
4 messages. And will he do so at trial today
5 under oath? I don't know.

6 So again, what we will show from the
7 counterclaims, originally it was alleged that
8 Tok Kim withheld credit card receipts from Youmi
9 Cho. Not true. Tok Kim, as you will see, gave
10 her hundreds of thousands of dollars in cash.

11 You will also see or hear testimony that
12 initially Tok Kim refused to turn over the store
13 until March 2021. Well, Tok Kim will testify
14 that the day that the store was turned over,
15 Youmi Cho had to have a business license. She
16 got her business license on March 7th, and the
17 store was turned over the following day.

18 You will also hear testimony that Tok Kim
19 and his wife trained Youmi Cho in operations of
20 the business. Again, I want to reiterate, as I
21 stated earlier, Sang Cho, the employee, had been
22 there -- been there for almost a decade at the
23 time this business opened. It was a well-oiled
24 machine. And really you'll also hear testimony
25 about the shifting narrative of the 36 checks.

1 So for the first 14 months of the
2 litigation, we will show that these checks,
3 we're told, they were provided under duress and
4 undue influence. And we will also show that at
5 Youmi Cho's deposition, she completely changed
6 course and said they were for other stores. And
7 immediately after that deposition made a motion
8 to amend her answer to address this new
9 counterclaim.

10 So we will show that, again, this is
11 weighing the evidence of credibility, that
12 there's a credibility problem with Youmi Cho.
13 You've got the course of performance. You've
14 got the \$250,000 down payment. You've got 36
15 checks, which we have 32 of them here. Four of
16 the 36 payments over a four-month period were
17 made without incident.

18 We have Sang Cho's bombshell text messages,
19 which were released shortly before his
20 deposition. And we've got the mistruths in the
21 counterclaims.

22 So just naturally, we always want to know
23 why. Why do people do what they do? And what
24 happened around the time that this -- that this
25 falling-out occurred. And so we will show that

1 shortly after or contemporaneous with the last
2 check being cashed, Ms. Kim was given a form by
3 Sang Cho, as he was applying for a mortgage, and
4 you'll see with some of these red marks in the
5 upper left-hand corner, Sang Cho asked Ms. Kim
6 to say that he was being paid by Kim Enterprises
7 as a proof of income. And Ms. Kim said no.

8 And you will hear testimony that Youmi Cho
9 got angry at her uncle. Why would Ms. Kim not
10 sign this? And then you will see the actual
11 form that was submitted to the mortgage company
12 changed out Kim Enterprises and listed K&C
13 Beauty, and also was a little more clear on the
14 income. At the time, Sang Cho made 3600 a
15 month. If you look at the first form, Ms. Kim
16 thought Sang Cho was trying to say 7200 a month.

17 So we will show that the purchase price was
18 \$800,000. And in weighing the question of fact
19 of the parties, we believe that we will show
20 that Mr. Kim's version of events is accurate.
21 And thank you.

22 THE COURT: All right. Defendant.

23 MR. PAAVOLA: Thank you, Your Honor.

24 May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. PAAVOLA: David Paavola and Ashley
2 Thibault. We have K&C Beauty, Youmi Cho, and
3 Sang Cho.

4 Your Honor, the parties are here about a
5 dispute of the purchase price for the Beauty
6 Store located at 3315 Broad River Road in
7 Columbia. As you heard, the plaintiff contends
8 there was an oral agreement for \$800,000,
9 \$250,000 down payment, followed by \$15,000 a
10 month for roughly three years. They contend
11 there is nothing in writing. It was never put
12 in writing. Oral only. However, K&C Beauty had
13 their written contract signed by both parties
14 reflecting a sales price of \$250,000.

15 So we're asking the Court to determine what
16 the actual sales price of the store was. The
17 written contract reflects the purchase price and
18 that really should end the story.

19 The \$250,000 price is also supported by how
20 this deal came out and how the parties got here.

21 Ms. Cho came to the United States in 2019,
22 student visa with her children so they could all
23 study English. Her children could experience
24 the English, American education system and also
25 learn English. A coveted skill for people in

1 Korea to know English.

2 You will recall with me that what happened
3 in 2019, 2020, COVID hits in the spring of 2020.
4 Really disrupted the education system. They
5 found themselves all studying that virtually.
6 And as we know, that really -- kids not
7 conducive to learning at all and especially not
8 a second language.

9 Youmi like the schools in the United
10 States, she wanted to explore if they could stay
11 longer. And her uncle Tok Kim earlier suggested
12 that she would work for him in the stores. She
13 couldn't do that. She had a job. He also had
14 suggested prior to this that she buy one of his
15 stores. In fact, he also suggested that she
16 sell her apartment in Korea and use that money
17 to fund the purchase of a store.

18 After considering his prior suggestions,
19 she considered whether she could actually do
20 that. And during the spring of 2020, you'll
21 hear that Mr. Kim and Ms. Cho have discussions
22 and discussed selling the store for that
23 \$250,000 price range.

24 In fact, Ms. Cho then makes an unplanned
25 return trip to Korea in the summer of 2020. The

1 purpose of which is simply to sell the Korean
2 apartment to have funds to buy a store.

3 She does that and sells it in July. Funds
4 become available in the October time frame.
5 Raises just over about \$220,000. Those funds
6 are brought to the United States and ultimately
7 used to buy the store.

8 Come back to the United States August of
9 2020, time for children to go to school. Money
10 becomes available in the October time frame.
11 And once the money is available, there's
12 additional discussions, as you've heard.

13 What you didn't hear is that, you know, you
14 hear them say -- Tok Kim will say it's \$800,000.
15 What you didn't hear is that Tok Kim also had
16 talked about \$800,000 for multiple stores.

17 Ms. Cho considers multiple stores. What
18 you'll hear is at the end of that dinner table
19 negotiation day, she leaves the house with an
20 agreement to buy one store for \$250,000,
21 consider purchasing other stores in the future.

22 Post negotiations, what happened after that
23 dinner table meeting, Youmi Cho then proceeds to
24 get a check for \$250,000, reflected in the
25 purchase price, and give her uncle. And I've

1 got that check. Should be on the screen for
2 Your Honor. As you can see, it's dated
3 December 1st, 2020. It's made payable to
4 Tok Kim in the middle, and it's \$250,000.
5 Mr. Kim also signed the check. Check was given
6 to Tok Kim in December. Around this time,
7 December 1st, was cashed put in his account.

8 What else did Ms. Cho have to do? Well,
9 she understands from her immigration training
10 that she has to have a written agreement to
11 satisfy immigration requirements evidencing her
12 investment in the United States, if she's buying
13 a business. She told her uncle she needed the
14 contract. He agreed to let her do that.

15 Mr. Kim, as you'll hear, prepared the
16 document and the Bill of Sale. Ms. Cho took it
17 to her uncle. They both signed it, and the deal
18 closed.

19 Post closing, Mr. Kim continually brings
20 up, so post December, spring, continues to bring
21 up this idea of buying the other two stores.
22 Wants to know when her -- when she gets her
23 checks in place. He wants 36 checks evidencing
24 this secondary deal to buy other stores. He
25 bothers her about when -- "Is the checkbook in?

1 Is the checkbook in?"

2 Eventually he's aware she gets her checks.
3 He pressures her to come to his house and write
4 checks for all of these other stores, 36 checks.
5 In fact, she has to ask him how to write a
6 check. She doesn't even know how to write a
7 check.

8 Under the pressure to do that, under this
9 idea of a good faith business gesture, they
10 trust their uncle. He says he knows American
11 law better, knows American business, has been
12 here for 40 years. She agrees to give him the
13 checks.

14 She later learns that these checks really
15 evidence no deal. She asked her uncle, "Can we
16 put this in writing, the second deal?" He
17 refuses. Eventually she stops paying it, and
18 this lawsuit comes about.

19 You will hear about Sang Cho. Mr. Cho is
20 here today. He works very hard. And as
21 Mr. Brown said, he came to the United States
22 when he was a teenager. He's adopted by his
23 aunt's family. He worked at the beauty store
24 for seven years prior to it being sold to
25 Ms. Cho.

1 He works 60, 70 hours a week, every week,
2 rarely gets vacation. He manages the Beauty
3 Store. He's a trusted employee, but he was not
4 a fiduciary of Tok Kim. He didn't share in the
5 profits. He had no other responsibility beyond
6 managing the store.

7 So he knew how to run the store, but he
8 didn't know his sister was considering buying
9 the store. He was not involved in the initial
10 discussions, and he was not involved in the
11 final negotiations of what the deal actually
12 was.

13 Why doesn't he know it? You figure maybe
14 he should because he's her brother. The sale
15 had no effect on him, didn't concern him. He
16 didn't pay much attention. He's still working
17 the same job he was before.

18 Did he have a role in getting the checks?
19 Yes. In fact, he has to assist -- he had to
20 assist his sister in getting the \$250,000 check
21 at the bank because he speaks English. He can
22 do that. He helped her out. So he has
23 knowledge to that extent.

24 Did he have a role in the 36 checks? He
25 had to help to place a stop payment on a check,

1 so he has a role there. But other than that
2 ministerial role, he has no other role.

3 Tok Kim contends he didn't sign the
4 purchase agreement. I'll place the purchase
5 agreement on the screen for the court.

6 Highlight and scroll. The purchase
7 agreement, we know, was prepared by Mr. Andy
8 Kim. Tok Kim contends he didn't sign this. But
9 the agreement on the first page evidences the
10 purchase price. Right in paragraph 2, purchase
11 price is \$250,000. The buyers execute and
12 deliver before December 15th the purchase. And
13 that, in fact, did happen.

14 Ms. Cho will testify that she brought this
15 document. We'll see where the immigration gave
16 email of the draft document, the unsigned
17 document. She took that to her uncle. They
18 both signed it in her presence. She saw him
19 sign it.

20 Other people familiar with his signature
21 will say it looks like his signature. However,
22 because he claims it's false, we have also hired
23 an expert -- handwriting expert to come and
24 testify that the signature on the last page of
25 the agreement is consistent with other known

1 signatures of Tok Kim.

2 And, in fact, Mr. Kim does agree that he
3 signed this second document, which is the Bill
4 of Sale. Mr. Kim says he signed this document.
5 In fact, right there in the bottom section, it
6 says signature. The top section you'll see --
7 you'll see also in this document is that this is
8 the Assets Purchase Agreement is identified at
9 least four times in the document. So the
10 document -- he does admit he signs. Yes, I
11 signed this document, it references this Asset
12 Purchase Agreement at least four times, and he
13 signed it.

14 So what the plaintiff is going to have you
15 believe is that -- I've got to place side by
16 side the signature on the Bill of Sale on the
17 left and the signature on the purchase agreement
18 on the right. What the plaintiff is asking you
19 to believe is that these are not the same
20 person. That the signature on the right is a
21 fake, and that it's fraudulent signature.

22 Again, that's absolutely false. He signed
23 both documents, and we'll show that to the
24 court.

25 Again, the written document should be

1 enough evidence in the price, but even if it's
2 not, Your Honor, we also have hired a financial
3 expert to testify his own independent valuation
4 of the Beauty Store at the time that K&C bought
5 it. He will testify that his valuation supports
6 a price in the range of \$250,000.

7 Your Honor, we also have affirmative
8 claims. The closing of the beauty store
9 purchase took place in December 2020. We bought
10 it September 15th. The store should have been
11 ours. What you will hear is that the revenues
12 from the store, the net revenues from
13 December 15th to March 7th -- 6th, 7th were kept
14 by Kim Enterprises and not turned over to K&C
15 Beauty.

16 The problem with that is that the grievance
17 says all revenues after the date of the
18 agreement belong to K&C Beauty. Those revenues
19 should have belonged to my client, so we are
20 seeking to get those back.

21 The client is also seeking to get back the
22 \$60,000 in these checks that she was pressured
23 to give that were cashed, and ultimately she
24 became wiser and canceled payment and is seeking
25 to get back that money as well.

1 What you'll also hear related to the
2 transfer of the store is that Kim Enterprises
3 got paid for the store in December. It spent
4 January to February selling all the inventory.
5 The shelves are bare. When does he turn it
6 over? He turns it over when the shelves are
7 bare. He doesn't -- he does not want to
8 restock.

9 He, in fact, tells Sang Cho that he doesn't
10 want to restock the store. The store, he's
11 turning over. The shelves are bare. You will
12 also hear how the inventory -- much of the
13 inventory is old, unsalable. My client had to
14 order a dumpster and throw so much of it away.

15 You're hearing this story about an
16 elaborate fraud supposedly perpetrated by my
17 client. Though she would have to have deceived
18 her immigration attorney as to the price of the
19 store. She would have to have deceived her
20 uncle about the existence of a written
21 agreement. Had to fake his signature. And she
22 has to do it -- not just fake his signature, but
23 do it so good that deceives an expert in
24 handwriting analysis. It simply is not true.

25 If there's any fraud, it is Kim Enterprises

1 selling the store in December, keeping all the
2 revenues for January, February; selling all the
3 inventory, not restocking it; and keeping all of
4 that money and refusing to sign a written
5 agreement evidencing the secondary agreement for
6 the other stores.

7 In fact, what they're doing is using an
8 absence of a written agreement to help push that
9 all into the first agreement. That is the
10 injustice here, Your Honor.

11 We appreciate your time in this case.

12 THE COURT: Okay. Let's stand in recess
13 for five minutes.

14 - - -

15 (A recess transpired.)

16 - - -

17 THE COURT: Okay. Mr. Brown, call your
18 first witness.

19 MR. BROWN: Thank you, Your Honor. We
20 would like a little guidance from the Court. We
21 would like to publish Andy Kim's deposition. We
22 have his sealed deposition, and I guess the
23 errata or Certificate In Lieu of Signing.

24 Your Honor, would you prefer that
25 Mr. Belser and I read the deposition transcripts

1 or ...

2 THE COURT: He's not available, I guess?

3 MR. BROWN: He's an immigration attorney in
4 Georgia.

5 THE COURT: Right. I understand who he is.
6 But you want to publish his deposition instead
7 of having him testify?

8 MR. BROWN: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. PAAVOLA: Nothing other than we have
11 filed with the Court objections to certain
12 documents and certain parts of his testimony.

13 THE COURT: Are you going to publish the
14 whole thing?

15 MR. BROWN: Yes, Your Honor. We would like
16 to publish the deposition. And there's one
17 exhibit -- and then Exhibit 1, which is all the
18 documents.

19 THE COURT: I prefer someone take the stand
20 and read from the deposition.

21 MR. BELSER: This is Freeman Belser. I
22 will play the role of Andy Kim.

23 MR. PAAVOLA: Would you like us to make our
24 objections at the time you're reading? How do
25 you want to handle our objections to the

1 documents?

2 THE COURT: Make your objections at the
3 time. I forget how this goes. You can
4 cross-examine him, I guess, right?

5 MR. BELSER: Your Honor, Freeman Belser for
6 the record. Typically, when it's read into the
7 record, I'll play the part of the witness.
8 Mr. Brown will play the part -- he will play
9 himself in the show. And then Mr. Paavola will
10 read his parts.

11 And so to the extent that there are -- it's
12 a little bit different because this is nonjury
13 and not a jury. Your Honor has been doing this
14 longer than some of us have been around. So, I
15 mean, you can assign whatever weight you want to
16 certain testimony.

17 Some of the things which have been objected
18 to I think have already been ruled upon in the
19 motions in limine.

20 I'm happy to read and stop or whatever.

21 THE COURT: Okay. Also keep in mind that
22 this is a nonjury case, sometimes the judge will
23 ask questions.

24 So you're going to object to that,
25 Mr. Paavola?

1 MR. PAAVOLA: Yes, Your Honor, I would
2 object to you asking questions. The one thing
3 that he -- the full extent of the testimony is
4 what's on the paper. So there's nothing -- he
5 can't answer questions, he's not here.

6 MR. BROWN: I'm happy to answer any
7 questions.

8 MR. PAAVOLA: And other witnesses, yes, but
9 for this case --

10 THE COURT: Okay.

11 MR. PAAVOLA: -- the testimony can either
12 just be in the record and Ms. Byers can type it
13 in as it's written, or it can be orally said and
14 she can also type it in. Either way.

15 THE COURT: All right. Mr. Belser, take
16 the stand.

17 MR. BROWN: Your Honor, I'm happy to unseal
18 this.

19 THE COURT: Let me do that, and we'll make
20 a note of it.

21 You have to read from it.

22 MR. BELSER: Yes, sir.

23 MR. PAAVOLA: Your Honor, before we begin,
24 may I hand you what we filed as our objections
25 so when it comes to it, you will have it.

1 THE COURT: Sure. Sure.

2 MR. PAAVOLA: Okay.

3 THE COURT: What I did was make a note that
4 I am the one that opened it up and the date that
5 I unsealed it.

6 MR. BELSER: All right. I'm ready. Can
7 you hear me?

8 MR. BROWN: May it please the Court.

9 THE COURT: You may proceed.

10 - - -

11 DIRECT EXAMINATION

12 OF ANDY KIM (as read)

13 - - -

14 BY MR. BROWN:

15 Q. Okay. Good morning, Mr. Kim.

16 A. Good morning.

17 Q. Thank you for taking the time to talk to us
18 this morning, and I appreciate your help through
19 email and everything.

20 Again, my name is Creston Brown, and I
21 represent the plaintiff in this case.

22 And so, Mr. Kim, have you ever had your
23 deposition taken before?

24 A. No, this is my first time.

25 Q. Okay. Well, you know, kind of as it was

1 explained to me and I explain to different deponents,
2 you know, this isn't a marathon. We can take a break
3 at any time, so just ask me and we'll take one. But,
4 I mean, I don't think this should take too terribly
5 long.

6 A. Okay. How long do you think we'll take?

7 Q. I mean, I don't think my questions should
8 be more than maybe 30 minutes, if that. I can't
9 speak for David, but, again, I don't think we have
10 that many questions.

11 A. Okay. Proceed.

12 Q. I always tell deponents two -- the two most
13 important things in a deposition are, number one,
14 tell the truth, but maybe just as important is that
15 we speak clearly and let each other talk so the court
16 reporter can, you know, take down everything we say.

17 And as it was explained to me on a previous
18 Zoom deposition, that was my first with Zoom, I
19 believe when we talk over each other, it becomes even
20 more hard for the court reporter. So I will try my
21 best to, like, ask a question and pause and let you
22 answer and try not to interrupt. I just ask that you
23 do the same.

24 A. Okay. Proceed.

25 Q. How did you prepare for this deposition

1 today?

2 A. Me?

3 Q. Yes. Like did you review, like, any
4 documents or emails or the files?

5 A. Actually, I didn't know I had to do -- I
6 had to review all the documents, so I just, you know,
7 roughly looked over the document that you sent me
8 yesterday.

9 Q. Okay. Okay. Thank you.

10 Without going into any attorney-client
11 privilege information, at a very high level, did you
12 become involved with, I guess, Youmi as a client?

13 MR. PAAVOLA: Creston, let me break in at
14 this point.

15 Mr. Kim, I'm David Paavola. I represent
16 K&C Beauty and Ms. Youmi Cho. I just wanted to
17 make sure it's clear to you that you are
18 Ms. Cho's attorney, and we're not waiving any
19 attorney-client privilege.

20 So to the extent that any questions or
21 information is being asked of you that gets into
22 attorney-client privilege, we object to that.
23 So I would ask that you allow me to place my
24 objections on the record. Again, we're not
25 waiving that, so don't divulge attorney-client

1 information.

2 THE WITNESS: I am aware of the
3 attorney-client privilege, and then -- but I
4 asked her whether I'm to disclose the
5 conversation relating to the purchase, the
6 preparation of the purchase, Asset Purchase
7 Agreements, and she said that, yeah, I can
8 disclose the communication all or in part.

9 MR. PAAVOLA: Okay. So who did you ask?

10 THE WITNESS: I asked whether I -- yeah, I
11 can disclose a communication or not because the
12 issue can be related to the -- from my point of
13 view, that issue can be related to the
14 unauthorized practice of law.

15 So I -- if you ask about that, then I will
16 have to clearly explain about myself because I,
17 you know, clearly explained that I have no
18 license in the state, and then I cannot provide
19 any legal advice.

20 So, yeah, if any questions is made
21 regarding -- or relating to that issue, then I
22 thought I have to, you know, explain about that.

23 MR. PAAVOLA: Obviously, we'll get into
24 some of those topics, but I want to be clear on
25 what you said earlier. I think you said you

1 asked and she said it was okay. Who are you
2 referring to?

3 THE WITNESS: Ms. Cho.

4 MR. PAAVOLA: She said, I guess, that the
5 communications that maybe Mr. Brown has given to
6 you to ask about, those communications were okay
7 to provide?

8 THE WITNESS: Only related to the
9 preparation of the Asset Purchase Agreements,
10 not for -- not for communication.

11 MR. PAAVOLA: Yeah, I understand.

12 THE WITNESS: Yeah.

13 MR. PAAVOLA: Okay.

14 BY MR. BROWN:

15 Q. Okay. So, yes, so just returning to my
16 question again, without going into any
17 attorney-client privilege, you know, how did you
18 become involved with Youmi in this -- in
19 facilitating, I guess, the immigration paperwork
20 which included the exchange of this Asset Purchase
21 Agreement?

22 A. Yeah. First, Mr. Kim called me, maybe he
23 or Ms. Cho called me first. I don't remember who
24 contacted me first. But maybe, probably Mr. Kim
25 first called me and then talk about Ms. Cho's

1 preparation. Because he was referred by a
2 salesperson whose name is exactly the same as mine,
3 Kim Yong, Woon Yong Kim. My name is Woon Yong Kim.
4 So he was the salesperson of the Twin Peak
5 International beauty wholesale supplier located in
6 Georgia. And then he was my former client.

7 And then maybe during the sales activity,
8 maybe Mr. Kim asked about the -- whether he knows
9 some good immigration attorney. And then the Woon
10 Yong Kim, the salesperson, referred me to -- referred
11 him to my office, and then he contacted me.

12 And then I let -- and then later I got a
13 call from Ms. Cho, so we set up some kind of
14 consultation. And then she explained about her
15 situation, and then I gave her advice. And then,
16 yeah, and then she retained our firm for her
17 immigration matter. And then, yeah, that's how I was
18 involved in her immigration matters as an attorney.

19 Q. Okay. Okay. Thank you.

20 And have you ever met Tok Kim?

21 A. No. No. Just over the phone.

22 Q. Okay. And just to make sure, again, I want
23 to make sure I have the timeline correct. So you
24 know when you talked to Mr. Kim in the beginning
25 about, you know, I guess how to facilitate or

1 connecting with Youmi after that initial --

2 A. No. No.

3 Q. I'm sorry.

4 A. Mr. Kim -- Mr. Kim, he didn't facilitate
5 some meeting with my firm and then Ms. Cho. Rather,
6 maybe he just didn't want to, you know, check I am a
7 good attorney or not. So he asked her about several
8 questions relating to some immigration matters.

9 And then later he decided that maybe he --
10 yeah, I feel like he's a good attorney, so I will
11 refer him to Ms. Cho because, you know, they're some
12 family members each other. So, yeah, that's what I
13 thought.

14 Q. Okay. Good. I appreciate you clarifying
15 that.

16 And so after that initial conversation
17 where he was trying to, you know, see whether you --
18 whether he thought you were a good attorney, did you
19 talk to him subsequently after that?

20 A. Actually, if -- if my memory serves me
21 right, I think Mr. Kim called our office first and
22 then later Ms. Cho called me for a consultation.

23 Q. Yeah. So after -- so after you started the
24 attorney-client relationship with Ms. Cho, did you
25 have, then, any further communications with Mr. Kim

1 whether via email or telephone?

2 A. Yeah, through the telephone. I don't think
3 we communicate through the email because she doesn't
4 have an email address. So because normally, yeah,
5 yeah, so I -- but it is just a few times. I
6 primarily communicated with Ms. Cho. But after the
7 attorney-client relationship was created, I just
8 talked to Mr. Kim just a few times.

9 Q. Okay. And then we delve into this -- and
10 we may delve into this a little bit later, but the
11 few times you talked to Mr. Kim after the
12 attorney-client privilege or attorney-client
13 relationship was established, what was the purpose of
14 those conversations, if you recall, with Mr. Kim?

15 A. Yeah. For the preparation of Ms. Cho's
16 immigration, the documentation, because that business
17 was about Mr. Kim's, the business. So I had to get
18 some information of what kind of business it is.

19 Primarily, Ms. Cho provided that
20 information for Mr. Kim, but sometimes she doesn't
21 have the domestic knowledge. So in the case I talked
22 with him, but it is just one or two times, I guess.

23 Q. Okay. Okay. I'd like to --

24 MR. PAAVOLA: Objection, Your Honor.

25 THE COURT: On what grounds?

1 MR. PAAVOLA: We object to the next section
2 of the transcript on page 11, line 19 to 12,
3 line 5 on hearsay grounds. Mr. Kim is talking
4 about -- a statement about what Mr. Tok Kim said
5 to him and also speculation, Your Honor.

6 THE COURT: Okay. Let him ask the
7 question, and then you make your objection at
8 the appropriate time.

9 MR. PAAVOLA: He -- Mr. Andy Kim is about
10 to continue his dialogue, and so we're objecting
11 to his continued dialogue.

12 THE COURT: You need to make a record of
13 what he's going to say.

14 MR. PAAVOLA: Okay.

15 THE COURT: So you objected at the time of
16 the testimony. All right.

17 MR. PAAVOLA: Your Honor, just to seek
18 clarification, what I'm objecting to is the next
19 continuation. After he's done, I can object to
20 it?

21 THE COURT: Yeah.

22 MR. PAAVOLA: Okay.

23 THE COURT: Yes. Well, what's the
24 question?

25 MR. BROWN: Mr. Kim was about to --

1 Mr. Andy Kim was about to provide testimony, I
2 guess it was kind of -- it really is a
3 continuation of his prior statement.

4 MR. BELSER: Back up to line 4 on page 11,
5 and then I'll just read until ...

6 MR. BROWN: Okay.

7 THE COURT: Please proceed.

8 MR. BROWN: Okay. Going back to line 4.

9 BY MR. BROWN:

10 Q. Okay. We may delve into this a little bit
11 later, but the few times you talked to Mr. Kim after
12 the attorney-client privilege or attorney-client
13 relationship was established, what was the purpose of
14 those conversations, if you recall, with Mr. Kim?

15 THE COURT: All right. Stop.

16 MR. PAAVOLA: Your Honor, objection on
17 hearsay grounds and on speculation grounds.

18 THE COURT: On hearsay?

19 MR. PAAVOLA: Hearsay grounds, Your Honor,
20 yes.

21 THE COURT: Okay.

22 MR. BROWN: I guess our first objection to
23 the objection is during the transcript,
24 Defendants did not object, so we contend that
25 they waived any objection.

1 And also it's the testimony of a party
2 opponent, which will be Ms. Cho, what she said.
3 And regarding speculation, I don't understand
4 what's speculation. It's just recounting the
5 call.

6 THE COURT: Repeat the question again,
7 please.

8 BY MR. BROWN:

9 Q. Okay. And we may delve into this a little
10 bit later, but the few times you talked to Mr. Kim
11 after the attorney-client privilege or
12 attorney-client relationship was established, what
13 was the purpose of those conversations, if you
14 recall, with Mr. Kim?

15 THE COURT: Stop. What was the objection
16 again?

17 MR. PAAVOLA: Objection is to hearsay.
18 He's about to get into talking about what
19 Tok Kim has told him in prior conversations.
20 That's hearsay.

21 THE COURT: Objection overruled.

22 THE WITNESS: Yeah, for the preparation --
23 for the preparation of Ms. Cho's immigration
24 documentation because that business was about
25 Mr. Kim, the business, so I had to get some

1 information what kind of business it is.

2 Primarily, Ms. Cho provided that
3 information for Mr. Kim, but sometimes she
4 doesn't have the domestic knowledge. So in the
5 case I talked with him, but it is just one or
6 two times, I guess.

7 BY MR. BROWN:

8 Q. Okay. Okay. I'd like to --

9 A. So -- and also the last time I talked to
10 Mr. Kim was after Ms. Cho's E-2. The status was
11 approved. And then maybe it was six months or one
12 year later, Mr. Kim called my office. And then he
13 said that the extra price was \$800,000. Yes, the
14 price -- the actual price was different. And then he
15 said what Ms. Cho is -- was refusing to pay the
16 balance.

17 But he said that he had some -- several
18 checks which was given by the Ms. Cho, but he said
19 that he's demanding copies of the check. But because
20 it is approved at the extra price, he will not give
21 me back.

22 Q. Okay. Well, and what I'd like to do is
23 just go through some documents. These are the
24 documents I sent you yesterday, and then what I did
25 in case I had any questions about the ones David

1 sent, I just kind of added into this.

2 So this is a 38-page PDF that I would like
3 to introduce as Plaintiff's Exhibit 1 and that will
4 be the only exhibit we introduce.

5 So do you recognize this email between --
6 that you sent to Freeman Belser? He's an attorney
7 with my firm.

8 MR. PAAVOLA: Objection, Your Honor.

9 THE COURT: What grounds?

10 MR. PAAVOLA: We're objecting to some of
11 these documents. These will be pages 13 to
12 26 -- I guess it's page 14 of their document.
13 It's an email from Mr. Belser to Mr. Kim. We're
14 fine with the response, but the initial email is
15 a statement of counsel. It's not evidence in
16 the case. It's also hearsay.

17 THE COURT: Okay. Objection overruled.

18 THE WITNESS: I remember, yes. He asked me
19 about this, yes, the information. So I sent
20 this to Mr. Paavola.

21 BY MR. BROWN:

22 Q. Okay. And --

23 A. Freeman.

24 Q. I don't think that David was in this email.

25 A. Right. Right. Yes. Ms. Cho's attorney.

1 Q. Yes. So my main question again with this,
2 this email had certain attachments and what I did is
3 I printed off certain of the attachments to ask you
4 about. And my first question to you is: I
5 understand that you sent blank documents that needed
6 to be signed.

7 And did Youmi send them back to you via
8 email or the U.S. Postal Service? How did you
9 receive the signed documents that you sent in this
10 email? How were they returned to you?

11 A. I will have to check because, yeah, if I
12 was doing -- communicating through emails, so
13 probably I believe, yeah, she sent that back by email
14 because some of our clients are located in other
15 states. And in this case, they provided theirs, some
16 necessary document through email because we didn't
17 need the other documents.

18 Q. Yeah. And if you can check on your
19 computer again, I can wait a minute. I'm just -- I
20 want to make sure that I understand how they were
21 returned to you because my understanding from the
22 folders is you sent blank documents, said "sign
23 these" and --

24 A. Yes. Okay. I will look over --

25 MR. BROWN: Line 24, David, page 13.

1 MR. PAAVOLA: Okay. I'm happy to read this
2 in, Your Honor. We objected to this just as
3 administrative and really not part of the -- it
4 doesn't need to be in the record. I'm happy to
5 read it in if you still want this 13 through 14,
6 19, but -- you still want this in the record?

7 MR. BELSER: Let's just go ahead and read
8 it.

9 MR. PAAVOLA: Creston, let me ask while
10 he's looking at that. The document on the
11 screen is not what I was given. On the bottom
12 it says Andy Kim Deposition 1.

13 MR. BROWN: Yeah, that's what I was saying.
14 What I just did -- because I noticed you had
15 sent -- your documents actually had the signed
16 Business Asset Purchase Agreement. So this
17 morning I just put -- I took my documents and
18 then took yours, put them into one file, and we
19 just Bates-labeled them.

20 MR. PAAVOLA: Okay. Well, I need that
21 document.

22 MR. BROWN: Yeah. You want me to send it
23 to you right now?

24 MR. PAAVOLA: Yes, so we can refer to the
25 same numbers.

1 MR. BROWN: Yeah. Yeah. Hold on.
2 Off the record.

3 MR. BELSER: Back on.

4 THE WITNESS: Yes, I received it through
5 the email, December 14.

6 BY MR. BROWN:

7 Q. Okay.

8 A. Yeah, December 14, 2020.

9 Q. Okay.

10 A. Yes.

11 Q. Okay. Thank you.

12 A. Yes.

13 Q. Okay. So in one of the documents in there
14 was a blank, which, again, I'm referring to Andy Kim
15 Depo Number 3. Is this the Business Asset Purchase
16 Agreement?

17 And so my first question to you is: Did
18 you draw up this document?

19 A. Yes, I drafted this document.

20 Q. And who asked you to draft this document?

21 A. Yeah, Ms. Cho. Yeah. Actually, she --
22 when she asked because she doesn't have knowledge
23 about the American law, so in the preparation, I sent
24 at least a required document for her E-2 status.
25 Because E-2 status means is for the investors in the

1 United States in most cases.

2 So when she purchased the business or when
3 she set up a business investing some funds, then the
4 foreigner can obtain an E-2 status in the United
5 States. One of the documents was because she
6 explained that she had the plan to purchase her
7 uncle's the business. So in the case, I need some
8 asset purchase closing documents like the asset
9 purchase documents.

10 And then I sent it through -- then I sent
11 it through the letter, the email. And then later she
12 asked me if I can prepare this document. So I
13 explained to her that I cannot prepare these
14 documents because I have no license in the states.
15 And I cannot provide any legal advice for that. And
16 I recommend you hire an attorney in your states who
17 is doing these closing transactions.

18 And she asked if it is mandatory. And so I
19 said it depends on the states. It may be -- may be
20 different, but normally it's not mandatory. But I
21 strongly recommend because of something going wrong,
22 then you, your interest cannot be protected from the
23 transaction.

24 And then she said she will ask and then
25 discuss with Mr. Kim because he also has his personal

1 attorney. And then she hung up the phone. And then
2 our conference -- and then a few days later she
3 called me back. And then she said that because
4 Mr. Kim said that because this was a transaction
5 between family, they really don't need an attorney.

6 So she asked me to draft email for E-2
7 status. So I obtained the price, and I also already
8 had information about the business. So I drafted a
9 closing document and sent that draft back to Ms. Cho
10 by email.

11 Q. And so based on your recollection of
12 events, as you just described them, when Ms. Cho
13 called you back and said that Mr. Kim said he didn't
14 need a lawyer, did you independently -- you did
15 independently verify that, correct?

16 A. Yeah. Relating to that, I did
17 independently ask Mr. Kim. I just -- because, like I
18 said earlier, primarily for the preparation of E-2
19 documents, I primarily talked with Ms. Cho. So she
20 said that she asked Mr. Kim. And then, yeah, he
21 didn't think they needed an attorney for that
22 transaction because that's the transaction between
23 families. So I just heard that only -- only from
24 Ms. Cho, not Mr. Kim.

25 Q. And just to confirm, and that's -- you have

1 the same answer for the purchase price of \$250,000 in
2 the contract. That was the number provided by
3 Ms. Cho with -- and you didn't hear anything from
4 Mr. Kim about that, correct?

5 A. Yeah. If my memory serves me right, yeah,
6 that's correct.

7 Q. Okay.

8 A. Only from Ms. Cho.

9 Q. And, again, I just have some general
10 questions. I'm not an immigration lawyer, but I did
11 some research about the E-2 visa. So did you explain
12 to me really what the E-2 visa is and the process?
13 Because I think -- I mean, it will help me maybe
14 understand some of the facets of this case. Do you
15 mind just giving me like a few-minute recap if I was
16 a new client?

17 MR. PAAVOLA: Objection, Your Honor, to
18 relevance.

19 THE COURT: Overruled.

20 THE WITNESS: The process is different
21 between changing the E-2 status and the E-2
22 visa. But for Ms. Cho's case, it was changing
23 the status in the United States. So I will just
24 briefly explain about the changing status into
25 E-2 in the United States.

1 So if a foreigner who is in -- who is in a
2 valid and not immigrant status, like a student
3 or a visitor, if they want to invest money in
4 the United States and run a business in the
5 United States, then in some case they first have
6 to invest money to some specific business.

7 In the case based on investments, the USCIS
8 grants the E-2 status. So after getting the E-2
9 status, they can legally operate a business.
10 Yeah, so that's all.

11 And then the status is given every two
12 years. And then as long as the business is
13 active and also there's some -- another factor
14 we have to prove that the corporation is not a
15 marginal corporation. That means that
16 corporation gives some kind of economy impact to
17 the local economy like hiring some employees in
18 the United States.

19 So as long as these two main factors are
20 satisfied, the foreigner can renew their E-2
21 status indefinitely.

22 BY MR. BROWN:

23 Q. And is it just repeated two-year renewals?

24 A. Yeah. Yeah. Every two years, the USCIS,
25 because the reason the USCIS gives just the two years

1 is because they will check if the business is still
2 active and the business, like I said earlier, gives
3 some -- gives some economic impact to the local
4 community.

5 Q. And would you agree that in -- let me back
6 up.

7 So the USCIS, is that part of the
8 Department of Homeland Security?

9 A. Yes. USCIS has the authority to regulate
10 the foreigners' status who are staying in the
11 United States.

12 Q. Okay. So they -- so would you agree with
13 me that when you complete these type of applications
14 for E-2, you know, visas relating to businesses, it's
15 a good practice to have a purchase agreement, I
16 guess, to show the Department of Homeland Security
17 the legitimacy of the transaction?

18 A. The Asset Purchase Agreement is a legal
19 document. So, you know, without the document, the
20 foreigner who is applying for E-2 status cannot prove
21 that they have ownership interest in the investments,
22 the business.

23 Q. Yeah. So would you agree that it's good
24 practice or is it -- are you saying it's required to
25 have an Asset Purchase Agreement like this when

1 you're completing an E-2 application?

2 A. Yeah. That's some kind of required
3 document.

4 Q. Okay. I would like to --

5 A. Without that document, yeah, it is. But
6 this document is only required that when the
7 foreigner who's applying for E-2 status to -- that
8 the purchase of the existing business. When they set
9 up a new business, then this -- the document is not
10 required. But when they purchase an existing
11 business, you know, closing document is all the time
12 required.

13 Q. Okay. I understand.

14 And looking at the second page of the Asset
15 Purchase Agreement, which is Bates-labeled Andy Kim
16 4, as I understand your testimony under Section 5,
17 the breakdown of good will at \$50,000 and tangible
18 assets at 200,000, for those --

19 A. The financials, can you enlarge the
20 document?

21 Q. Oh, yeah. Sure. Sure.

22 A. Yeah, thank you.

23 Q. So those numbers -- is it your testimony
24 that those numbers were provided to you by Ms. Cho?

25 A. Yeah, I believe so.

1 Q. Okay. And you don't have any idea what
2 tangible assets make up that \$200,000 as represented
3 here?

4 A. Maybe the rough amount of the -- you know,
5 the inventories.

6 Q. And based on your -- as I understand your
7 testimony, you did not talk to Mr. Kim?

8 A. No.

9 Q. Regarding these numbers?

10 A. No. No.

11 Q. Okay. In the middle of page 5 of the Asset
12 Purchase Agreement, which is Andy Kim 7, under 16(b),
13 so this section, as I'm moving my mouse, it talks
14 about each party has been advised to seek independent
15 legal and tax counsel. I think does that relate to
16 what you just said earlier about what you had told
17 Ms. Cho to relay to her uncle, that the parties
18 should seek, you know, independent counsel?

19 A. I'm not sure whether I intentionally put
20 the sentence in or not, yeah. Because, you know,
21 they, you know -- actually their intent was not, you
22 know, to draft some complex -- you know, the legal
23 document. Their intent was because we don't need an
24 attorney. We don't even need some kind of these
25 documents because we know each other very well. We

1 are family.

2 So their intention was just to obtain
3 whatever documents from Ms. Cho and the E-2 status.
4 So I don't know if I put this sentence intentionally
5 or not, but, yeah, I don't remember.

6 Q. And just to confirm, you had said that they
7 intended. When you say the word "they," are you
8 basing that on what Youmi told you?

9 A. Yeah. Yeah. Yeah. Because I mostly, you
10 know, obtained their information only through
11 Ms. Cho. So my impression that they discussed each
12 other about this matter because especially at that
13 time, Ms. Cho has no -- little knowledge about, you
14 know, the U.S. systems and then culture and laws and
15 everything.

16 On the other hand, Mr. Kim lived long in
17 the United States. And then I felt like Ms. Cho
18 relied on Mr. Kim, you know, relating her -- her
19 marriage, her -- the legal marriage and then
20 including immigration status. So I explained to her
21 sometimes she told me that she would ask Mr. Kim.

22 Yeah. Yeah. I clearly remember that
23 Mr. Kim has his own attorney because he needs an
24 attorney for -- because I heard that he has many
25 businesses. And then, yeah, because of that, there

1 are a lot of, you know, business transactions and for
2 which he used an attorney a long time. Maybe he's a
3 local attorney.

4 Q. But do you have any knowledge that Mr. Kim
5 actually ever saw this contract?

6 A. No. No. I just assumed because when she
7 give this document back after signing, I saw
8 Mr. Kim's signature on the paper so I assumed. I
9 just assumed. But I personally cannot -- could not
10 verify whether Mr. Kim looked through all these
11 documents because what I did is just -- just a draft
12 of this document and then send this document by email
13 to Mr. -- to Ms. Cho only, not --

14 Q. Okay.

15 A. -- not including Mr. Kim.

16 Q. Okay. Thank you.

17 And I'd like to look at, I guess, paragraph
18 18, which is on Andy Kim Depo Number 8. There's a
19 mediation arbitration provision. And as you see
20 right there, it reference being enforceable by the
21 courts of Alaska.

22 And I guess my question is, I'm not aware
23 that Mr. Kim or Youmi or anybody having any relation
24 to Alaska, so I'm just curious where the Alaska
25 language came from.

1 A. I think, yeah, I just took copies, you
2 know, the other document to here, so that's what
3 happened.

4 Q. So as I understand your testimony, are you
5 saying that you copied it from another agreement that
6 maybe that prior agreement had Alaska related --

7 A. Yeah. Yeah.

8 Q. -- entities?

9 A. I believe so.

10 Q. And kind of the same question on the
11 following page. So this would be Andy Kim Number 9
12 under paragraph 21C, it also talks about the laws of
13 Alaska. And then --

14 A. Yeah. Yeah. Right.

15 Q. My question is the same thing. Is do you
16 believe that this Alaska language is because just it
17 was from a former ...

18 A. Uh-huh.

19 Q. Okay. And then -- oops, hold on -- and
20 then this Bill of Sale document that is Andy Kim
21 Number 11, can you explain to me, I guess, the
22 purpose of this document? And if you need a chance
23 to read it or look at it, I'm fine.

24 A. Yes. Because normally some -- yeah. In
25 most cases, the USCIS also want a Bill of Sale in

1 addition to the Asset Purchase Agreement. So that's
2 what I prepared.

3 Q. Okay. And, again, can you explain to me
4 the purpose of this document, Andy Kim Number 12,
5 which is the LLC?

6 A. Yes. This document is required for E-2
7 status because we need to provide it. And so E-2 --
8 E-2 investor status is all given when the person has
9 more than 50 percent or more in the investment's
10 business. But in this case, Ms. Cho obtained the
11 hundred -- the hundred percent -- the ownership of
12 the business, the K&C Beauty, LLC. So, yeah, that's
13 the document prove her owner's interest to the USCIS.

14 Q. Actually, I have a couple more questions.
15 I'm glad you brought up percentage. So the -- is
16 that a hard and fast rule about the 50 percent, that,
17 you know, if you're buying a business, is it
18 recommended to be at least 50 percent?

19 A. No. No, it's mandatory. So if the
20 foreigner -- if a foreigner who has less than
21 50 percent, in that case that person cannot be
22 granted for E-2 status because the law requires the
23 E-2 investor should have controlling power and
24 interest of the business. So at least the person
25 should have the 50 percent, the owner's interest in

1 the business.

2 Q. And to clarify, is it really they should
3 have 50 percent plus .001 to have the controlling, or
4 is 50 percent fine?

5 A. Yeah. 50 percent joint venture is fine.
6 So 50 or more, that is allowed for E-2 status.

7 Q. Okay. And looking at the next document,
8 which is Andy Kim 13, this is just -- can you explain
9 to me the purpose of this? I guess it's an
10 employment document?

11 A. Yeah. That's the top of -- that's a top of
12 the A letter. And then I drafted this letter, too,
13 because Ms. Cho has a -- had a plan to hire people,
14 some staff. And I heard those people were already --
15 had been working for Mr. Kim at that same business.
16 So based on the information Ms. Cho provided me with,
17 I draft this letter to show to the USCIS that this
18 business will have positive economy impact to the
19 local economy by hiring the people.

20 But because this is first time application,
21 actually, in the case, this is not mandatory. Yeah,
22 she wanted to have me draft this letter, so, yeah, I
23 drafted it.

24 Q. Okay. I guess just following page -- which
25 is Andy Kim 14, it's the same -- you just testified

1 that it's the same?

2 A. Yes. This is the same document to -- this
3 is a job offer for the same purpose. Same propose.
4 But these two letters are not mandatory for the E-2
5 application.

6 Q. Okay. Going back to the E-2, the
7 50 percent rule, so somebody was buying an 800,000 or
8 was going to buy a business for 800,000, is it your
9 testimony they would have to put in at least \$400,000
10 or more to get the E-2 visa; is that correct?

11 MR. BROWN: David?

12 MR. PAAVOLA: I'm sorry.

13 MR. BROWN: You said "object to the form."

14 MR. PAAVOLA: I wasn't objecting -- I
15 didn't object to that question.

16 MR. BROWN: Okay. "Yes. Yes."

17 MR. BELSER: Let me read it. So this is
18 the witness.

19 THE WITNESS: Yes. Yes. If that business
20 is \$800,000, then, yeah, the person who wants to
21 apply for E-2 status should invest at least the
22 \$400,000 generally. Generally. Because the
23 amount of the investments, the funds is not the
24 definite standard to determine the percentage of
25 ownership. But generally, yes. Generally

1 speaking, yes.

2 BY MR. BROWN:

3 Q. So if I came to you or if a foreigner came
4 to you and said, "I would like to buy an \$800,000
5 business, but I can only put \$250,000 down," would
6 they be able to get the E-2 Visa?

7 A. No. No. It's not possible. Other asset,
8 intangible assets, or other asset like some patents
9 or some special, some knowledge, like a trademark
10 that indicates, you know, maybe it is possible they
11 agreed that this person has a 50 percent interest.

12 I mean, the tangible assets like patents or
13 some trademark or some trade secrets, if the person
14 only has \$250,000 or so, those kinds of intangible
15 assets, then both parties can agree that the person
16 only has \$250,000 -- who has \$250,000 has the more
17 than 50 percent interest in the business.

18 Some technology company -- in some
19 technology companies that can happen. But in this
20 type of cases, like just purchasing beauty supply
21 business, I've never seen that only be \$250,000,
22 that's not possible in most cases.

23 Q. So just to clarify, if somebody is
24 purchasing a business for \$800,000 and only has 250-
25 in cash and no other patents or technology, is it

1 your position that the individual would not be able
2 to get the E-2 visa based on only 250-?

3 MR. PAAVOLA: Objection, Your Honor. Asked
4 and answered.

5 THE COURT: Sustained.

6 BY MR. BROWN:

7 Q. Okay. I have just a couple of questions.
8 You've answered most of them about starting on Andy
9 Kim 15 about the I-129 form. And just to confirm on
10 Andy Kim Depo page 16, under 4B, is this check
11 because I believe -- because Ms. Cho, I believe, was
12 an F status, which was a student?

13 A. Yes.

14 Q. Okay. And then the only other question I
15 had about this was clarifying on the two-year term.
16 That's a continual renewal at long as her visa has an
17 economic impact. So she could go indefinitely every
18 two years, correct?

19 A. Yes.

20 Q. I'm almost done. My question about -- hold
21 on one second. On Andy Kim 25, what is the purpose
22 of this E-1/E-2 Classification Supplement Form to
23 I-129?

24 A. Yeah. All the foreign people who want to
25 change their status to E-2 should fill out this

1 supplement form as well in addition to the form
2 I-129. So this is a mandatory required form we have
3 to submit to the USCIS.

4 Q. On the second page of this form, Andy Kim
5 Depo 26, can you explain to me in sections 3 and 4,
6 what those mean.

7 A. Because, like I said, E-2 status. It is
8 important how much the foreigner has that has the
9 owner's interest in the investment's business. And
10 then also they require us to provide the asset and
11 net worth and income. And then the staffing
12 information, the number 7 on the form. So how many
13 people actually it is the E-2 investment business
14 supports. So I put that -- those information on this
15 paper.

16 Q. So under sections 4 and 5, assets and net
17 worth of 250-, is that the assets and net worth of
18 Youmi Cho?

19 A. Because she only invested 250,000 in the
20 business, and also this is a new business, she could
21 set up a new business and invest only 250-. So,
22 yeah, I put that 250- for each of the section.

23 Q. But if she -- if the business was sold for
24 800,000, and she only put 250,000, this deal would
25 not have -- this E-2 visa would not have happened?

1 MR. PAAVOLA: Objection, Your Honor. Asked
2 and answered.

3 THE COURT: Sustained.

4 BY MR. BROWN:

5 Q. So if somebody wanted to buy an \$800,000
6 business and only had \$250,000, to get you to fill
7 out the E-2 paperwork, they would have to mislead you
8 about the purchase price?

9 MR. PAAVOLA: Objection, Your Honor. Asked
10 and answered. Prejudicial.

11 MR. BROWN: And my only counter to that is
12 this changed the tenor of the question to go
13 about the misleading nature, and I didn't just
14 ask that same question over and over.

15 THE COURT: Overruled.

16 BY MR. BROWN:

17 Q. You can answer.

18 A. In the case, yeah, they will have to --
19 maybe they will have to make another, you know, some
20 deal.

21 MR. BROWN: Okay. I believe that's all the
22 questions I have. Thank you for your time and
23 agreeing to do this deposition on your time.

24 And so please answer any questions that
25 Mr. Paavola has, and then I may just have a few

1 follow-ups. But, again, thank you for your
2 time.

3 - - -

4 CROSS-EXAMINATION

5 - - -

6 BY MR. PAAVOLA:

7 Q. Mr. Kim, again, my name is David Paavola.
8 I represent this Ms. Cho in this lawsuit brought by
9 her uncle against her.

10 Did you get a chance to review -- this is
11 the Asset Purchase Agreement that Mr. Brown asked you
12 about, as Andy Kim 3 through that's 10. Then
13 yesterday I sent an email to you and everyone else
14 with my documents for Exhibit 1, which was the
15 Business Asset Purchase Agreement that we
16 Bates-labeled -- it's Bates-labeled Defendant 48
17 through 55.

18 Did you get a chance to look at this
19 document I sent yesterday?

20 A. Yes.

21 Q. You did? Okay. My first question for you
22 is whether these two documents are the same or have
23 you seen any changes between the two of them and can
24 you look through them?

25 THE COURT REPORTER: Can you slow down a

1 little bit. Thank you.

2 BY MR. PAAVOLA:

3 Q. You did? Okay. My first question for you
4 is whether these two documents are the same, or if
5 you see any changes between the two of them? And can
6 you look through them? If you could do that in your
7 screen, let's take the time to do that.

8 A. No. I think, again, these two documents
9 are the same.

10 Q. Okay. Let's go down to page Andy Kim --
11 Bates-stamped Andy Kim Deposition 10 and defendant --
12 it's going to be slightly confusing, but use
13 Defendant Bates-stamp 55 and also Bates-stamp Andy
14 Kim Deposition Number 34.

15 Okay. Is there any difference between
16 these two pages?

17 A. Yeah. Those two pages are the same except
18 the signature.

19 Q. Okay. So Defendant's 55 had a signature
20 and Kim Deposition 10 does not, correct?

21 A. Yes.

22 Q. If you look at the next page, which is
23 Bates-stamped Andy Kim 11, and Defendant's 56, this
24 is titled the Bill of Sale. Did you get a chance to
25 review these documents before today?