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SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Carmen T. Mullen, Circuit Judge
Civil Action No.: 2025-CP-07-00051
Appellate Case No. 2025-000792

BEAR ISLAND DISTRIBUTORS, LLC,

Appellant,

v.

LINCOLN & SOUTH BREWING CO., LLC,

Respondent.

RESPONDENT'S FINAL BRIEF

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
I. STATEMENT OF THE CASE	1
II. STATEMENT OF THE FACTS	2
A. The Distribution Agreement	2
B. Bear Island’s Miscues, Mistakes, And Malfunctions	4
III. ARGUMENT AND CITATION OF AUTHORITY	12
STANDARD OF REVIEW	12
A. THE CIRCUIT COURT APPLIED THE APPROPRIATE EVIDENTIARY STANDARD IN DENYING BEAR ISLAND’S MOTION FOR TEMPORARY INJUNCTION.....	12
1. Bear Island’s Request for a Temporary Injunction.....	13
2. How Is “Adversely Affected” Defined?.....	13
3. A Proper Distribution Agreement Termination.....	15
4. Bear Island’s Evidentiary Failures	17
B. BEAR ISLAND FAILED TO PRESENT EVIDENCE IT WAS ENTITLED TO A COMMON LAW TEMPORARY INJUNCTION.	19
1. Bear Island Failed to Show Irreparable Harm	19
2. Bear Island Cannot Show a Likelihood of Success	22
3. A Proper Distribution Agreement Termination.....	25
IV. CONCLUSION.....	28

TABLE OF AUTHORITIES

Case Decisions, Administrative Rulings, Etc.

<u>Adoptive Parents v. Biological Parents</u> , 315 S.C. 535, 446 S.E.2d 404 (1994)	14
<u>Ahrens v. State</u> , 392 S.C. 340, 709 S.E.2d 54 (2011)	26
<u>Brooks v. Benore Logistics Systems, Inc.</u> , 442 S.C. 462, 900 S.E.2d 436 (2024).....	14
<u>Carolina Cable Network v. Alert Cable TV, Inc.</u> , 316 S.C. 98, 447 S.E.2d 199 (1994).....	3
<u>Carolina Park Associates, LLC v. Marino</u> , 400 S.C.1, 732 S.E.2d 876, 879 (2012)	26
<u>Caribbean Marine Services Co., Inc. v. Baldrige</u> , 844 F.2d 668 (9th Cir. 1988)	19
<u>City of Sumter Police Department v. One (1) 1992 Blue Mazda Truck</u> , 330 S.C. 371, 498 S.E.2d 894 (Ct.App. 1998).....	14
<u>Compton v. South Carolina Department of Corrections</u> , 392 S.C. 361, 709 S.E.2d 639, 642 (2011)	15
<u>Corporation for Public Broadcasting v. Federal Emergence Management Agency</u> , 2025 WL 1938198 (D.D.C., 15 July 2025)	19
<u>County of Richland v. Simpkins</u> , 348 S.C. 664, 560 S.E.2d 902 (Ct.App. 2002).....	12, 19
<u>Denman v. City of Columbia</u> , 387 S.C. 131, 140, 691 S.E.2d 465 (2010)	12
<u>Estate of Meier by and through Meier v. Burnsed</u> , 445 S.C. 288, 914 S.E.2d 130 (2025).....	14
<u>Grosshuesch v. Cramer</u> , 367 S.C. 1, 623 S.E.2d 833 (2005)	12

<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000)	14
<u>Johnson v. Spartanburg County School Dist. 7</u> , 2008 WL 984826 (S.C.App., 27 Oct. 2008)	19
<u>Key Corporate Capital, Inc. v. County of Beaufort</u> , 373 S.C. 55, 644 S.E.2d 675 (2007).....	26
<u>Lancaster County Bar Association v. South Carolina Commission on Indigent Defense</u> , 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).....	14
<u>Ledford v. Pennsylvania Life Ins. Co.</u> , 267 S.C. 671, 230 S.E.2d 900 (1976)	12
<u>Monteith v. Harby</u> , 190 S.C. 453, 3 S.E.2d 250 (1939)	26
<u>Nguyen v. Scott</u> , 2025 WL 2419288 (W.D.Wash., 21 Aug. 2025).....	19
<u>Nutt Corp. v. Howell Road, LLC.</u> , 396 S.C. 323, 721 S.E.2d 447 (Ct.App. 2011).....	26
<u>Pervoe v. Macomber</u> , 2025 WL 2606625 (S.D.Cal., 9 Sept. 2025)	19
<u>Piedmont Distributing Co., Inc. v. Pearl Brewing Co.</u> , 737 F.2d 1311 (4 th Cir. 1984)	15
<u>Powell v. Immanuel Baptist Church</u> , 261 S.C. 219, 199 S.E.2d 60 (1973)	19
<u>Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.</u> , 387 S.C. 583, 694 S.E.2d 15 (2010)	15, 18
<u>Richland County v. South Carolina Department of Revenue</u> , 422 S.C. 292, 811 S.E.2d 758 (2018)	12
<u>Roach v. Combined Utilities Commission</u> , 290 S.C. 437, 351 S.E.2d 168 (Ct.App. 1986).....	19
<u>Rowe v. Hyatt</u> , 321 S.C. 366, 468 S.E.2d 649 (1996)	14

<u>Sanford v. South Carolina State Ethics Commission,</u> 385 S.C. 483, 685 S.E.2d 600 (2009).....	12
<u>Santee Cooper Resort, Inc. v. South Carolina Public Service Commission,</u> 298 S.C. 179, 379 S.E.2d 119 (1989)	26
<u>Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.,</u> 361 S.C. 117, 603 S.E.2d 905 (2004)	12
<u>Segars v. Parrott,</u> 54 S.C. 1, 31 S.E. 677 (1898)	19
<u>Smith v. Planned Parenthood South Atlantic,</u> 2022 WL 3478531 (SC Sup.Ct., 17 Aug. 2022)	15
<u>State v. Hudson,</u> 336 S.C. 237, 519 S.E.2d 577 (Ct.App. 1999).....	14
<u>State v. Kinard,</u> 427 S.C.367, 831 S.E.2d 138 (Ct.App. 2019).....	14
<u>Strategic Recourses Co. v. BCS Life Ins. Co.,</u> 367 S.C. 540, 627 S.E.2d 687 (2006).....	12
<u>Strother v. Lexington County Recreation Commission,</u> 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998).....	14
<u>Whitmire v. Adams,</u> 273 S.C. 453, 257 S.E.2d 160 (1979)	26
<u>Winter v. Natural Resources Defense Council, Inc.,</u> 555 U.S. 7, 24 (2008)	19
<u>ZAN, LLC v. Ripley Light Marina, LLC,</u> 406 S.C. 404, 751 S.E.2d 664 (Ct.App. 2013).....	26
 <u>Statutes, Court Rules, Administrative Regulations, Etc.</u> 	
<u>S.C. Code Ann. §§ 61-2-10, et seq.</u> (Thomson Reuters West 2023).....	13

<u>S.C. Code Ann. §§ 61-4-10, et seq.</u> (Thomson Reuters West 2022).....	11
<u>S.C. Code Ann. §§ 61-4-100</u> (Thomson Reuters West 2023).....	1
<u>S.C. Code Ann. §§ 61-4-1100, et seq.</u> (Thomson Reuters West 2023).....	20
<u>S.C. Code Ann. § 61-4-1100(1)(b)</u> (Thomson Reuters West 2023).....	10
<u>S.C. Code Ann. § 61-4-1100(2)(b)</u> (Thomson Reuters West 2023).....	15, 16
<u>S.C. Code Ann. § 61-4-1120</u> (Thomson Reuters West 2023).....	13, 18
<u>S.C. Code Ann. § 61-4-1310</u> (Thomson Reuters West 2020).....	4, 20, 25

Books, Treatises, Legal Periodicals, Etc.

29 <u>South Carolina Jurisprudence, Private Business</u> <i>Franchises and Business Opportunities,</i> § 45 (Thomson Reuters West August 2025 Update).....	4, 20
29 <u>South Carolina Jurisprudence, Private Business</u> <i>Franchises and Business Opportunities,</i> § 47 (Thomson Reuters West August 2025 Update).....	16
James Flanagan, <u>South Carolina Civil Procedure</u> , 507 (2 nd Edition 1996).....	12
W. Micheal Garner, 3 <u>Franchise and Distribution</u> <u>Law and Practice, Beer, Wine, and Liquor</u> <i>Distributorships</i> , § 16.2 (Thomson Reuters West November 2024 Update)	15
W. Micheal Garner, 3 <u>Franchise and Distribution</u> <u>Law and Practice, Beer, Wine, and Liquor</u> <i>Distributorships</i> , § 16.4 (Thomson Reuters West November 2024 Update)	15

I. STATEMENT OF THE CASE

On 9 January 2025, the Appellant, Bear Island Distributors, LLC (“Bear Island”), brought this action against the Respondent, Lincoln & South Brewing Co., LLC (“Lincoln & South”) for (a) alleged violations of South Carolina law,¹ (b) a temporary restraining order/temporary and/or permanent injunction, and (b) breach of the covenant of good faith and fair dealing. (R.A.15-24, paras. 6-45, 47-50, 52-62). Bear Island, in essence, sought to prevent Lincoln & South from terminating the beer distribution agreement Lincoln & South had with Bear Island. (R.A.14, paras. 1-2). Bear Island also filed an emergency TRO motion. (R.A.189-191). On 11 February 2025, Lincoln & South responded denying the material allegations and asserting several affirmative defenses (R.A.93-108, paras. 1-3, 5-45, 47-50, 52-74), as well as counterclaiming for (1) breach of contract, (2) breach of the covenant of good faith and fair dealing, (3) tortious interference with prospective contractual relations, and (4) defamation. (R.A.109-124, paras. 79-122, 124-127, 129-134, 136-147, 149-154). On 13 March 2025, Bear Island filed its Reply to the Counterclaims denying the material allegations and asserting several affirmative defenses. (R.A.128-137).

On 10 February 2025, Bear Island moved for a temporary injunction. (R.A.192-204). Lincoln & South objected to the temporary injunction and filed an opposition return. (R.A.239-246). Lincoln & South also filed various opposition affidavits. (R.A.293-389; R.A.390-413). The Circuit Court heard Bear Island’s temporary injunction motion via Virtual Webex video conference on 25 February 2025. (R.A.3). By written order dated 3 March 2025, the Circuit Court denied Bear Island’s motion. (R.A.3-5). On 13 March

¹ See S.C. Code Ann. §§ 61-4-100 (Thomson Reuters West 2023).

2025, Bear Island moved to alter or amend the order. (R.A.248-261). Lincoln & South objected to such reconsideration and submitted a return. (R.A.263-270). Bear Island replied. (R.A.272-278). By order dated and filed 26 March 2025, the Circuit Court denied reconsideration effectively affirming the original order. (R.A.6-13). This appeal followed on 24 April 2025. (R.A.414-425).

II. STATEMENT OF THE FACTS

A. The Distribution Agreement

On 16 June 2021, Bear Island and Lincoln & South entered into a contractual agreement (the “*Distribution Agreement*”) (R.A.29-49; R.A.294, para. 14) through which Lincoln & South agreed to supply its malt beverage products to Bear Island and, in turn, Bear Island agreed to distribute Lincoln & South’s products to customers throughout South Carolina. (R.A.31, para. 3, R.A.109, para. 79;). The *Distribution Agreement* contained several relevant provisions:

1. “Agreement” shall mean this document and all of its exhibits.
2. “Code Date” shall mean a date which is clearly marked on the Brand by [Lincoln & South] on the date of production which indicates expiration of shelf life.
3. “Cooperage” shall mean containers for Draft Beer, commonly known as kegs. It shall also include tubs or pallets used for storage of kegs.
4. “Initial Term” shall mean a period of two (2) years following the date of execution of this [*Distribution Agreement*].
5. “Past Code Date” shall mean a Brand that has exceeded its specific shelf life for freshness, as indicated by the current date being after the Code Date.

6. “Perpetual Term” shall mean an indefinite period following the Renewal Term of this *[Distribution] Agreement*.
7. “Renewal Term” shall mean a period of one (1) year which shall take place immediately following the Initial Term of this *[Distribution] Agreement*.²

Importantly, the *Distribution Agreement* imposed significant distribution, promotion, and marketing responsibilities on Bear Island, including, but not limited to, the following

- a. [Bear Island] will use commercially reasonable efforts to promote and sell Brands to Customers in [South Carolina]. These efforts are required to accomplish the purpose of this *[Distribution] Agreement* and maintain the highest possible quantity of Orders for Brands in [South Carolina].
- b. [Bear Island] agrees to maintain an adequate sales force to call on Customers with Reasonable Frequency. [Bear Island] further agrees to maintain a sufficient sales force to promote the Brands as may be agreed by [Lincoln & South] and [Bear Island] from time to time. At all times, [Bear Island] agrees to use good faith efforts regarding the sales and marketing of [Lincoln & South]’s Brands.

² (R.A.29-30, paras. a, c-d, m, t-u, w; R.A.109, para. 80). In addition, the Distribution Agreement provided, in Section 2. **TERM AND SCOPE**, as follows:

This Agreement shall become effective and binding upon the Parties on the date set forth above. The term of this Agreement shall be from the date of execution as set forth above until terminated in accordance with this Agreement and/or applicable law. The Parties agree that the Initial Term of this Agreement shall run for the period of two (2) years from the date set forth above. The Parties may thereafter enter into a Renewal Term for the Period of one (1) year. **Following the Renewal Term, this Agreement shall be deemed to fall under the Perpetual Term unless terminated prior.**

(R.A.31, p.3; R.A.109, para. 80) (Emphasis added). Perpetual contracts are not favored under South Carolina law. *See Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994).

- c. [Bear Island] agrees to place Orders using Electronic Means and with Reasonable Frequency and in sufficient quantities to satisfy the demand for Brand from Customers in [South Carolina], in accordance with the terms and conditions of this *[Distribution] Agreement*, which shall be included on [Lincoln & South]'s Invoice to [Bear Island].
- d. [Bear Island] agrees to pick up orders on a mutually agreed upon weekly schedule dependent upon rate of sale and production schedule from [Lincoln & South] and to fully comply with the terms and conditions of Delivery, pickup, and return if warranted of this *[Distribution] Agreement*.³

The *Distribution Agreement* also imposed various responsibilities on Bear Island for, among other things, planning, reporting, marketing, supplier/distributor relationship management, and maintenance of quality standards and care for Lincoln & South's products.⁴

B. Bear Island's Miscues, Mistakes, And Malfunctions

Unfortunately, from the *Distribution Agreement's* very outset Bear Island struggled to meet its promises and obligations made to Lincoln & South. (R.A.114, para. 81; R.A.294, para. 15). Following execution of the *Distribution Agreement*, Bear Island failed to issue a press release announcing the signing of the contract. (R.A.114, para. 82). Bear Island failed to file the *Distribution Agreement* with the South Carolina Department of Revenue within 60 days of its adoption as required by law. (R.A.114, para. 83).⁵ Throughout the first two years (*i.e.*, the Initial Term), Bear Island regularly placed orders

³ R.A.31, Section 5.a; R.A.109, para. 80.

⁴ R.A.32-33, Sections 5.b. – 5.h; R.A.109, para. 80.

⁵ S.C. Code Ann. § 61-4-1310 (Thomson Reuters West 2020). The Distribution Agreement should have been file with the SCDOR no later than 15 August 2021. (R.A.114, para. 83). *See also generally* 29 South Carolina Jurisprudence, *Private Business Franchises and Business Opportunities*, § 45 (Thomson Reuters West August 2025 Update).

off schedule and would often come to pick up orders unannounced. (R.A.115, para. 84; R.A.294, para. 15). The difficulties were so pervasive that Lincoln & South's sole managing member, Thomas Gadhue ("Mr. Gadhue") (R.A.293, para. 1), grew very concerned that Bear Island's poor communication and lack of coordination would trigger even more problems as consumer demand for Lincoln & South's products necessitated an increase in production. (R.A.115, para. 85).

Consequently, Mr. Gadhue requested William Cram ("Mr. Cram"), Bear Island's managing member, to meet on 23 November 2023 to discuss Lincoln & South's concerns over Bear Island's scheduling and Bear Island's ability to accommodate Lincoln & South's expected volume increase to 60 barrels per week. (R.A.115, para. 86; R.A.294, para. 16).⁶ Mr. Cram assured Mr. Gadhue Bear Island was committed to its partnership with Lincoln & South and Bear Island was, itself, in the process of making capital investment improvements to its warehouse facilities and distribution fleet so Bear Island could accommodate Lincoln & South's expected production increase. (R.A.115, para. 87; R.A.294, para. 17).⁷ Mr. Cram also assured Mr. Gadhue Bear Island would resolve its scheduling problems by buying and installing a refrigerated storage building at Lincoln & South's facility allowing Lincoln & South to store its product therein and making the product readily available for Bear Island pick-up. (R.A.115, para. 88; R.A.294, para. 17). Based on these assurances, Mr. Gadhue agreed Lincoln & south would continue its relationship with Bear Island. (R.A.115, para. 89; R.A.295, para. 18).

⁶ Lincoln & South made a \$300,000.00 investment in additional brewing capacity to reach the 60 barrels per week rate.

⁷ Mr. Gadhue sent Mr. Cram "a photograph of a company [which] supplie[d] refrigerated storage shed to assist [Mr. Cram in providing the promised unit]." (R.A.294, para. 17; R.A.322).

Nevertheless, Bear Island failed to follow through on its assurances. (R.A.115, para. 89; R.A.295, para. 19). Bear Island failed to show it made any significant capital infusion into its warehouse facilities or distribution fleet. (R.A.115, para. 89; R.A.295, para. 19). Bear Island failed to install the promised refrigerated storage building at Lincoln & South's facility where Lincoln & South could store its product. (R.A.116, para. 91; R.A.295, para. 19). Moreover, Bear Island failed to comply with Lincoln & South's requested weekly schedule for purchase orders and pick-ups.⁸ (R.A.116, para. 92; R.A.295, para. 19; R.A.324-341).

Bear Island's failure to both accommodate Lincoln & South's increased production and to improve Bear Island's scheduling became ever apparent in June 2024 when Lincoln & South was able to accomplish the anticipated 60 barrels per week production increase. (R.A.116, para. 93). While Lincoln & South advised Bear Island on 12 June 2024, Lincoln & South had reached the expected increase in production and requested confirmation Bear Island was ready to accommodate this increase, Bear Island never responded. (R.A.116, para. 94; R.A.296, para. 27; R.A.360-361). Ultimately, Bear Island responded noting it would take Bear Island some six to nine months to accommodate the increase in production.⁹ (R.A.116, para. 95; R.A.296, para. 27; R.A.360-361).

Contemporaneously, Lincoln & South discovered Bear Island was failing in its efforts to promote and market Lincoln & South's products. (R.A.116, para. 96). In fact, Lincoln & South had to request Bear Island send over to Lincoln & South its sales

⁸ Bear Island routinely sent last minute purchase orders to Lincoln & South which prevented Lincoln & South from having enough time to prepare product orders and, thereby, often causing delay to Bear Island's pick-ups. (R.A.116, para. 92).

⁹ Lincoln & South had, however, advised Bear Island that Lincoln & South was steadily working toward this increased production goal almost a year earlier. (R.A.116, para. 95).

representatives' information so Lincoln & South could, itself, forward the information along to potential retailers after Lincoln & South had received numerous complaints from retailers indicating they could not acquire Lincoln & South's product. (R.A.116, para. 96; R.A.295, para. 21).

Mr. Gadhue, understandably concerned with these recent negative developments, agreed to meet with Mr. Cram on 5 July 2024 to address Bear Island's short-comings and discuss solutions. (R.A.116, para. 97; R.A.295, para. 22). Mr. Gadhue flew into Hilton Head from Vermont¹⁰ on 2 July 2024 to attend the scheduled meeting, only to receive a text from Mr. Cram on 4 July 2024, indicating he was unable to attend due to a family commitment. (R.A.117, para. 98; R.A.295, para. 22; R.A.347-349). Even though Mr. Gadhue attempted to reschedule the meeting for 8 July 2024, Mr. Cram never responded. (R.A.117, para. 98; R.A.295, para. 22; R.A.347-349).

Unfortunately, Bear Island's miscues, malfunctions, and failures continued to intensify in August 2024. (R.A.117, para. 99). Beginning on 13 August 2024, Lincoln & South started to receive retail customers' complaints concerning the quality and consistency of Lincoln & South products. (R.A.117, para. 100; R.A.295, para. 21; R.A.343-345; R.A.391, para. 11).¹¹ Lincoln & South investigated these various consumer complaints and ultimately determined the problems at issue stemmed from Bear Island's mishandling of the Lincoln & South product after the merchandise had been transferred

¹⁰ Mr. Gadhue has owned a home in South Carolina since 2021, but he is from Vermont and continues to live there on a general basis. (R.A.293, paras. 5-6).

¹¹ Mr. Rybicki noted that “[b]ased on [his] experience, the problems [Lincoln & South] were having could only be caused by [Bear Island’s] improper storage [of Lincoln & South’s product] at inconsistent or insufficiently low enough temperature, or untimely distribution.” (R.A.391, para. 11).

from Lincoln & South’s temperature-controlled facility over to Bear Island’s possession, custody, and control. (R.A.117, para. 100; R.A.295, para. 21; R.A.351-358; R.A.390-391, para. 9).**12**

Mr. Gadhue observed such mishandling firsthand when he visited Bear Island’s Charleston South Carolina facility on 23 August 2024.**13** (R.A.117, para. 101; R.A.295, para. 24). Mr. Gadhue saw Lincoln & South’s product sitting in an unacclimatized warehouse with a broken door and discovered Bear Island’s trucks lacked insulation confirming Bear Island’s mishandling resulted in the poor quality and consistency of Lincoln & South’s product.**14** (R.A.117, para. 102; R.A.295, para. 24; R.A.351-358). Mr. Gadhue also observed Bear Island storing Lincoln & South’s kegs in an unfenced area exposed to direct sunlight.**15** (R.A.117, para. 103; R.A.295, para. 24; R.A.351-358). He noted he saw “what [appeared] like hundreds of kegs unsecured and stacked up [outside

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- 12** Mr. Rybicki noted the following issues Lincoln & South experienced with Bear Island:
- a. Lack of communication;
 - b. Failure to achieve promised sales numbers;
 - c. Mishandling of [Lincoln & South’s] product;
 - d. Failing to facilitate and participate in any structured business plan that would help foster a successful business relationship;
 - e. Refusing to wrap [Bear Island] trucks with [Lincoln & South] advertising after promising to do so for years [and] only wrap trucks in a competitors brand right when this litigation started.

(R.A.390-391, para. 9).

13 Mr. Gadhue had contemporaneously been on Hilton Head Island for yet another failed attempt to meet with Mr. Cram. (R.A.117, at para. 101; R.A.295, para. 24).

14 Notwithstanding Bear Island’s alleged “ ‘top of the line’ transportation ‘fleet’ of vehicles, it appears Bear Island ha[d] [only five] trucks to service the entire state of South Carolina.” (R.A.295, para. 25).

15 Mr. Gadhue even observed vines growing on Lincoln & South’s kegs. (R.A.117, at para. 103; R.A.295, para. 24).

at the Bear Island facility].” (R.A.295, para. 24; R.A.351-358). Mr. Gadhue stated: “[t]his was disturbing because [Lincoln & South] had [regularly] been clamoring for [the return of] kegs from [Bear Island], which [wa]s supposed to return [the kegs] from the retail customers during deliveries, and [Lincoln & South] w[as] regularly told [Bear Island] did not have any [kegs to return]. (R.A.295, para. 24; R.A.351-358). When Mr. Gadhue contacted Mr. Cram about his observed product mishandling, Mr. Cram, not only failed to apologize for Bear Island’s failures, Mr. Cram then proceeded to chastise Mr. Gadhue for making an “unannounced” visit to Bear Island’s facility. (R.A.117, para. 104; R.A.295-296, para. 26).**16**

At that point, Mr. Gadhue decided Lincoln & South could no longer do business with Bear Island and, on 6 September 2024, informed Mr. Cram that Lincoln & South planned to terminate the *Distribution Agreement* with Bear Island. (R.A.117, para. 105; R.A.296, paras. 28-29).**17** Thereafter, on 14 October 2024, Lincoln & South, through legal counsel, notified Bear Island that Lincoln & South would formally move to terminate the *Distribution Agreement* via the pre-signed consent Mutual Termination Agreement attached to the *Distribution Agreement*. (R.A.118, para. 106; R.A.296, para. 30). Bear Island rejected this offer on 19 October 2024 (R.A.296, para. 30), and later demanded, on or around 25 October 2024, Lincoln & South pay \$750,000.00 to terminate of the *Distribution Agreement*. (R.A.118, para. 107; R.A.296, para. 30).**18**

16 Furthermore, Mr. Cram told Mr. Gadhue, his partner in the Distribution Agreement, to “stay off [Bear Island’s] property.” (R.A.295-296, para. 26).

17 See also R.A.363-367.

18 Mr. Cram refused to “speak with [Mr. Gadhue] directly, but [Bear Island] then began a mad scramble in October [2024] of purchase orders and demands for [Lincoln & South] to make appearance at marketing events despite knowing full well of [Lincoln & South’s] intent to terminate

On 14 November 2024, pursuant to South Carolina law,¹⁹ Lincoln & South gave Bear Island notice of Lincoln & South’s intent to terminate the *Distribution Agreement* as of 13 January 2025. (R.A.118, para. 108; R.A.296, para. 31; R.A.369-380). Lincoln & South provided the termination notice (a) to Bear Island 60 days prior to the scheduled termination date, (b) specifically listed some 60 of Bear Island’s substantive, fundamental, and material violations of the *Distribution Agreement*, (c) set forth Lincoln & South’s specific reasons for terminating the *Distribution Agreement*, and (d) granted Bear Island an opportunity to correct its various miscues, mistakes, and failures prior to the termination date. (R.A.118, para. 109; R.A.296, para. 31).

Bear Island, however, failed to correct its course of conduct and even failed to place a purchase order during the 60-day period. (R.A.118, para. 110). Bear Island failed to place any purchase orders, cure its enumerated deficiencies, or respond to the notice of termination clearly demonstrating Bear Island did not intend to maintain the *Distribution Agreement*. (R.A.118, para. 111).²⁰ After doing nothing for almost two months, Bear Island responded to the notice of termination on 9 January 2025, by filing this lawsuit seeking an emergency TRO to compel Lincoln & South to remain in the *Distribution Agreement*. (R.A.118, para. 113; R.A.296, para. 31).²¹

the *Distribution Agreement*.” (R.A.296, para. 30). Nevertheless, Bear Island’s last purchase order to Lincoln & South was on 14 October 2024. (R.A.296, para. 34).

¹⁹ See S.C. Code Ann. § 61-4-1100(1)(b) (Thomson Reuters West 2023).

²⁰ Faced with Bear Island’s complete inaction, Lincoln & South eventually secured a relationship with another distributor who was willing to entered into a new distribution agreement with Lincoln & South after the scheduled 13 January 2025, termination date. (R.A.118, para. 112; R.A.296, para. 33).

²¹ Mr. Gadhue stated that “[r]ather than go through a hearing on the emergency [TRO] that [Bear Island] had been filed and then a hearing for a temporary [injunction], which [Lincoln &

Additionally, on 10 February 2025, Bear Island moved the Circuit Court to issue a temporary injunction preventing Lincoln & South from:

- (a) terminating the *Distribution Agreement*,
- (b) discontinuing and/or terminating any of Lincoln & South's obligations or duties under the *Distribution Agreement*,
- (c) refusing to sell its products to Bear Island, and
- (d) evading the *Distribution Agreement* by marketing Lincoln & South's products to Bear Island's customers through another distributor or via any other means or method.

(R.A.192). Lincoln & South strenuously opposed the motion. (R.A.239-246; R.A.293-389; R.A.247-389; R.A.390-412).

The Circuit Court ultimately determined Bear Island was not entitled to a temporary injunction pursuant to the *South Carolina Alcohol and Alcoholic Beverages Act 22* as Bear Island was not able to demonstrate that, absent the imposition of a temporary injunction, Bear Island would be and/or might be adversely affected by termination of the Distribution Agreement. (R.A.8). Moreover, the Circuit Court concluded Bear Island "itself was the cause of any potential adverse affect to [Bear Island] because [Bear Island] had not ordered product [from Lincoln & South] since October, 2024." (R.A.8). Furthermore, Lincoln & South "[wa]s only one of the 28 beer suppliers that ha[d] exclusive distribution agreements with [Bear Island and, therefore, Bear Island] can and has continued to do business with its other 27 beer suppliers" (R.A.10).**23**

South] understood [Bear Island] had or would be filing, [Lincoln & South] agreed to [s]tay the effective termination date [of the Distribution Agreement]. (R.A.296, para. 32).

22 See S.C. Code Ann. §§ 61-4-10, *et seq.* (Thomson Reuters West 2022).

23 The Circuit Court noted Lincoln & South's "Notice of Termination letter . . . provided [60] specific instances where [Bear Island] breached the terms and conditions of the [Distribution

III. ARGUMENT AND CITATION OF AUTHORITY

Standard Of Review

“ ‘An order [either] granting or denying an injunction is reviewed [by appellate courts] for [an] abuse of discretion.’ ”²⁴ “An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law.”²⁵ Moreover, “ ‘[a]n injunction is a drastic remedy issued by the [trial] court in its discretion to prevent irreparable harm suffered by the plaintiff.’ ”²⁶ In order “[t]o obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.”²⁷

A. THE CIRCUIT COURT APPLIED THE APPROPRIATE EVIDENTIARY STANDARD IN DENYING BEAR ISLAND’S MOTION FOR TEMPORARY INJUNCTION.

Contrary to Bear Island’s meritless arguments, the Circuit Court applied the proper and correct evidentiary standard where addressing Bear Island’s alleged entitlement to a temporary injunction. Moreover, the Circuit Court appropriately addressed all three

Agreement, as well as the fact Bear Island] did not address [Lincoln & South’s] Notice of Termination [nor] come into compliance with the Distribution Agreement after receiving the Notice of Termination [nor] place[] a purchase order with [Lincoln & South] for product since October 2024.” (R.A.6-7).

²⁴ Richland County v. South Carolina Department of Revenue, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (*citing* Strategic Recourses Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006)) (Citation omitted in original).

²⁵ County of Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App. 2002) (*citing* Ledford v. Pennsylvania Life Ins. Co., 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976)).

²⁶ Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (*citing* James Flanagan, South Carolina Civil Procedure, 507 (2nd Edition 1996)).

²⁷ Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010) (*citing* Sanford v. South Carolina State Ethics Commission, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009); Grosshuesch v. Cramer, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005)).

elements of a common law temporary injunction. The Circuit Court's two orders should be affirmed by this Court of Appeals in all respects as they are proper and correct recitations of the applicable law.

1. Bear Island's Request for a Temporary Injunction

Bear Island sought a temporary injunction from the Circuit Court, pursuant to S.C. Code Ann. § 61-4-1120 (Thomson Reuters West 223) based on assertions Bear Island would be "adversely affected by [Lincoln & South's] termination on cancellation . . ." (*Id.*) of the *Distribution Agreement* as of 13 January 2025. (R.A.194). Bear Island requested the Circuit court to enjoin Lincoln & South from:

. . . taking any actions whatsoever which would in any way interfere with Bear Island's rights under the *[D]istribution [A]greement* . . ., including but not limited to (a) terminating the *Distribution Agreement*; (b) requiring Lincoln [& South] to continue to comply with its obligations under the *Distribution Agreement* and sell its [B]rands (*i.e.*, varieties of beer) . . . to Bear Island, and (c) circumventing the *Distribution Agreement* by supplying Bear Island's customers through other distributors or other means.

(R.A.192). Moreover, Bear Island asserted it "need **only** show that [Bear Island] "is or might be adversely affected by the cancellation or termination" of the *Distribution Agreement* to [authorize the Circuit Court to] enjoin Lincoln [& South] from terminating the *Distribution Agreement*. (R.A.202) (Emphasis in original).

2. How Is "Adversely Affected" Defined?

Nothing in either S.C. Code Ann. § 61-4-1120 or elsewhere in the South Carolina Alcohol and Alcoholic Beverages Act,²⁸ including within Article 11 – *Beer Wholesaler Franchise* of Chapter 4 *Beer, Ale, Porter, and Wine*, defines the term "adversely affected".

²⁸ See S.C. Code Ann. §§ 61-2-10, *et seq.* (Thomson Reuters West 2023).

While “ ‘[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature,’ ”²⁹ “when faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.”³⁰ Furthermore, “[w]ords must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute’s operation.”³¹ Nevertheless, “ ‘[i]n construing a statute [an appellate] [c]ourt will reject an interpretation when such an interpretation leads to an absurd result [which] could not have been intended by the [L]egislature..’ ”³²

That is the situation in this contractual dispute between Bear Island and Lincoln & South. Under Bear Island’s theory of the case the term “adversely affected” essentially means any allegedly “negative” result, ***however minor***, which Bear Island either directly “suffered” or which Bear Island “may have suffered” because of Lincoln & South terminating the *Distribution Agreement* mandated the Circuit Court to grant Bear Island injunctive relief. For the Circuit Court to have granted Bear Island a temporary injunction on such a flimsy basis would have allowed Bear Island to effectively hold Lincoln & South ***hostage*** to continue their totally fractured commercial relationship until this litigation

²⁹ Estate of Meier by and through Meier v. Burnsed, 445 S.C. 288, 294, 914 S.E.2d 130, 133 (2025) (*quoting* Brooks v. Benore Logistics Systems, Inc., 442 S.C. 462, 477, 900 S.E.2d 436, 444 (2024) (*quoting* Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

³⁰ Strother v. Lexington County Recreation Commission, 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998) (*citing* Adoptive Parents v. Biological Parents, 315 S.C. 535, 446 S.E.2d 404 (1994)).

³¹ State v. Hudson, 336 S.C. 237, 246, 519 S.E.2d 577, 583 (Ct.App. 1999) (*citing* Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996); City of Sumter Police Department v. One (1) 1992 Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct.App. 1998)).

³² State v. Kinard, 427 S.C.367, 375, 831 S.E.2d 138, 142 (Ct.App. 2019) (*quoting* Lancaster County Bar Association v. South Carolina Commission on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008)).

ended. This would have been in the face of Lincoln & South’s substantial evidence it was Bear Island’s own product distribution miscues, mistakes, and malfunctions which lead to the *Distribution Agreement* termination. (R.A.369-380).

3. A Proper *Distribution Agreement* Termination

Undeniably, “South Carolina law protects beer distributors from arbitrary, unfair terminations of their distributorship contracts by registered beer producers.”³³ The operative intent is legal protection from either arbitrary and/or unfair terminations, not terminations, as in this case, based on just cause and made in good faith. Consequently, the law also acknowledges contractual agreements, such as the *Distribution Agreement*, may be cancelled and/or terminated for good cause, in good faith, and for material breaches of the contractual agreement.³⁴ The authorities recognize this is a well-recognized and accepted practice across the country.³⁵

Consequently, the imposition of injunctive relief in this case is clearly an absurd result never intended by our Legislature when viewed in the context of the normal requirements for injunctive relief,³⁶ together with the specific statutory requirements

³³ Piedmont Distributing Co., Inc. v. Pearl Brewing Co., 737 F.2d 1311, 1314 (4th Cir. 1984) (Interpreting predecessor statute).

³⁴ See S.C. Code Ann. § 61-4-1100(2)(b). See also 29 S.C. Juris., § 47.

³⁵ See W. Micheal Garner, 3 Franchise and Distribution Law and Practice, Beer, Wine, and Liquor Distributorships, § 16.2 (Thomson Reuters West November 2024 Update) (“Limitations on termination or nonrenewal of beer, wine, or liquor distributorships are similar to those under automobile statues and franchise relationship statutes generally. Most states that have such provisions prohibit the manufacturer or distributor from terminating the distributor except for good cause and require notice . . .”). See also *Id.*, at § 16.4 (Thomson Reuters West November 2024 Update) (Setting forth summary of state beer, wine, and liquor statutes).

³⁶ Smith v. Planned Parenthood South Atlantic, 2022 WL 3478531, at *1 (Sup.Ct., 17 Aug. 2022) (citing Compton v. South Carolina Department of Corrections, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–587, 694 S.E.2d 15, 17 (2010)) (“A party seeking a temporary injunction must establish three

imposed on Lincoln & South when seeking to properly terminate the *Distribution Agreement*,³⁷ namely the “notice of intention to cancel the *[Distribution] [A]greement . . .* must be given in writing at least [60] days before the date of the proposed cancellation or termination.”³⁸ Furthermore, Lincoln & South’s “notice [had to] contain . . . assurance that the *[Distribution] [A]greement . . . [wa]s* being terminated in good faith and for material violation of one or more provisions which [we]re relevant to the effective operation of the *[Distribution] [A]greement . . .*”³⁹ Finally, the notice had to contain “a list of the specific reasons for the termination or cancellation.”⁴⁰

As the law required, Lincoln & South’s termination for cause letter to Bear Island “contained assurance that the *[Distribution] [A]greement [wa]s [being]* terminated in good faith and for material violation of one or more provisions which [we]re relevant to the effective operation of the *[Distribution] [A]greement*, and [set forth] a list of the specific reasons for the termination.”⁴¹ Lincoln & South’s termination notice complied with South Carolina law in all respects and demonstrated that if Bear Island was adversely affected by the termination, those adverse effects arose solely from Bear Island’s own actions and/or inactions.

elements to receive this relief: (1) immediate, irreparable harm if the injunction is not granted; (2) a likelihood of success on the merits; and (3) no adequate remedy at law.”).

³⁷ See S.C. Code Ann. § 61-4-1100(2)(b) (Thomson Reuters West 2023). See also 29 South Carolina Jurisprudence, *Private Business Franchises and Business Opportunities*, § 47 (Thomson Reuters West Aug. 2025 Update).

³⁸ *Id.* See also 29 S.C. Juris., § 47.

³⁹ *Id.* See 29 S.C. Juris., § 47.

⁴⁰ *Id.* See 29 S.C. Juris., § 47.

⁴¹ See 29 S.C. Juris., § 47 (*citing* S.C. Code Ann. § 61-4-1100(2)(b)).

4. Bear Island's Evidentiary Failures

Moreover, even if the “proper standard” for the Circuit Court to grant injunctive relief was simply for Bear Island to present “evidence” Bear Island was actually or might somehow be “adversely affected” by the termination of the *Distribution Agreement* termination, it was clear the Circuit Court concluded “the facts and circumstances presented by [Bear Island in support of its request for injunctive relief] did not convince the [Circuit] Court that [Bear Island] made a [proper and sufficient] showing that [Bear Island] will or might be adversely affected [by termination of the *Distribution Agreement*].” (R.A.8). Bear Island was required to present evidence demonstrating it was entitled to injunctive relief and simply failed to so.

In this vein the Circuit Court specifically found and concluded:

[Bear Island] offered evidence [it] w[as] not able to order product from [Lincoln & South]. However, the [Circuit] Court finds that **[Bear Island] itself was the cause of any potential adverse affect because they had not ordered product since October, 2024.** [Bear Island]’s counsel’s letter to [Lincoln & South]’s counsel on January 29, 2025, is not evidence of [Bear Island]’s attempt to submit a Purchase Order. Additionally, the letter **did not show that [Bear Island] made any attempt to comply with the Distribution Agreement.** [Bear Island] also argued [it] would suffer loss of business, loss of reputation, loss of goodwill, and loss of customers [if the *Distribution Agreement* was terminated]. However, [Bear Island] provided a text message with a retail customer of [Lincoln & South], where the customer inquired about getting [Lincoln & South]’s product and was told by [Bear Island]’s Sales Representative . . . ‘Lincoln [&] South has none to sell us . . . need to sub for something else.’ [Bear Island] **admitted that it did not make an inquiry** to [Lincoln & South] or place a purchase order to service that retail customer; instead, [Bear Island] told the customer [Lincoln & South] did not have any product and offered a substitute product. [Bear Island] also argue[d] that it collaborated with [Lincoln & South], to service the [Hilton Head Island] Seafood Festival. However, the evidence indicated that [Bear Island] **tried to sell competing products to the Hilton Head Island**

Seafood Festival. Further, after the customer contacted [Lincoln & South] to inquire why [Bear Island] was promoting one of [Lincoln & South] competitors, [Lincoln & South] contacted [Bear Island] and had to demand that [Bear Island] make the product delivery to the [Hilton Head Island] Seafood Festival.

(R.A.8-9) (Emphasis added).

Furthermore, Bear Island asserted the Circuit Court used the “clear and convincing” standard of proof when reviewing Bear Island’s entitlement to injunctive relief seizing on the Circuit Court’s statement that “Bear Island . . . did not present **convincing** evidence that [Bear Island] has been or might be adversely affected by the cancellation of the *Distribution Agreement* . . .” (R.A.4) (Emphasis added). At best, this is a “red herring” and at worst a gross mischaracterization of the Circuit Court’s decision. All the Circuit Court was stating was that Bear Island’s evidence failed to **convince** the Circuit Court Bear Island was entitled to injunctive relief. There was no indication the Circuit Court used some higher standard of proof when considering Bear Island’s motion, just that Bear Island, which clearly bore the burden of proof,⁴² failed to present sufficient evidence to persuade, induce, or influence, sway, encourage, and/or convince the Circuit Court to impose a preliminary injunction on Lincoln & South pursuant to S.C. Code Ann. § 61-4-1120.

The Circuit Court properly denied Bear Island’s request for injunctive relief against Lincoln & South. The Circuit Court’s decision should be affirmed in all respects.

⁴² Poynter Investments, 387 S.C. 583, 586–587, 694 S.E.2d 15, 17.

B. BEAR ISLAND FAILED TO PRESENT EVIDENCE IT WAS ENTITLED TO A COMMON LAW TEMPORARY INJUNCTION.

1. Bear Island Failed to Show Irreparable Harm.

Bear Island was required to show to the Circuit Court Bear Island was *likely* to suffer irreparable harm if the Circuit Court failed to grant injunctive relief.⁴³ This is the case since the “sole purpose for granting a temporary injunction is to preserve status quo in order to avoid possible irreparable injury to a party.”⁴⁴ Nevertheless, such relief is not, however, granted on the potential or possibility of irreparable harm, as speculative injury is not sufficient as “[a] court of equity never enjoins by reason of a theoretical or speculative injury.”⁴⁵ Moreover, the courts have noted “[b]ecause preliminary injunctive relief is such an ‘extraordinary remedy’, it may not issue ‘based only on a possibility of irreparable harm.’ ”⁴⁶

The evidence demonstrated and the Circuit Court agreed that an injunction was not necessary to preserve the parties’ respective rights while this litigation proceeded forward. (R.A.3-5; R.A.6-12). Lincoln & South is but one of 28 beverage

⁴³ County of Richland v. Simpkins, 384 S.C. 664, 669, 560 S.E.2d 902, 904 (*citing* Roach v. Combined Utilities Commission, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct.App. 1986)).

⁴⁴ Johnson v. Spartanburg County School Dist. 7, 2008 WL 984826, at *2 (S.C.App., 27 Oct. 2008) (*citing* Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973)).

⁴⁵ See Segars v. Parrott, 54 S.C. 1, 23, 31 S.E. 677, 697 (1898). See also Pervoe v. Macomber, 2025 WL 2606625, at *2 (S.D.Cal., 9 Sept. 2025) (*quoting* Caribbean Marine Services Co., Inc. v. Baldridge, 844 F.2d 668, 674 (9th Cir. 1988)) (Mere “[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction.”); Nguyen v. Scott, 2025 WL 2419288, at *25 (W.D.Wash., 21 Aug. 2025).

⁴⁶ Corporation for Public Broadcasting v. Federal Emergence Management Agency, 2025 WL 1938198, at *5 (D.D.C., 15 July 2025) (*quoting* Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008)) (Emphasis and internal quotation marks omitted in original).

producers/manufacturers (R.A.10) which Bear Island holds captive (*i.e.*, hostage) through South Carolina’s oppressive statutory construction which restricts alcohol beverage makers from distributing their products save and except through a licensed distributor.⁴⁷ Ironically, it appears Bear Island considered Lincoln & South to be of such little significance that Bear Island, although statutorily required to do so, never properly registered as Lincoln & South’s distributor in accordance with the law.⁴⁸ As the Circuit Court noted: Lincoln & South “is only one of the 28 beer suppliers [which] have exclusive distribution agreements with [Bear Island and, therefore, Bear Island] can and has continued to do business with its 27 other beer suppliers” (R.A.10). Lincoln & South simply is just another one of Bear Island’s producer/customers. Bear Island failed to present any credible evidence that Bear Island’s “loss” of Lincoln & South as a product supplier did, much less, would cause Bear Island any harm which cannot be addressed and/or calculated in Bear Island’s meritless claim of “lost” revenue. (R.A.24).

Furthermore, as the Circuit Court acknowledged Bear Island cannot legitimately claim irreparable harm since the harm asserted arises from Bear Island’s own conduct. (R.A.8). The Circuit Court stated while Bear Island “offered evidence [Bear Island] w[as] not able to order product from [Lincoln & South], the [Circuit] Court finds that [Bear Island] itself was the cause of any potential adverse affect because [Bear Island] had not ordered product [from Lincoln & South] since October, 2024.” (R.A.8).⁴⁹ Furthermore, the

⁴⁷ See generally S.C. Code Ann. §§ 61-4-1100, *et seq.* (Thomson Reuters West 2023). See Article 11 – *Beer Wholesaler Franchise* - of Chapter 4 – *Beer, Ale, Porter, and Wine* – of Title 61 – *Alcohol and Alcoholic Beverages*.

⁴⁸ See S.C. Code Ann. § 61-4-1310. (Thomson Reuters West 2023). See also 29 S.C. Jurisprudence, § 45.

⁴⁹ (R.A.296, para. 34). The Circuit Court did acknowledge Bear Island claimed it’s attorney’s “letter to [Lincoln & South’s] counsel on January 29, 2025” constituted a product order.’

evidence showed that “since October 2024 [Bear Island] ha[d] been selling [Lincoln & South] product from [Bear Island’s] storage which [Lincoln & South product] [wa]s out of date and off quality.” (R.A.297; R.A.382-386). Additionally, Bear Island undertook a concerted campaign to both undermine Lincoln & South’s business and ruin Lincoln & South’s product brands including, but not limited to, (a) selling, distributing, and shelving out-of-date product which, as noted, spawned numerous customer complaints; (b) substituting and promoting with retail customers Lincoln & South’s competitors’ products for those of Lincoln & South; and (c) falsely representing to retail customers that Lincoln & South was having “production issues” and/or “did not have product”. (R.A.8-9; R.A.297; R.A.382-386).

The only irreparable harm suffered by Bear Island may come from others in the industry, including other brewers and retail customers, once they become aware of Bear Island’s reprehensible conduct and negative business practices catalogued in this litigation to the extent the parties’ filings becoming public. Such an outcome was not Lincoln & South’s doing and, in any case, fails to evidence credible irreparable harm sufficient for the Circuit Court to have imposed a restraining order and/or injunction forcing Lincoln & South to remain beholden to Bear Island while Bear Island was doing everything possible to destroy Lincoln & South’s business.

The Circuit Court correctly refused Bear Island’s request for a preliminary injunction and the decision should be affirmed in all respects.

(R.A.8). The Circuit Court, however, concluded that letter “[wa]s not evidence of [Lincoln & South’s] attempt to submit a Purchase Order[and, moreover,] the letter did not show that [Bear Island] made any attempt to comply with [terms, conditions, and obligations in] the Distribution Agreement.” (R.A.8).

2. Bear Island Cannot Show a Likelihood of Success.

While Lincoln & South has been transparent and forthright throughout its business relationship with Bear Island, the same cannot be said for Bear Island. The evidence demonstrated Bear Island's conduct, almost from the *Distribution Agreement's* inception has been far from professional. (R.A.8-10; R.A.295-297, paras. 19-28, 35; R.A.323-361, 388-389). Lincoln & South's reliance upon and expectations of Bear Island proved to be both seriously misplaced and ill-advised. (R.A.8-10; R.A.295-297, paras. 19-28, 35; R.A.323-361, 388-389; R.A.391, paras. 11-13; R.A.393-413).

As has been noted, Bear Island solicited Lincoln & South as a customer by representing Bear Island was investing capital into its physical facilities and infrastructure such that Bear Island could handle Lincoln & South's anticipated increased production and capacity. (R.A.294-297, paras. 16-17, 19-21, 25-28, 35; R.A.321-345, 359-361, 387-389; R.A.391, paras. 11-13; R.A.393-413). While Lincoln & South followed through with its promised capital investment and achieved the promised production and capacity increase (R.A.294, para. 16; R.A.296, para. 27; R.A.360-361, Bear Island failed to do so. (R.A.296, paras. 27-28; R.A.360-361). When presented with the request for placement of product at its projected capacity, Bear Island acted as if Bear Island had no prior notice of Lincoln & South's production increase, admitted Bear Island did not have the ability to accommodate Lincoln & South's increased capacity, and advised Lincoln & South it could take Bear Island some six to nine months before Bear Island could possibly meet Lincoln & South's production output. (R.A.116, para. 94; R.A.296, para. 27; R.A.360-361). Notwithstanding its assurances, Bear Island clearly failed to make the represented capital improvements to its facilities and infrastructure as promised. (R.A.116, para. 94; R.A.296, para. 27; R.A.360-361).

Lincoln & South provided Bear Island with a written schedule for Bear Island to submit purchase orders to Lincoln & South to assure product was properly and timely available for pick up. (R.A.115, para. 84; R.A.294, para. 15). A schedule is imperative given the brewing and packaging process. Unfortunately, Bear Island failed to follow the set schedule, regularly submitting purchase orders late. (R.A.115-116, paras. 84, 92; R.A.294, para. 15). Even though Lincoln & South gave Bear Island the written schedule on numerous occasions, Bear Island continuously failed to follow the set schedule, asserting that it needed flexibility to operate. (R.A.115-116, paras. 84, 92; R.A.294, para. 15).**50**

Eventually, Bear Island suggested Lincoln & South allow Bear Island to install a temperature-controlled storage facility (i.e., refrigeration unit) on Lincoln & South's property in which Lincoln & South could store product. (R.A.115, para. 88; R.A.294, para. 17). This would allow Bear Island the ability to pick up Lincoln & South's product whenever Bear Island wanted to do so, thereby eliminating the need for Bear Island to adhere to a set schedule for the submission of purchase orders. Lincoln & South readily agreed to this proposal and even sent Bear Island suggested vendors and examples of temperature-controlled storage facilities. (R.A.115, para. 88; R.A.294, para. 17; R.A.322). Much in the same vein as Bear Island's other "assurances", Bear Island never followed through with the installation of the temperature-controlled storage facility. (R.A.116, para. 91; R.A.295, para. 19).

50 Bear Island requested Lincoln & South to allow Bear Island direct access to Lincoln & South's production facility. This request, however, was not feasible given prior incidents and potential civil liability issues.

In addition to its false assurances of performance, infrastructure, facilities, and capabilities, Bear Island directly breached the terms and conditions of the *Distribution Agreement*, including but not limited to, the following:

- a. Failing to market and promote Lincoln & South's product in good faith (R.A.116, para. 96; R.A.294-297, paras. 17, 19-21, 28, 35; R.A.390-391, para. 9);
- b. Failing to maintain an adequate sales force to market Lincoln & South's product (R.A.116, para. 96; R.A.294-297, paras. 17, 19-21, 28, 35; R.A.390-391, para. 9);
- c. Failing to place orders with Lincoln & South for a several month period (R.A.118, para. 110; R.A.296, para. 34);
- d. Failing to place and pick up orders in accordance with the mutually agreed upon schedule (R.A.115-116, paras. 84, 86, 92; R.A.294-295, paras. 15-17, 19-20);
- e. Failing to provide Lincoln & South with monthly depletion reports (sales numbers) (R.A.390-391, para. 9);
- f. Selling/distributing/shelving Lincoln & South's product past its code date (R.A.297, para. 35; R.A.390-391, paras. 9, 11-13; R.A.407-413);
- g. Failing to store Lincoln & South's product in a controlled environment warehouse at a consistent temperature under 40 degrees Fahrenheit (R.A.117, para. 102; R.A.295, para. 24; R.A.390-391, paras. 9, 11; R.A.394-396);
- h. Failing to transport Lincoln & South's product in properly insulated/temperature controlled vehicles (R.A.117, para. 102);
- i. Failing to follow Lincoln & South's specific quality control instructions in-house or at retail (R.A.117, paras. 102-103; R.A.391, para. 12; R.A.407-413);
- j. Storing Lincoln & South's kegs in an unfenced and unsecured area (R.A.117, para. 103; R.A.295, para. 24; R.A.351-358; R.A.390-391, para. 9);

- k. Storing Lincoln & South's kegs uncovered and under direct sunlight (R.A.117, para. 103; R.A.295, para. 24; R.A.351-358; R.A.391, para. 12; R.A.407-413);
- l. Failing to return Lincoln & South's kegs within a reasonable time or upon request (R.A.295, para. 24; R.A.391, para. 12; R.A.407-413);
- m. Failing to file the *Distribution Agreement* with the SCDOR as required S.C. Code Ann. § 61-4-1310 (R.A.114, para. 83); and
- n. Failing to issue a joint press release announcing the signing of the *Distribution Agreement*. (R.A.114, para. 82).

Not only was Bear Island unable to demonstrate to the Circuit Court that Bear Island had a "likelihood of success" on its claims against Lincoln & South, the evidence presented showed the very opposite position. Given Bear Island's documented errors, miscues, misrepresentations, and shortcomings Lincoln & South clearly had much more than its own "likelihood of success" on Lincoln & South's claims against Bear Island. Lincoln & South was, and remains, justified in Lincoln & South's termination of the *Distribution Agreement*.

3. Bear Island Had Sufficient Other Legal Remedies Available Rendering an Injunction Unwarranted.

Bear Island pled statutory and contractual causes of action against Lincoln & South. (R.A.14, para. 1; R.A.23-24, paras. 1, 52-61). Assuming Bear Island was successful on those claims, Bear Island would recover monetary relief sufficient to redress any alleged nefarious conduct by Lincoln & South. The Circuit Court correctly concluded Bear Island failed to present sufficient evidence showing it was entitled to a temporary injunction preventing Lincoln & South's termination of the *Distribution Agreement*.

It is well-established law that “equitable relief is unnecessary when an adequate remedy for money damages is available at law.”⁵¹ Moreover, “ [a]n adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.’ ”⁵² Bear Island, absent any credible proof, simply asserted “Bear Island ha[d] no adequate remedy at law as money damages alone w[ould] not fully compensate Bear Island for [Lincoln & South’s] breaches [of the *Distribution Agreement*], and injunctive relief [wa]s warranted to prevent future irreparable harm.” (R.A.24, para. 62).

Unfortunately for Bear Island our courts have previously concluded “a remedy at law was available [to Bear Island] because there was a contractual agreement between the parties [(i.e., the *Distribution Agreement*)].”⁵³ Both Bear Island and Lincoln & South have never disputed the existence of the *Distribution Agreement*, and both agree it was a binding contract. (R.A.15-16, paras. 6-10; R.A.94-95, paras. 6-10). “Therefore an action at law was available from which [Bear Island] could have sought [and, in fact, did seek] to recover contractual damages [from Lincoln & South].”⁵⁴

⁵¹ Carolina Park Associates, LLC v. Marino, 400 S.C.1, 8, 732 S.E.2d 876, 879 (2012) (citing Monteith v. Harby, 190 S.C. 453, 3 S.E.2d 250, 251 (1939); Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007)). See also generally Whitmire v. Adams, 273 S.C. 453, 458, 257 S.E.2d 160, 163 (1979).

⁵² ZAN, LLC v. Ripley Light Marina, LLC, 406 S.C. 404, 413-414, 751 S.E.2d 664, 669 (Ct.App. 2013) (quoting Santee Cooper Resort, Inc. v. South Carolina Public Service Commission, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)).

⁵³ Nutt Corp. v. Howell Road, LLC., 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct.App. 2011).

⁵⁴ *Id.*, 396 S.C. 323, 329, 721 S.E.2d 447, 450 (citing Ahrens v. State, 392 S.C. 340, 347-348, 709 S.E.2d 54, 58 (2011) (“An action seeking damages for breach of contract is an action at law.”)).

Further, the forced continuation of the *Distribution Agreement* was clearly against Lincoln & South's best interests as to do so eroded Lincoln & South's ability to advance its business and brands in the public marketplace. Forcing Lincoln & South to continue working with Bear Island subjected Lincoln & South to Bear Island's never ending adverse business conduct essentially without any recourse. Bear Island has endeavored hold Lincoln & South even though Bear Island has failed to actively market, promote, and distribute Lincoln & South's product in good faith.

The Circuit Court correctly refused Bear Island's request for a preliminary injunction and the decision should be affirmed in all respects.

VI. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Respondent, Lincoln & South Brewing Co., LLC, respectfully requests this Court of Appeals to affirm the Circuit Court in all respects.

Respectfully submitted:

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___ December 2025

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SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Carmen T. Mullen, Circuit Judge
Civil Action No.: 2025-CP-07-00051
Appellate Case No. 2025-000792

BEAR ISLAND DISTRIBUTORS, LLC,

Appellant,

v.

LINCOLN & SOUTH BREWING CO., LLC,

Respondent.

**PROOF OF SERVICE
for the
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I, Stephen P. Groves, Sr., Esquire, hereby certify that on 11 December 2025, I served one copy of the **Respondent's Final Brief** submitted by the Respondent, Lincoln & South Brewing Co., LLC, on counsel for the Appellant at the address noted, as well as an electronic copy at the e-mail address noted:

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11 December 2025

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