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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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STATE OF SOUTH CAROLINA)	
COUNTY OF YORK)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
Eswin Aguilar,	)	Civil Action No. 2021-CP-46-01792
)	
Plaintiff,)	
)	
v.)	
	)	<u>DEFENDANT AGCO CORP.'S</u>
Nance Tractor and Implement, Inc., AGCO	)	<u>RESPONSE TO PLAINTIFF'S FIRST SET</u>
Corp., and AGCO Finance, LLC,	)	<u>OF INTERROGATORIES</u>
)	
Defendants.)	
)	
)	

Defendant, AGCO Corp. ("AGCO"), by and through its counsel, and pursuant to Rule 33, SCRCF hereby answers and responds to Plaintiff's First Set of Interrogatories, dated August 10, 2021, as follows.

INTERROGATORIES

1. Identify all contracts, photographs, plats, sketches, videotapes, audiotapes, electronic data files, emails, web pages, or other documents or materials now or previously in possession, custody, or control of the Defendant that relate to the Plaintiff.

ANSWER: Objection—this Interrogatory is overbroad, unduly burdensome, vague, and ambiguous to the extent that it relies on the terminology "all [documents] that relate to the Plaintiff." Moreover, this Interrogatory is not limited in time or scope, as it appears to request identification of any and all documents that relate to Plaintiff, without regard to the dates and time referenced in the Amended Complaint.

Subject to and without waiving this objection, AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to

the full extent required under the rules of civil procedure when such investigation is complete. At this time, AGCO identifies the following documents:

- a) Plaintiff's Amended Complaint;
- b) AGCO Limited Warranty Terms and Conditions — United States, Canada, and Mexico Effective for Equipment Retailed and Delivered After January 1, 2019;
- c) Retail Installment Contract and Security Agreement dated April 24, 2019;
- d) Warranty Registration Records;
- e) Maintenance Work Order(s) created by Defendant Nance Tractor and Implement, Inc.; and
- f) Electronic correspondence by and between AGCO employees and Plaintiff.

2. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether written or recoded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete. At this time, AGCO identifies the following persons or entities that may possess knowledge or information of any fact or circumstances relevant to the claims or allegations in Plaintiff's Complaint or AGCO's defenses thereto:

Name:	Address:	Summary of Knowledge:
Aguilar, Eswin	Counsel for Plaintiff	Plaintiff is expected to have knowledge about the allegations raised in his Amended Complaint, including, but not limited to, information related to the purchase and repair of the subject tractor.

Blackwell, Cole	Counsel for Defendant Nance	Mr. Blackwell is expected to have knowledge about his communications about and observations of the subject tractor, his communications about and observations of powertrain warranties, the history of work and repair on the subject tractor, and other relevant information related to the subject tractor.
Hinson, Brittany	Counsel for Defendant Nance	Ms. Hinson is expected to have knowledge about her communications with and observations of Plaintiff, her communications about and observations of the subject tractor, the history of work and repair on the subject tractor, and other relevant information related to the subject tractor. At the times relevant to the Complaint, Ms. Hinson was the Service Manager at Nance; however, she has since moved to the sales division.
Markley, Gale	Counsel for Defendant Nance	Mr. Markley is expected to have knowledge about his communications with and observations of Plaintiff, his communications about and observations of the subject tractor, the history of work and repair on the subject tractor, and other relevant information related to the subject tractor.
Nance, Michael	Counsel for Defendant Nance	Mr. Nance is expected to have knowledge about his communications with and observations of Plaintiff, his communications about and observations of the subject tractor, his communications about and observations of the powertrain warranty, the sale of the subject tractor, the history of work and repair on the subject tractor, the financing of the subject tractor, and other relevant information related to the subject tractor.

Willis, Jacob	Counsel for Defendant AGCO	Mr. Willis is expected to have knowledge about his communications with and observations of Plaintiff, his communications about and observations of the subject tractor, his communications about and observations of the powertrain warranty, the sale of the subject tractor, the history of work and repair on the subject tractor, the financing of the subject tractor, and other relevant information related to the subject tractor.
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Responding further, AGCO directs Plaintiff to the business records produced contemporaneously herewith. AGCO states is not aware of any written or recorded statements taken from the witnesses identified in this answer, or otherwise.

3. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: AGCO directs Plaintiff to its response to Interrogatory No. 2 above.

4. Set forth the names and addresses of all insurance companies that have liability insurance coverage relating to the Plaintiffs claims and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: AGCO objects to this interrogatory on the basis that it seeks information outside its control or custody—specifically, Interrogatory No. 4 seeks information for insurance companies of Defendants AGCO Finance and Nance Tractor, of which AGCO has limited knowledge. Subject to, and without waving said objection, AGCO states that it is not aware of any insurance companies that may have liability insurance coverage relating to the Plaintiff’s claims.

AGCO is self-insured for claims generally related to comprehensive general liability and product liability.

5. Identify the names and addresses of any expert witnesses that Defendant proposes to use during the trial of this case. Set forth the opinion each expert is expected to render and identify the facts and documents relied upon in arriving at their opinion.

ANSWER: AGCO has not yet made a determination as to what expert witness(es) it intends to offer at trial in this matter. AGCO reserves the right to supplement and/or amend this response and disclose the identity of said witnesses, and any relevant information, pursuant to any discovery schedule set forth in this matter and pursuant to the South Carolina Rules of Civil Procedure.

6. Set forth a list of all employees or representatives who communicated with the Plaintiff regarding the Tractor.

ANSWER: AGCO states that Jacob Willis communicated with Plaintiff. AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

7. For each party identified in response to Interrogatory 6, indicate the date and substance of the communications.

ANSWER: In accordance with Rule 33(c), SCRPC, AGCO directs Plaintiff to the business records produced contemporaneously herewith. AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

8. Set forth a list of all employees or representatives who inspected or performed repairs on the Plaintiffs tractor.

ANSWER: In accordance with Rule 33(c), SCRCP, AGCO directs Plaintiff to the business records produced contemporaneously herewith. AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

9. For each employee or representative identified in response to Interrogatory 8, indicate their mechanical credentials at the time of repairs, including, but not limited to, professional certifications and degrees.

ANSWER: Objection — this Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Moreover, this Interrogatory appears to seek information that is completely irrelevant to the claims and defenses at issue in this case. Subject to and without waiving said objection, AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

10. For each employee or representative identified in response to Interrogatory 8, list every AGCO Corp. and/or Massey Ferguson training course, seminar, or other continuing education module consistent with Section 2.10.5 of the MF 4707 Operator's Manual that the employee attended or participated in during the last three (3) years.

ANSWER: Objection — this Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Moreover, this Interrogatory appears to seek information that is completely irrelevant to the claims and defenses at issue in this case. Subject to and without waiving said objection, AGCO is still investigating the claims and

defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

11. Set forth the date on which production of the Massey Ferguson MF 4707 sold to the Plaintiff (Serial Number MC040EJ5236016) was completed.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

12. Set forth the date on which the Massey Ferguson MF 4707 sold to the Plaintiff (Serial Number MC040EJ5236016) was transferred to Nance Tractor and Implement, Inc.

ANSWER: In accordance with Rule 33(c), SCRCP, AGCO directs Plaintiff to the business records produced contemporaneously herewith.

13. Set forth a list of any Massey Ferguson dealerships to which the Massey Ferguson MF 4707 sold to the Plaintiff (Serial Number MC040EJ5236016) was transferred prior to being transferred to Nance Tractor and Implement, Inc.

ANSWER: Objection — this Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Moreover, this Interrogatory appears to seek information that is completely irrelevant to the claims and defenses at issue in this case.

14. Set forth a list of any occasions on which the Massey Ferguson MF 4707 sold to the Plaintiff (Serial Number MC040EJ5236016) was reacquired due to claims of defects.

ANSWER: Objection — this Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Moreover, this Interrogatory appears to seek information that is completely irrelevant to the claims and defenses at issue in this

case. Subject to and without waiving said objection, AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

15. Set forth a list of all written warranties identified in paragraph 44 of Defendant AGCO Corp.'s Answer to Plaintiffs Complaint.

ANSWER: AGCO directs Plaintiff to the AGCO Limited Warranty Terms and Conditions – United States, Canada, and Mexico.

16. Set forth a list of payments or credits provided to Nance Tractor and Implement, Inc. for repairs performed on the Massey Ferguson MF 4707 sold to the Plaintiff (Serial Number MC040EJ5236016) under AGCO Corp.'s warranties.

ANSWER: Objection — this Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Moreover, this Interrogatory appears to seek information that is completely irrelevant to the claims and defenses at issue in this case. Subject to and without waiving said objection, AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

17. Set forth a list of any records in your possession, custody, or control related to the replacement of a tire on the Massey Ferguson MF 4707 sold to the Plaintiff (Serial Number MC040EJ5236016).

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

18. Set forth a list of any technical service bulletins issued concerning the Massey Ferguson MF 4707 within the last three (3) years.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

19. Set forth a list of agreements entered into with Nance Tractor and Implement, Inc., related to Nance Tractor and Implement, Inc.'s repair obligations.

ANSWER: Objection — this Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Moreover, this Interrogatory appears to seek information that is completely irrelevant to the claims and defenses at issue in this case. Subject to and without waiving said objection, AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

20. With regards to paragraph 75 of Defendant AGCO Corp.'s Answer to Plaintiffs Complaint, identify the purpose for which a representative was sent to the Plaintiff's property.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

21. With regards to paragraph 75 of Defendant AGCO Corp.'s Answer to Plaintiff's Complaint, identify the representative who was sent to the Plaintiff's property.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

22. With regards to paragraph 80 of Defendant AGCO Corp.'s Answer to Plaintiff's Complaint, identify any payments or credits issued to Nance Tractor and Implement, Inc. in exchange for furnishing a loaner tractor.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

23. With regards to paragraph 94 of Defendant AGCO Corp.'s Answer to Plaintiff's Complaint, identify the terms and conditions under which a loaner tractor was offered to the Plaintiff.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

24. Identify the role AGCO Corp. played in drafting the retail installment contract form presented to the Plaintiff in connection with his purchase of the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016).

ANSWER: Objection—this Interrogatory is vague and ambiguous with its use of the phrase “role AGCO Corp. played in drafting”—which is subject to multiple meanings and interpretations. Subject to and without waiving said objection, AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be

supplemented to the full extent required under the rules of civil procedure when such investigation is complete.

25. Identify the parties to whom AGCO Corp. has distributed the above-mentioned retail installment contract form.

ANSWER: AGCO Corp. has not distributed the above-mentioned retail installment contract form to any parties.

26. Please indicate where the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff was taken on April 28, 2021.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete. At this time, AGCO does not know where the subject tractor was taken on April 28, 2021.

27. Set forth a list of the repairs that have been performed on the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff since April 28, 2021.

ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the rules of civil procedure when such investigation is complete. At this time, AGCO has no knowledge as to what repairs have or have not been performed on the subject tractor since that time.

28. Please indicate where the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff is currently being held.

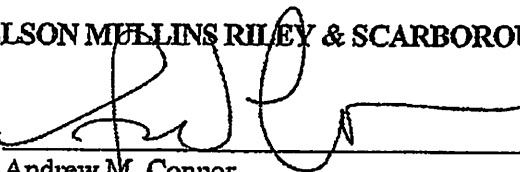
ANSWER: AGCO is still investigating the claims and defenses asserted in this lawsuit, and its response to this interrogatory will be supplemented to the full extent required under the

rules of civil procedure when such investigation is complete. At this time, AGCO is not aware of where the Tractor is currently being held.

29. Set forth a list of documents that have been generated since April 28, 2021 concerning the retrieval and/or repair of the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff.

ANSWER: Defendant objects to this Interrogatory on the grounds that it seeks or appears to seek information protected by the attorney-client privilege and/or the doctrine of work product immunity. Defendant further objects to this Interrogatory on the grounds that it seeks the mental impressions of its attorneys. The initial complaint in this matter was filed on June 8, 2021, and any documents generated since that time would have been prepared in anticipation of litigation and would be privileged.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for AGCO Corporation

Charleston, South Carolina

October 13, 2021

in this case. More specifically, the phrase “office or place of business” is not defined and is subject to multiple interpretations. Subject to and without waiving said objection, AGCO responds: Admitted.

3. Admit that AGCO Corp. distributes the operator’s manuals which accompany the purchase of a Massey Ferguson tractor to its authorized dealers in South Carolina.

RESPONSE: Admitted.

4. Admit that Jacob Willis sent an email to the Plaintiff on January 8, 2021.

RESPONSE: Admitted.

5. Admit that the Tractor was repaired at Nance Tractor and Implement, Inc. (“Nance”), on or about January 8, 2021.

RESPONSE: Despite making a reasonable inquiry, the information known or readily obtainable by AGCO is insufficient to enable AGCO to admit or deny this request. AGCO admits only that Nance Tractor’s Work Order No. WM04649 (AGCO 00035) is dated January 8, 2021. AGCO cannot state with complete certainty whether the repairs listed in Work Order No. WM04649 were performed on the exact date listed on the Work Order.

6. Admit that AGCO does not possess any maintenance work orders indicating that the Tractor was taken back to Nance after the repairs listed on Maintenance Work Order # WM04649 were completed.

RESPONSE: Admitted.

7. Admit that the document produced by the Defendant as AGCO 00020 shows that Jacob Willis’ email, which was allegedly sent on July 8, 2021, was in response to an email from the Plaintiff dated January 4, 2021.

RESPONSE: Denied. AGCO does not allege that Jacob Willis responded by email on July 8, 2021 to Plaintiff's January 4, 2021 email. Upon information and belief, the emails produced as AGCO 00020, AGCO 00021, AGCO 00023, and AGCO 00024 showed a July 8, 2021 sent date that was produced through the archive process and features of Microsoft Outlook when the emails were converted to PDF for production. The dates on these emails were not modified in bad faith or through any fraudulent action on the part of AGCO. Contemporaneously with these responses, AGCO is producing the native email files, which reflect the correct sent date.

8. Admit that the documents produced as AGCO 00020, AGCO 00021, and AGCO 00023 show that Jacob Willis allegedly sent three separate emails to the Plaintiff on July 8, 2021, within just six seconds.

RESPONSE: Denied. AGCO does not allege that Jacob Willis sent three emails to Plaintiff on July 8, 2021 within six seconds. Upon information and belief, the emails produced as AGCO 00020, AGCO 00021, AGCO 00023, and AGCO 00024 showed a July 8, 2021 sent date that was produced through the archive process and features of Microsoft Outlook when the emails were converted to PDF for production. The dates on these emails were not modified in bad faith or through any fraudulent action on the part of AGCO. Contemporaneously with these responses, AGCO is producing the native email files, which reflect the correct sent date.

9. Admit that the document produced as AGCO 00024 allegedly shows that Jacob Willis sent an email to David Sumner on July 8, 2021, within exactly one second after sending the email to the Plaintiff produced as AGCO 00023.

RESPONSE: Denied. AGCO does not allege that Jacob Willis sent an email to David Sumner on July 8, 2021 within one second after sending the email produced as AGCO 00023. Upon information and belief, the emails produced as AGCO 00020, AGCO 00021, AGCO 00023, and AGCO 00024 showed a July 8, 2021 sent date that was produced through the archive process and features of Microsoft Outlook when the emails were converted to PDF for production. The dates on these emails were not modified in bad faith or through any fraudulent action on the part of AGCO. Contemporaneously with these responses, AGCO is producing the native email files, which reflect the correct sent date.

10. Admit that Work Order #WO79876, produced as AGCO 00043, shows that the repair of the Tractor at Powell Tractor, Inc. (“Powell”) continued until at least January 3, 2022.

RESPONSE: Despite making a reasonable inquiry, the information known or readily obtainable by AGCO is insufficient to enable AGCO to admit or deny this request. AGCO admits only that Powell Tractor Inc.’s Work Order No. WO79587 is dated January 3, 2022. AGCO cannot state with complete certainty whether the repairs listed in Work Order No. WO79587 were performed on the exact date listed on the Work Order.

11. Admit that AGCO agreed to purchase an extended “enhanced” warranty for the Plaintiffs Tractor on or about January 12, 2021.

RESPONSE: Admitted.

12. Admit that every retail installment contract arising out of the purchase of Massey Ferguson tractor from an authorized AGCO dealer in the State of South Carolina is assigned to AGCO Finance, LLC.

RESPONSE: Objection — this Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Moreover, this Request

appears to seek information that is completely irrelevant to the claims and defenses at issue in this case. Subject to and without waiving said objection, despite making a reasonable inquiry, the information known or readily obtainable by AGCO is insufficient to enable AGCO to admit or deny this request. The Retail Installment Contract and Security Agreement is an AGCO Finance LLC form distributed by AGCO Finance LLC. AGCO is not a party to the Retail Installment Contract and Security Agreement.

13. Admit that AGCO's authorized dealers in South Carolina are permitted to charge an additional fee, which is not separately disclosed to the customer, as part of the "administration fee" which appears on the Retail Installment Contract and Security Agreement.

RESPONSE: Objection — this Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Subject to and without waiving said objection, despite making a reasonable inquiry, the information known or readily obtainable by AGCO is insufficient to enable AGCO to admit or deny this request. The Retail Installment Contract and Security Agreement is an AGCO Finance LLC form distributed by AGCO Finance LLC. AGCO is not a party to the Retail Installment Contract and Security Agreement.

Respectfully submitted this 10th day of April, 2024.

[signature on following page]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/Carmen H. Thomas

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Attorneys for AGCO Corporation

Columbia, South Carolina


April 10, 2024

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for AGCO Corp, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Defendant AGCO Corp.'s Response to Plaintiff's
Second Requests to Admit

Counsel Served: Joseph G. Studemeyer, Esq.
Ryan G. Studemeyer, Esq.
Studemeyer Law Firm
PO Box 1014
Irmo, SC 29063
greg@studemeyerlawfirm.com
ryan@studemeyerlawfirm.com
Counsel for Plaintiff



Roxanne D. Englin
Administrative Assistant

Dated: April 10, 2024

ANSWER: On April 28, 2021, the Tractor was taken to Nance Tractor & Implement, Inc. (“Nance”). Plaintiff later requested that Nance not perform any further work on the Tractor, and to meet Plaintiff’s request, the Tractor was taken to Powell Tractor Inc. (“Powell”) at 2154 Highway 59, Westminster, SC, 29693, in July 2021. When Plaintiff was made aware the tractor was repaired, Plaintiff refused to accept delivery of the repaired Tractor on October 29, 2021, noting that he was pursuing legal action. The Tractor remains at Powell in Westminster, SC. In further response, in accordance with Rule 33(c), SCRPC, AGCO directs Plaintiff to the business records produced by AGCO, which show the repairs Powell performed on the Tractor after April of 2021.

3. Identify every communication of any kind, including but not limited to phone calls, emails, letters, text messages, etc., between any representative of AGCO and the Plaintiff about the whereabouts of the Tractor or the status of the repairs performed on the Tractor after it was picked up by AGCO in April of 2021.

ANSWER: On April 28, 2021, the Tractor was taken to Nance. Shortly after the tractor was taken to Nance, Plaintiff requested during a telephone call with Jacob Willis of AGCO that Nance not perform any further work on the Tractor. Mr. Willis responded that AGCO would arrange to have the Tractor taken to another dealer for repairs. The Tractor was transferred to Powell in Westminster, SC in July 2021. Mr. Willis informed Plaintiff during a telephone call on October 29, 2021, that Powell had completed repairs on the Tractor, and that the Tractor was ready to be delivered to him. Plaintiff responded that he did not want the Tractor and that he was pursuing legal action. Mr. Willis has not communicated with Mr. Aguilar since the October 29, 2021 telephone call.

4. Describe how the amount of the hidden fee which AGCO's authorized dealers in South Carolina charge customers as part of the "administration fee" is calculated.

ANSWER: AGCO objects to this interrogatory on the grounds that it is vague, overly broad, and unduly burdensome. The terms "hidden fee" and "administration fee" are not defined, and AGCO objects to the characterization of any such fees as hidden. Subject to and without waiving said objection, AGCO states: AGCO is not a party to the Retail Installment Contract and Security Agreement, which is an AGCO Finance LLC form distributed by AGCO Finance LLC. AGCO has no involvement in determining the amount of any fee charged by dealers related to the Retail Installment Contract and Security Agreement. AGCO therefore cannot describe how the fee is calculated.

5. Explain why the Plaintiff allegedly refused to accept the loaner tractor the day before it was to be delivered in April of 2021.

ANSWER: AGCO agreed to provide Plaintiff a loaner tractor while his Tractor was being repaired. The day before the loaner was to be delivered, Plaintiff told AGCO he did not want the loaner. Plaintiff did not give AGCO a reason for his refusal to accept the loaner tractor.

6. Provide a summary sufficient for the Plaintiff to understand the full extent of the repairs that were performed on the Tractor at Powell Tractor Inc. according to the documents produced as AGCO 00042 – 00043.

ANSWER: AGCO objects to this interrogatory on the grounds that it is vague, overly broad, and unduly burdensome. Specifically, AGCO does not know what would be sufficient for Plaintiff to understand the full extent of the repairs performed by Powell. Subject to and without waiving said objection, AGCO states: In accordance with Rule

33(c), SCRCF, AGCO directs Plaintiff to the business records previously produced by AGCO as AGCO 00042-00043. Please also refer to the documents produced contemporaneously herewith as AGCO 00044-00047, 00052-00056, and 00081-00082.

Respectfully submitted this 10th day of April, 2024.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/Carmen H. Thomas

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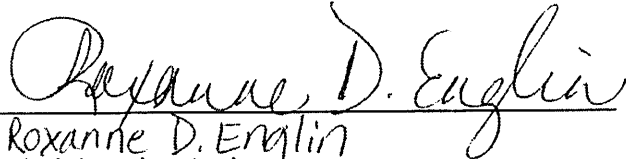
April 10, 2024

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for AGCO Corp, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Defendant AGCO Corp.'s Response to Plaintiff's Third Set of Interrogatories

Counsel Served: Joseph G. Studemeyer, Esq.
Ryan G. Studemeyer, Esq.
Studemeyer Law Firm
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Irmo, SC 29063
greg@studemeyerlawfirm.com
ryan@studemeyerlawfirm.com
Counsel for Plaintiff



Roxanne D. Englin
Administrative Assistant

Dated: April 10, 2024

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Eswin Aguilar,	)	Civil Action No. 2021-CP-46-01792
)	
)	
Plaintiff,)	
)	
v.)	
	)	<u>DEFENDANT AGCO CORP.'S</u>
	)	<u>SUPPLEMENTAL RESPONSES TO</u>
AGCO Corp.,	)	<u>PLAINTIFF'S FIRST SET OF</u>
	)	<u>INTERROGATORIES</u>
)	
Defendant.)	
)	
)	
)	

Defendant, AGCO Corp. ("AGCO"), by and through its counsel, and pursuant to Rule 33, SCRCP hereby supplements certain responses to Plaintiff's First Set of Interrogatories, dated August 10, 2021, as follows:

INTERROGATORIES

22. With regards to paragraph 80 of Defendant AGCO Corp.'s Answer to Plaintiff's Complaint, identify any payments or credits issued to Nance Tractor and Implement, Inc. in exchange for furnishing a loaner tractor.

RESPONSE: None. Plaintiff was offered a loaner tractor. Plaintiff informed AGCO that he would not accept the loaner the day before the loaner was scheduled to be delivered to him.

23. With regards to paragraph 94 of Defendant AGCO Corp.'s Answer to Plaintiff's Complaint, identify the terms and conditions under which a loaner tractor was offered to the Plaintiff.

RESPONSE: Plaintiff was offered a loaner tractor to use while his Tractor was being repaired. Plaintiff refused to accept the loaner the day before it was scheduled to be delivered to him.

26. Please indicate where the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff was taken on April 28, 2021.

RESPONSE: In accordance with Rule 33(c), SCRCP, AGCO directs Plaintiff to the business records previously produced. Specifically, as noted in Jacob Willis' July 8, 2021 email to Plaintiff (AGCO00020), the Tractor was at Nance Tractor and Implement, Inc. ("Nance") as of July 2021. The Tractor was taken to Nance on April 28, 2021. Plaintiff later requested that Nance not perform any further work on the Tractor, and the Tractor was taken to Powell Tractor Inc. in Westminster, SC.

27. Set forth a list of the repairs that have been performed on the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff since April 28, 2021.

RESPONSE: In accordance with Rule 33(c), SCRCP, AGCO directs Plaintiff to AGCO's supplemental business records labeled AGCO00042-00043.

28. Please indicate where the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff is currently being held.

RESPONSE: The Tractor is currently located at Powell Tractor Inc. at 2154 Highway 59, Westminster, SC 29693. Jacob Willis of AGCO contacted Plaintiff on or about October 29, 2021, and informed him that the Tractor had been repaired and ready to be delivered to him. Plaintiff responded that he did not want the tractor and that he was pursuing legal action.

29. Set forth a list of documents that have been generated since April 28, 2021 concerning the retrieval and/or repair of the Massey Ferguson MF 4707 (Serial Number MC040EJ5236016) sold to Plaintiff.

RESPONSE: Defendant objects to this Interrogatory on the grounds that it seeks or appears to seek information protected by the attorney-client privilege and/or the doctrine of work product immunity. Defendant further objects to this Interrogatory on the grounds that it seeks the mental impressions of its attorneys. The initial complaint in this matter was filed on June 8, 2021, and any documents generated since that time would have been prepared in anticipation of litigation and would be privileged. Subject to and without waiving said objection, in accordance with Rule 33(c), SCRPC, AGCO directs Plaintiff to AGCO’s supplemental business records labeled AGCO00042-00043.

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October 19, 2023

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
	)	Civil Action No.: 2021-CP-46-01792
Eswin Aguilar,)	
	)	DEFENDANT AGCO CORP.'S
Plaintiff,	)	MOTION AND MEMORANDUM IN
	)	SUPPORT OF SUMMARY JUDGMENT
v.)	
)	
AGCO Corp.)	
)	
Defendant.)	

Defendant AGCO Corp. (“AGCO”) moves for summary judgment on Plaintiff Eswin Aguilar’s (“Plaintiff”) Fourth Amended Complaint, pursuant to Rule 56(c), SCRPC. In support of this Motion, AGCO respectfully shows and states unto the Court as follows:

I. BACKGROUND

In April 2019, Plaintiff purchased a new 2019 Massey Ferguson MF4707 tractor (the “Tractor”) from Nance Tractor and Implement, Inc. (“Nance”). *See* Statement of Undisputed Material Facts (“SUMF”) ¶ 5. Nance extended credit to Plaintiff, per the terms and conditions of a Retail Instalment Contract and Security Agreement (the “Instalment Contract”). *Id.* ¶ 6. The Instalment Contract was signed by Plaintiff and Nance. *Id.* ¶ 7. Nance then assigned the Instalment Contract to AGCO Finance, LLC (“AFC”). *Id.* ¶ 8. But AGCO is not a party to, or third-party beneficiary of, the Instalment Contract. *Id.* ¶ 7.

The Tractor was sold with AGCO’s two-year Limited Warranty, which warranted the Tractor to be free from defects in material and workmanship for 24 months or 2,000 hours, whichever comes first. *Id.* ¶¶ 11–13. The Limited Warranty does not cover transportation costs or rental of replacement equipment. *Id.* ¶ 14. The Limited Warranty does not entitle the owner to recover incidental, special, or consequential damages. *Id.* ¶ 15. Besides the standard warranty,

AGCO also had the “option” to “repair or replace” the Tractor for an additional 12-month period. *Id.* ¶ 18.

In April 2019, the Tractor was dropped off at Plaintiff’s property in South Carolina. *Id.* ¶ 24. After one of the Tractor’s tires was damaged shortly after delivery, AGCO provided a replacement tire as a courtesy. *Id.* ¶¶ 25–26. *See id.* ¶ 16 (Exceptions from the Limited Warranty: “Rubber tires are warranted directly by the respective manufacturer only and not by AGCO.”). Plaintiff just had to pay to have the Tractor towed to Nance. *Id.* ¶ 27.

In addition to that courtesy replacement, AGCO ensured that every issue covered by AGCO’s two-year Limited Warranty was repaired at no cost to Plaintiff:

<u>Date</u>	<u>Concern</u>
October 9, 2019	Tractor displayed an error code. <i>Id.</i> ¶ 28.
July 20, 2020	Tractor displayed an error code. <i>Id.</i> ¶ 29.
October 6, 2020	Tractor’s four-wheel-drive function had issues and Tractor made noises. <i>Id.</i> ¶ 31.
October 20, 2020	AGCO dispatched a representative to “perform a diagnostic on the tractor,” update the software, and calibrate the Tractor. <i>Id.</i> ¶ 32.
January 4, 2021	Plaintiff requested an extended warranty on the Tractor. <i>Id.</i> ¶¶ 34–35.
April 21, 2021	Tractor displayed an error code. <i>Id.</i> ¶ 38.

<u>Date</u>	<u>Resolution</u>
November 5, 2019	Tractor was repaired at no cost to Plaintiff. <i>Id.</i> ¶ 28.
September 28, 2020	Tractor was repaired at no cost to Plaintiff. <i>Id.</i> ¶ 29.
October 15, 2020	Tractor was repaired at no cost to Plaintiff. <i>Id.</i> ¶ 31.
October 30, 2020	Tractor was taken in for repairs and loaner tractor was provided at no cost to Plaintiff. <i>Id.</i> ¶ 33.
January 8, 2021	Tractor was repaired at no cost to Plaintiff. <i>Id.</i> ¶¶ 33, 36.
January 8, 2021	AGCO provided “an enhanced warranty to extend [Plaintiff’s] coverage by 1 additional year.” <i>Id.</i> ¶¶ 36–37.
April 28, 2021	AGCO picked up the Tractor, took it to Nance for repairs, and offered to provide a loaner tractor at no cost to Plaintiff. But Plaintiff did not want a loaner. <i>Id.</i> ¶¶ 40, 41–42, 46.
July 2021	Tractor was transferred to Powell Tractor, Inc. <i>Id.</i> ¶ 46.
October 2021	Tractor was repaired at no cost to Plaintiff. <i>Id.</i> ¶¶ 46–48.

As for the April 2021 repair, AGCO picked up the Tractor. *Id.* ¶ 40. When asked if AGCO had permission to pick up the Tractor, Plaintiff said, “Maybe so. But I don’t remember. [T]hey didn’t tell me when they were coming to pick it up.” *Id.* ¶ 43. Because Plaintiff’s property requires a gate code to enter, Plaintiff or his spouse must have provided a gate code to AGCO or manually opened the gate for AGCO to pick up the Tractor. *Id.* ¶ 44. Although Plaintiff “did not ask” where the Tractor was going, he likely knew it was taken to Nance, because he requested that Nance not perform any more work on it. *Id.* ¶¶ 40, 45, 46. In response to that request, AGCO agreed to have the Tractor taken to Powell for repair. *Id.*

On October 29, 2021, AGCO informed Plaintiff that “Powell had completed the warranty repairs” and that “the Tractor was ready to be delivered.” *Id.* ¶ 48. But Plaintiff did not want the Tractor. *Id.* When AGCO told Plaintiff the Tractor was ready, Plaintiff “did not ask” where the Tractor was, what condition it was in, whether Plaintiff could pick it up, or whether AGCO could deliver it. *Id.* ¶ 49. Instead, on June 8, 2021, Plaintiff filed suit against Nance, AFC, and AGCO to revoke his acceptance of the Tractor. *Id.* ¶ 62; *see generally* Compl.

Plaintiff’s Fourth Amended Complaint now asserts six causes of action solely against AGCO: (1) breach of express warranty (Fourth Am. Compl. ¶¶ 83–94); (2) conversion (*id.* ¶¶ 95–107); (3) negligent bailment (*id.* ¶¶ 108–16); (4) civil conspiracy (*id.* ¶¶ 117–24); (5) violations of the South Carolina Unfair Trade Practices Act (“SCUTPA”) (*id.* ¶¶ 125–31); and (6) violations of South Carolina’s Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act (“S.C. Fair Practices Act”) (*id.* ¶¶ 132–45); and seeks to recover actual, incidental, consequential, and treble damages, including attorneys’ fees arising out of the purchase.

AGCO fully performed its obligations under the Limited Warranty, repaired each purported defect, and informed Plaintiff that the Tractor was ready to be delivered to him. *See* SUMF ¶¶ 48, 52–54. But Plaintiff “didn’t want the [T]ractor.” *Id.* ¶ 48. It has been at Powell since July 2021. *Id.* Accordingly, this Court should grant AGCO’s motion for summary judgment. The undisputed material facts show: (1) AGCO did not breach—but fully performed—the Limited Warranty; (2) Plaintiff authorized AGCO to pick up the Tractor; (3) Plaintiff’s negligent bailment claim is barred by the economic loss rule, and if it were not barred, there is no loss or damage to the Tractor; (4) AGCO did not act with the intent to harm Plaintiff or in furtherance of a conspiracy; (5) AGCO did not engage in unfair or deceptive acts or practices; and (6) Plaintiff’s S.C. Fair Practices Act claim is invalid because the Instalment Contract is not covered by the Act.

II. LAW AND ARGUMENT

A. Summary Judgment Standard

Summary judgment is proper when “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114–15, 410 S.E.2d 537, 545 (1991) (quoting Rule 56(c), SCRCP). When a plaintiff fails to establish an element essential to his case, there can be no genuine issue as to any material fact, since a failure to establish even one essential element of a party’s case renders the cause of action insufficient as a matter of law. *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). The court may rely on the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” to make that determination. *See* Rule 56(c), SCRCP. When applying this standard, “the

evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002).

B. Plaintiff’s breach of express warranty claim is invalid because of AGCO’s performance of the Limited Warranty (Count I).

Plaintiff’s first cause of action against AGCO asserts a claim for breach of express warranty. To establish a cause of action for breach of an express warranty, a plaintiff must show “the existence of the warranty, its breach by the failure of the goods to conform to the warranted description, and damages proximately caused by the breach.” *First State Sav. & Loan v. Phelps*, 299 S.C. 441, 448, 385 S.E.2d 821, 825 (1989) (citations omitted). AGCO’s two-year Limited Warranty warranted the Tractor to be free from defects in material and workmanship for 24 months or 2,000 hours. *See* SUMF ¶¶ 11–13.

Plaintiff has failed to establish a breach of the Limited Warranty. Without any support, Plaintiff claims that “AGCO failed to remedy the defects.” Pl.’s Mot. for Summ. J. at p. 17; *see also* Fourth Am. Compl. ¶ 89. But Plaintiff’s testimony and the warranty records demonstrate AGCO’s compliance with the Limited Warranty. *See, e.g.*, SUMF ¶¶ 28–29, 31–33, 36, 40, 46–48, 52–55 (AGCO paid to repair the Tractor several times and at no cost to Plaintiff). Each purported defect in the warranty period was repaired or otherwise acted upon by AGCO:

- AGCO provided a replacement tire for the Tractor—despite tires being “warranted directly by the respective manufacturer,” not AGCO. *Id.* ¶¶ 16, 26.
- October 9, 2019, Tractor displayed error code; repaired on November 5, 2019. *Id.* ¶ 28.
- July 20, 2020, Tractor displayed error code; repaired on September 28, 2020. *Id.* ¶ 29.
- October 6, 2020, Tractor made noises; repaired on October 15, 2020. *Id.* ¶ 31.
- October 20, 2020, AGCO dispatched representative to perform diagnostic, update software, and calibrate Tractor; taken in for repairs on October 30, 2020 and loaner tractor provided; repaired on January 8, 2021. *Id.* ¶¶ 32–33, 36.

- On April 21, 2021, Tractor displayed error code; picked up by AGCO on April 28, 2021. *Id.* ¶¶ 38, 40–42, 46.
- April 24, 2021, Warranty period ends for the Tractor. *Id.* ¶ 39.
- April 28, 2021, AGCO picked up the Tractor, took it to Nance for repairs, and offered to provide a loaner at no cost to Plaintiff. But Plaintiff did not want a loaner. *Id.* ¶¶ 40–42, 46.
- July 2021, Tractor transferred to Powell. *Id.* ¶ 46.
- October 2021, Tractor repaired. *Id.* ¶¶ 46–48.

Plaintiff made no further claims after the October 2021 repair. *Id.* ¶¶ 48–51. Because AGCO fully performed its obligations under the Limited Warranty, summary judgment should be entered in favor of AGCO on Count I.

To the extent an enhanced warranty exists for the Tractor, *see id.* ¶¶ 34–37, the mere existence of an enhanced warranty is not sufficient. As noted above, Plaintiff must also show “breach by the failure of the goods to conform to the warranted description, and damages proximately caused by the breach” of the enhanced warranty. *Phelps*, 299 S.C. at 448, 385 S.E.2d at 825. Thus, Plaintiff must show what was warranted by AGCO under the enhanced warranty, and how the enhanced warranty was breached. Plaintiff provides no evidence of either element.

Instead, Plaintiff cites law that the warrantor cannot cause “unreasonable delay” in the repair or “indefinitely tinker.” *See* Pl.’s Mot. for Summ. J. at pp. 18–19. That issue was not raised in Plaintiff’s breach of express warranty claim. *See* Fourth Am. Compl. ¶¶ 84–94. Even so, AGCO offers evidentiary support that AGCO did not “tinker” with the Tractor. Neither did Powell nor Nance. *See* SUMF ¶ 46. And if there was any delay, it is undisputed that it stemmed from COVID-19 related supply constraints or Plaintiff’s lack of effort to pick up the Tractor after the October 2021 repair. *Id.* ¶¶ 46, 48–51.

Therefore, summary judgment in AGCO's favor is required on Count I of the Fourth Amended Complaint for breach of the Limited Warranty, or an enhanced warranty.

C. Plaintiff's conversion claim is invalid because Plaintiff authorized AGCO to pick up the Tractor (Count II).

"Conversion is 'the *unauthorized* assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights.'" *Bank of New York v. Sumter Cnty.*, 387 S.C. 147, 158, 691 S.E.2d 473, 479 (2010) (emphasis added) (citing *Moore v. Weinberg*, 383 S.C. 583, 589, 681 S.E.2d 875, 879 (2009)). Plaintiff's conversion claim must fail because Plaintiff authorized AGCO to pick up the Tractor for repair and Plaintiff has since refused to accept its return. *See* SUMF ¶¶ 43–44, 48–51.

The Fourth Amended Complaint makes clear that Plaintiff authorized AGCO to pick up the Tractor: "Plaintiff authorized AGCO to pick up the Tractor to perform repairs on April 22, 2021, and AGCO arrived to pick up the Tractor on April 28, 2021." Fourth Am. Compl. ¶ 96. The evidence—Plaintiff's own deposition testimony—shows the same: Q. "And then AGCO picked up the tractor, right?" A. "Yeah." *See* SUMF ¶ 40. While Plaintiff contends that he "was not at home when the Tractor was picked up," Pl.'s Mot. for Summ. J. at p. 20, he answered, "[m]aybe so" when asked whether AGCO had permission to pick up the Tractor. *See* SUMF ¶ 43. Because Plaintiff's property requires a gate code to enter, Plaintiff or his spouse must have provided the gate code to AGCO or opened the gate for AGCO to pick up the Tractor. *Id.* ¶ 44. When AGCO picked up the Tractor, Plaintiff "did not ask" where it was going. *Id.* ¶¶ 40, 45. But Plaintiff knew the Tractor was taken to Nance because he requested that Nance not perform any more work on it. *Id.* ¶ 46. In response to that request, AGCO took the Tractor to Powell, and later informed Plaintiff that "Powell had completed the warranty repairs to his Tractor and that the Tractor was ready to be delivered to him." *Id.* ¶¶ 46, 48.

These facts do not state a conversion claim under South Carolina law. Plaintiff has not provided, and cannot provide, any support for the elements of conversion: that AGCO's possession was unauthorized when picked up for repairs; that Plaintiff demanded AGCO return the Tractor to him; or that AGCO refused to return the Tractor to Plaintiff upon such a demand. Instead, the facts show that Plaintiff authorized AGCO to pick up the Tractor; once AGCO completed the warranty repairs, AGCO told Plaintiff that "the [T]ractor was ready to be picked up"; but Plaintiff refused to take it. *See* SUMF ¶¶ 48–51. For these reasons, summary judgment in AGCO's favor is required on Count II of the Fourth Amended Complaint for conversion.

D. Plaintiff cannot maintain his claim for negligent bailment because there was no "loss" or "damage," and it is barred by the economic loss rule (Count III).

Plaintiff claims that AGCO breached its bailment duties by failing to "account for the status or whereabouts" of the Tractor "for six months," and that Plaintiff "suffered actual damages" as a result. Pl.'s Mot. for Summ. J. at p. 22; Fourth Am. Compl. ¶¶ 113, 115. Under South Carolina law, negligent bailment must result in "loss or damage" of the bailed property. *Shoreland Freezers, Inc. v. Textile Ice & Fuel Co.*, 241 S.C. 537, 541, 129 S.E.2d 424, 425 (1963).

Here, Plaintiff does not allege what damages he incurred—just "losses that are the natural consequence and proximate result of AGCO's negligence." Fourth Am. Compl. ¶ 116. Plaintiff cannot contend there was any actual damage to the Tractor, as AGCO paid to "complete[] the warranty repairs." SUMF ¶ 48. And Plaintiff does not, and cannot, allege there was any lost income. *See generally* Fourth Am. Compl. (no allegation of lost income); SUMF ¶ 15 (agreeing that the Limited Warranty "excludes liability for loss of crops, loss of profits or revenue, other commercial losses and inconvenience"), ¶ 62 (Plaintiff "agreed not to" seek lost profits from

AGCO.). Moreover, the Limited Warranty does not entitle Plaintiff to a “refund” or a “new tractor” as Plaintiff may have wanted. *See* Pl.’s Mot. for Summ. J. at p. 21; SUMF ¶¶ 11–18.

Without any damage, Plaintiff proceeds under a loss theory. Under a loss theory, “the bailor must prove delivery to the bailee and *his refusal to return*” the bailed property. *Fleischman, Morris & Co. v. S. Ry.*, 76 S.C. 237, 56 S.E. 974, 977 (1907) (emphasis added). That theory also fails, because AGCO contacted Plaintiff on October 29, 2021, and informed him that “Powell had completed the warranty repairs to his Tractor and that the Tractor was ready to be delivered to him.” SUMF ¶ 48. But Plaintiff did not want the Tractor. *See id.* (“No. I didn’t want my [T]ractor at all.”). AGCO did not lose the Tractor, and AGCO did not cause any damage to the Tractor. It has been at Powell since July 2021. *Id.* ¶ 50. However, Plaintiff did not ask where the Tractor was, what condition it was in, whether he could pick it up, or whether AGCO could deliver it to him. *Id.* ¶¶ 49, 51.

To the extent Plaintiff seeks damages for purely economic losses,¹ his remedies are limited by the economic loss rule, to include the prohibition against tort-based causes of action. “The economic loss rule is a creation of the modern law of products liability. Under the rule, there is no tort liability for a product defect if the damage suffered by the plaintiff is only to the product itself. In other words, tort liability only lies where there is damage done to other property or personal injury.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009) (citation omitted). The economic loss rule bars tort actions, including negligence actions, when a

¹ The Fourth Amended Complaint seeks “judgment for all losses that are the natural consequence and proximate result of AGCO’s negligence.” Fourth Am. Compl. ¶ 116. Plaintiff’s prayer for relief is for “actual damages, incidental damages, consequential damages, [and] treble damages.” *See id.*, WHEREFORE clause. But there are no actual, incidental, or consequential damages here: the Tractor was repaired; Plaintiff turned down a loaner tractor; and his tree farm was “not yet a functional tree farm.” *See* SUMF ¶¶ 4, 44–45. Thus, Plaintiff appears to seek damages for purely economic losses.

duty is created solely by contract. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995) (“A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.”). “Where a purchaser’s expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only ‘economic’ losses.” *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 345, 384 S.E.2d 730, 736 (1989). “Conversely, where a purchaser buys a product which is defective and physically harms him, his remedy is in either tort or contract.” *Id.* As the South Carolina Supreme Court has explained, “[c]ontract law seeks to protect the expectancy interests of the parties,” while “[t]ort law . . . seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property.” *Sapp*, 386 S.C. at 147, 687 S.E.2d at 49.

Plaintiff’s negligent bailment claim is barred by the economic loss rule because the only duty AGCO owed to Plaintiff related to the repair of the Tractor arises out of the contract between Plaintiff and AGCO: the Limited Warranty—the same contract for which Plaintiff also seeks to recover damages from AGCO’s alleged breach. *See* SUMF ¶¶ 11–18. Accordingly, because the duty AGCO owed to Plaintiff arises out of the Limited Warranty (a contract), the economic loss rule bars Plaintiff’s claim for negligent bailment, and Plaintiff’s negligent bailment claim must be dismissed. *See Tommy L. Griffin Plumbing & Heating Co.*, 320 S.C. at 54-55, 463 S.E.2d at 88 (economic loss rule bars a negligence action “where duties are created solely by contract”).

For these reasons, summary judgment in AGCO’s favor is required on Count III of the Fourth Amended Complaint for negligent bailment.

E. Plaintiff's civil conspiracy claim is invalid because AGCO did not act with the intent to harm, or in furtherance of a conspiracy (Count IV).

Under South Carolina law, “a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), *reh'g denied* (Aug. 18, 2021). Plaintiff's civil conspiracy claim fails for at least two reasons.

First, a critical element is missing: An agreement to commit an unlawful act. Plaintiff merely alleges that “AGCO conspired to distribute adhesion contracts,” the Instalment Contract. Fourth Am. Compl. ¶ 119. But AGCO is not a party to, or third-party beneficiary of, the Instalment Contract. SUMF ¶ 7. That was strictly between Plaintiff and Nance, and subsequently assigned to AFC. *Id.* ¶¶ 7–8. Thus, Plaintiff cannot show that there was an agreement with AGCO to commit an unlawful act. AFC—not AGCO—charged Plaintiff an administrative fee for the Tractor. *Id.* ¶ 10. AFC is not the manufacturer or AGCO's agent. *Id.* ¶ 9. The inquiry ends there.

Second, Plaintiff cannot show that AGCO acted with the intent to harm him. The Supreme Court in *Paradis* confirmed that “[s]ince civil conspiracy is an intentional tort, an intent to harm, which has also been discussed in our conspiracy law, remains an inherent part of the analysis.” *Paradis*, 433 S.C. at 575 n.9, 861 S.E.2d at 780 n.9. Where, for example, alleged conspirators acted out of a general desire to make a profit rather than to harm the plaintiff, a claim for civil conspiracy cannot lie. *See Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993). Plaintiff does not allege, and cannot show, that AGCO acted with malice, nor does he allege that the AGCO's actions were directed specifically to him. *See* Fourth Am.

Compl. ¶ 118–24. Rather, the evidence shows that Plaintiff did not talk to anyone at AGCO before he purchased the Tractor from Nance. SUMF ¶ 19. To the extent Plaintiff claims AGCO intended to “mislead, deceive, and oppress consumers” generally, there is no factual support. *See id.* ¶ 119. Because Plaintiff cannot show that AGCO conspired with the intent to injure him, his claim for civil conspiracy must fail.

For these reasons, summary judgment in AGCO’s favor is required on Count IV of the Fourth Amended Complaint for civil conspiracy.

F. Plaintiff’s SCUTPA claim is invalid because AGCO did not engage in unfair or deceptive trade practices (Count V).

Plaintiff’s SCUTPA claim is invalid because AGCO did not engage in unfair or deceptive trade practices. To maintain a private cause of action under SCUTPA, a plaintiff must show: “(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010) (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)); *see generally* S.C. Code Ann. § 39-5-140. Plaintiff bases his SCUTPA claim on six allegations. Each is unsupported by facts or law.

First, Plaintiff cites to 16 C.F.R. § 702.3, claiming that AGCO failed to provide a copy of the Limited Warranty before he purchased the Tractor. *See* Fourth Am. Compl. ¶ 127(a). However, 16 C.F.R. 702.3 applies to consumer products, not commercial products. *See* 16 C.F.R. § 702.3(b)(1)(i)(A) (“Provid[e] a copy of the written warranty with every warranted *consumer product*.”) (emphasis added). Plaintiff purchased the Tractor for his commercial, not consumer, use. SUMF ¶¶ 4, 6.

Second, Plaintiff claims it was unfair and deceptive to require him to pay for towing the Tractor, “even when the repairs are necessitated by equipment defects.” Fourth Am. Compl. ¶ 127(b). Yet, the Limited Warranty is clear that “[i]t is the responsibility of the Owner to transport the [Tractor]” to a dealer for repairs (SUMF ¶ 14), and Plaintiff cannot show how a *purchaser’s* decision to buy a Tractor that has a Limited Warranty requiring him to tow that Tractor to the service shop is somehow an unfair or deceptive practice of *AGCO*. Nor can Plaintiff cite any authority, statute, or regulation in South Carolina or otherwise that requires a tractor manufacturer like *AGCO* to advance payment to farmers for transportation costs to and from dealers for warranty repairs. Other than a \$399.00 towing charge and a \$200.00 towing charge, Plaintiff has not had to paid for any repairs to the Tractor under the Limited Warranty. SUMF ¶¶ 27, 55.

Third, Plaintiff claims that *AGCO* disseminates an Instalment Contract that has inconspicuous provisions and allows *dealers* to charge an “administration fee.” Fourth Am. Compl. ¶ 127(c). *AGCO* is not the dealer; Nance is. *See* SUMF ¶¶ 2, 5–6. Indeed, Plaintiff glosses over the key fact that *AGCO* is not a party to the Instalment Contract in any capacity—the only parties to the Instalment Contract are Plaintiff, Nance, and *AFC*. *See id.* ¶ 7 (*AGCO* is not a party to, or third-party beneficiary of, the Instalment Contract.). Nance’s administration fee cannot be imputed to *AGCO*. *See, e.g., First v. Rolling Plains Implement Co., Inc.*, 108 F.4th 262, 272 (5th Cir. 2024) (“[W]e cannot impute [employee of corporate farm implement dealer’s] statements to *AGCO* Corporation. [That employee] worked for . . . a different company and legal entity.”).

Nor can Plaintiff cite any authority, statute, or regulation in South Carolina or otherwise that would prohibit a tractor manufacturer from providing a form contract to its dealers—

particularly when Plaintiff has not alleged that AGCO has any involvement in the collection or charging of the challenged administration fees. See SUMF ¶ 10. Quite the opposite: “[A] take-it-or-leave it contract of adhesion is not necessarily unconscionable, even though it may indicate one party lacked a meaningful choice.” *Mart v. Great S. Homes, Inc.*, 441 S.C. 304, 318, 893 S.E.2d 360, 367 (Ct. App. 2023) (citation omitted) (declining to find unconscionable an adhesion contract between home seller and home purchaser); see also, e.g., *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (declining to find unconscionable an adhesion contract between consumer and lender); *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 402, 498 S.E.2d 898, 905 (Ct. App. 1998) (declining to find unconscionable an adhesion contract between lender and borrowers).

To the extent Plaintiff claims that the Instalment Contract is unfair and deceptive, it is the lack of adequate disclosures, or the presence of omissions, that could constitute deceptive acts or practices—not written disclaimers or waivers, such as the waiver of the right to a jury trial here. See *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 70, 777 S.E.2d 176, 195 (2015) (“[T]here must be a representation, omission, or practice that is likely to mislead the consumer . . .”). Plaintiff signed the Instalment Contract and, in doing so, acknowledged reading any such disclaimer or waiver:

3. BUYER ACKNOWLEDGES HAVING READ THE ENTIRE CONTRACT (INCLUDING THE ADDITIONAL TERMS AND CONDITIONS CONTAINED ON PAGE 2) AND ACKNOWLEDGES RECEIPT OF A TRUE COPY AT THE TIME OF ITS EXECUTION.	
BUYER'S NAME GSwik Ariel Aguilar Queda	BUYER'S SIGNATURE <i>[Signature]</i>
BUYER'S ADDRESS [Redacted]	BUYER'S PHONE NUMBER [Redacted]
BUYER'S SIGNATURE <i>[Signature]</i>	BUYER'S SIGNATURE <i>[Signature]</i>
BUYER'S ADDRESS [Redacted]	BUYER'S ADDRESS [Redacted]

SUMF ¶ 6.

Fourth, Plaintiff claims that AGCO failed to disclose that the Tractor was manufactured in China. Fourth Am. Compl. ¶ 127(d). Under SCUTPA, an act is considered “unfair” if it is offensive to public policy or is immoral, unethical, or oppressive, and “deceptive” if it has a

tendency to deceive. *See deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000). The facts show that Plaintiff never asked where the Tractor was manufactured; he was just “of the impression that it was from [the United States].” SUMF ¶ 21. *See id.* (Plaintiff was asked: “When did AGCO conceal [where the Tractor was manufactured]? Was it before the purchase?” AGCO “never told [him]” it was manufactured in the United States.). Plaintiff’s impression is not an unfair or deceptive practice by AGCO. *See id.* ¶¶ 21–22.

Fifth, Plaintiff claims that AGCO threatened him with lawyers “rather than honor its obligations.” Fourth Am. Compl. ¶ 127(e). But there is no factual basis to support that allegation. Instead, Jacob C. Willis, an Account Manager with AGCO, testified that he did not threaten Plaintiff with lawyers. SUMF ¶ 60. Rather, once Plaintiff informed Mr. Willis that he was involving an attorney, Mr. Willis responded that “all future communications with AGCO would have to go through counsel.” *Id.* Moreover, AGCO’s involvement of an attorney—which is alleged to have been unfair or deceptive—does not fall within the definition of “trade or commerce” under SCUTPA as it did not involve the advertisement, sale, or distribution of services or property within a business context. *See, e.g., Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638–39, 743 S.E.2d 808, 816 (2013) (Promulgation of emergency regulation did not satisfy the requirement that the alleged unfair act occurred “in the conduct of any trade or commerce.”).

Sixth, Plaintiff claims that AGCO fabricated discovery. Fourth Am. Compl. ¶ 127(f). SCUTPA is designed to address unfair or deceptive acts or practices in trade or commerce that affect the public interest, *not private disputes or issues related to legal procedures* such as discovery. *See* S.C. Code Ann. § 39-5-20. Even so, any incorrect dates on emails that AGCO “produced through the archive process and features of Microsoft Outlook when the emails were

converted to PDF for production . . . were not modified in bad faith or through any fraudulent action on the part of AGCO.” SUMF ¶ 36 n.1.

For these reasons, summary judgment in AGCO’s favor is required on Count V of the Fourth Amended Complaint for Plaintiff’s SCUTPA claim.

G. Plaintiff’s S.C. Fair Practices Act claim is invalid because the Instalment Contract is not covered by the Act (Count VI).

Plaintiff’s sixth cause of action is barred because the S.C. Fair Practices Act does not apply to the Instalment Contract. Specifically, S.C. Code Ann. § 39-6-120 defines the types of agreements covered by the Act: “The provisions of this chapter apply to all written and oral agreements *between a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division and an equipment dealer . . .*” (Emphasis added.) In fact, nowhere in the definitions of the S.C. Fair Practices Act is the word “consumer” listed. *See* S.C. Code Ann. § 39-6-20 (The statute’s definitions are specifically directed at the business relationships within the supply chain, not at consumer transactions.). Plaintiff is not an equipment dealer. He operates a tree farm in Ridgeway, South Carolina. *See* SUMF ¶ 4. To the extent Plaintiff alleges violations of the S.C. Fair Practices Act related to the challenged Instalment Contract, it is not covered by the Act.

If Plaintiff’s sixth cause of action was not barred, it would still fail for the reasons addressed above. *See, e.g.*, Fourth Am. Compl. ¶¶ 137 (alleging the Tractor is manufactured in China), 140 (alleging there are “inconspicuous disclaimers” in the Instalment Contract), 141 (alleging AGCO breached the express warranty), 142 (alleging “dealers” charge “administrative fees”), 143 (alleging AGCO “fabricat[ed] discovery”). Accordingly, summary judgment in AGCO’s favor is required on Count VI of the Fourth Amended Complaint for Plaintiff’s S.C. Fair Practices Act claim.

III. CONCLUSION

For these reasons, AGCO requests that this Court enter an Order granting its motion for summary judgment, and for any additional relief this Court deems appropriate.

Respectfully submitted,

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Columbia, South Carolina

February 24, 2025

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for AGCO Corp., do hereby certify that I have served all counsel with a copy of the pleading(s) below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Defendant AGCO Corp.'s Motion for Summary Judgment

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Dated: February 24, 2025

EXHIBIT A
*(Defendant AGCO Corp.'s Statement
of Undisputed Material Facts in
Support of Summary Judgment)*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
	)	Civil Action No.: 2021-CP-46-01792
Eswin Aguilar,)	
	)	DEFENDANT AGCO CORP.'S
	)	STATEMENT OF UNDISPUTED
Plaintiff,	)	MATERIAL FACTS IN SUPPORT
	)	OF SUMMARY JUDGMENT
v.)	
)	
AGCO Corp.)	
)	
Defendant.)	
)	

Defendant AGCO Corp. (“AGCO”) files this statement of undisputed material facts in support of its motion for summary judgment on Plaintiff Eswin Aguilar’s (“Plaintiff”) Fourth Amended Complaint.

1. AGCO Corp. manufactures tractors and other farm equipment, including Massey Ferguson tractors. Fourth Am. Compl., ¶ 6; Answer to Fourth Am. Compl., ¶ 6.
2. AGCO sells its equipment through a network of independent dealers, including Nance Tractor and Implement, Inc. (“Nance”). Fourth Am. Compl., ¶ 10; Answer to Fourth Am. Compl., ¶ 10.
3. AGCO Finance, LLC (“AFC”) is engaged in the business of financing farming equipment. Fourth Am. Compl., ¶ 16; Answer to Fourth Am. Compl., ¶ 16.
4. Plaintiff operates a tree farm in Ridgeway, South Carolina. Aguilar Dep. 13:6–12.
5. On or about April 24, 2019, Plaintiff purchased a new 2019 Massey Ferguson MF4707 tractor (the “Tractor”) from Nance for \$51,200. Fourth Am. Compl., Ex. A; Aguilar Dep. 12:12–14, 142:2–144:1, 197:17–21.
6. Nance extended credit to Plaintiff for the purchase price of the Tractor, according to the terms and conditions of a “Retail Instalment Contract and Security Agreement (Agricultural

and Commercial Use)” dated April 24, 2019 (the “Instalment Contract”). Plaintiff read the Instalment Contract’s terms and conditions. Fourth Am. Compl., ¶ 14, Ex. A (“BUYER ACKNOWLEDGES HAVING READ THE ENTIRE CONTRACT”); Answer to Fourth Am. Compl., ¶ 14; Aguilar Dep. 18: 21–19:15 (Instalment Contract was for “Agricultural and Commercial Use”), 20:18–20.

7. Plaintiff and Nance signed the Instalment Contract; however, AGCO is not a party to, or third-party beneficiary of, the Instalment Contract. Fourth Am. Compl., Ex. A; Aguilar Dep. 23:1–24:18; AGCO’s Resp. to Pl.’s Second Reqs. to Admit, ¶ 12; AGCO’s Resp. to Pl.’s Third Set of Interrogatories, ¶ 1.

8. Nance assigned the Instalment Contract to AFC. Fourth Am. Compl., ¶ 16, Ex. A; Answer to Fourth Am. Compl., ¶ 16.

9. AFC “is not the manufacturer of the machinery or the manufacturer’s agent or an agent therein.” Aguilar Dep. 187:10–188:2; Fourth Am. Compl., Ex. A at p. 2.

10. AFC charged Plaintiff an administrative fee for the Tractor. AGCO has never charged Plaintiff such a fee. Fourth Am. Compl., ¶ 24, Ex. B; Answer to Fourth Am. Compl., ¶ 24; Aguilar Dep. 26:19–27:2; AGCO’s Resp. to Pl.’s Second Reqs. to Admit, ¶ 13; AGCO’s Resp. to Pl.’s Third Set of Interrogatories, ¶ 4.

11. The Tractor was sold to Plaintiff with AGCO’s two (2) year Limited Warranty. Fourth Am. Compl., ¶ 65; Answer to Fourth Am. Compl., ¶ 65; Aguilar Dep., Ex. 3 at AGCO 00001.

12. AGCO expressly warranted the Tractor to be free from defects in material and workmanship for twenty-four (24) months or two thousand (2,000) hours, whichever came first:

TRACTORS	ALL TRACK TRACTORS ^{1,4} , AGRICULTURAL WHEELED TRACTORS ² , EXCEPT FENDT ³	TWENTY-FOUR (24) MONTHS OR TWO THOUSAND (2000) HOURS WHICHEVER COMES FIRST
	1500, 1900, 4600M, 4700 AND STA SERIES POWERTRAIN ⁴ , EXCEPT 1526 AND ZT TRACTORS	TWENTY-FOUR (24) MONTHS OR TWO THOUSAND (2000) HOURS WHICHEVER COMES FIRST
	1526, 1700, 1700E, GC1700, 2600H AND 2700E SERIES	TWENTY-FOUR (24) MONTHS OR TWO THOUSAND (2000) HOURS WHICHEVER COMES FIRST

Fourth Am. Compl. ¶ 84; Answer to Fourth Am. Compl., ¶ 84; Aguilar Dep. 33:4–34:14, Ex. 3 at p. 1.

13. The Limited Warranty was for 24 months or 2,000 hours, which Plaintiff does not dispute. *See* Aguilar Dep. 173:16–23 (Q. “You would agree that [AGCO] agreed to do that for two years or 2,000 hours, whatever came first?” A. “Right.”), 213:23–214:1.

14. The Limited Warranty does not cover transportation costs or rental of replacement equipment:

OWNER’S OBLIGATION

It is the responsibility of the Owner to transport the equipment . . . to the service shop of an authorized AGCO Dealer or alternatively to reimburse the Dealer for any travel or transportation expense involved in fulfilling this warranty. This Warranty does NOT cover rental of replacement equipment during the repair period, damage to products which have been declared a total loss and subsequently salvaged, overtime labor charges, freight charges for replacement parts, or special handling requirements (such as, but not limited to, the use of cranes).

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

15. The Limited Warranty does not entitle the Owner to recover incidental, special, or consequential damages, such as the cost of rental or replacement equipment:

EXCLUSIVE EFFECT OF WARRANTY AND LIMITATION OF LIABILITY

THIS WARRANTY IS IN LIEU OF ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PURPOSE OR OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED. The remedies of the Owner set forth herein are exclusive. The Company neither assumes nor authorizes any person to assume for it any other obligation or liability in connection with the sale of covered machines. Correction of defects, in the manner and for applicable period of time provided above, shall constitute fulfillment of all responsibilities of AGCO to the Owner, and AGCO shall not be liable for negligence under contract or in any manner with respect to such machines, IN NO EVENT SHALL THE OWNER BE ENTITLED TO RECOVER FOR

INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES SUCH AS . . . COST OF RENTAL OR REPLACEMENT EQUIPMENT.

Aguilar Dep. 38:16–39:14, Ex. 3 at p. 2 (emphasis added); Aguilar Dep. 148:23–149:5 (Q. “So we previously read that the warranty excludes liability for loss of crops, loss of profits or revenue, other commercial losses and inconvenience?” A. “So then why are we even talking about the trees, then?” Q. “Why are you seeking damages for trees?” A. “Okay.”).

16. The Limited Warranty has additional exceptions, including that rubber tires are warranted directly by the respective manufacturer, not AGCO:

EXCEPTIONS FROM THIS WARRANTY

Repairs and Maintenance Not Covered Under Warranty - This warranty does not cover conditions resulting from misuse, natural calamities, use of non-AGCO parts, negligence, alteration, accident, use of unapproved attachments, usage which is contrary to the intended purposes, or conditions caused by failure to perform required maintenance. Replacement of Wear or Maintenance items (unless defective) such as but not limited to, filters, wiper blades, fuses, brake linings, clutch friction disc, coolants, hoses, belts, lubricants, refrigerant, light bulbs, window glass, injections nozzles, wheel alignment, brake and clutch adjustment, tightening of nuts, belts, bolts, and fittings, service tune-up, headlight alignment, computer parameter adjustments and general adjustments which may from time to time be required are not covered.

Rubber Tire Warranty - *Rubber tires are warranted directly by the respective manufacturer only and not by AGCO.*

Aguilar Dep. 34:15–22, 35:22–36:4, Ex. 3 at p. 2 (emphasis added).

17. Plaintiff understood that the Limited Warranty was, indeed, “limited.” Aguilar Dep. 171:23–172:5.

18. The Limited Warranty provides that AGCO also had the “option” to “repair or replace” the Tractor “for an additional (12) month period”:

In addition to standard warranty, the company will repair or replace, at its option, without charge for parts or labor, during normal working hours, any defective engine, transmission, drive axle casing, and/or components enclosed within these coatings for an additional (12) month period provided the tractor has not been used for more than 2000 hours, whichever comes first.

Aguilar Dep. 171:23–173:2, 178:2–5, Ex. 3 at AGCO 00001.

19. Plaintiff did not talk to any AGCO representative before he purchased the Tractor from Nance. Aguilar Dep. 15:7–9, 189:25–190:5.

20. Plaintiff thought that the Tractor was made in the United States, but no one from AGCO represented to him that the Tractor was made in the United States. Aguilar Dep. 96:3–97:10.

21. Plaintiff did not ask AGCO where the Tractor was manufactured prior to purchasing it; Plaintiff was just “of the impression that it was from here.” Aguilar Dep. 80:24–81:5, 100:4–101:3 (Q. “You say, ‘AGCO conceals that its iconic Massey Ferguson tractors are manufactured in China.’ My question is: When did AGCO conceal that fact to you? Was it before the purchase?” A. “[N]o. They never told me any of that.”).

22. The Tractor was “manufactured by AGCO Corporation in China.” Aguilar Dep. 153:14–154:7, Ex. 11 at AGCO 00048 (Decl. of Amy Ganter); AGCO’s Resp. to Pl.’s Second Set of Interrogatories, ¶ 1; AGCO’s Resp. to Pl.’s First Req. for Admis., ¶ 1.

23. The plate on the Tractor states, “AGCO Corporation, Duluth GA - USA”; however, it does not state “*Made in Duluth, Georgia.*” Aguilar Dep. 141:5–24, Ex. 10 at 0083–85.

24. On or about April 29, 2019, Nance dropped off the Tractor at Plaintiff’s property in Ridgeway, South Carolina. Aguilar Dep. 27:10–18.

25. Plaintiff alleges that one of the Tractor’s tires was discovered to be damaged shortly after delivery. Fourth Am. Compl., ¶ 33.

26. AGCO provided a replacement tire at no charge to Plaintiff. Aguilar Dep. 28:8–29:7, 46:25–5, 154:12–158:20, Ex. 11 at AGCO 00051 (“I offered to pay for the pickup and delivery of the [T]ractor since it was in the shop for another warranty issue that was covered under warranty at the same time.”).

27. Plaintiff paid \$399.00 to have the Tractor towed to Nance. Aguilar Dep. 36:17–19; 105:6–11.

28. On October 9, 2019, the Tractor displayed an error code. Fourth Am. Compl., ¶ 34; Answer to Fourth Am. Compl., ¶ 34; Aguilar Dep. 29:15–25. On November 5, 2019, Nance repaired the Tractor under the Limited Warranty at no cost to Plaintiff:

CLIENT NAME	ESWIN AGUILAR	ORDER DATE	ORDER NUMBER
CLIENT PHONE	(803) 238-9063	11/5/2019	WM03665
WORK LOCATION	SHOP LOCATION		
SERVICE TYPE	Warranty, No Charge		
WORK DESCRIPTION	Replaced broken gear in transmission housing.		
ADDITIONAL NOTES	Service is covered under Powertrain Warranty		

Fourth Am. Compl., ¶ 38; Answer to Fourth Am. Compl., ¶ 38; Aguilar Dep. 48:23–49:4 (“Service type warranty no charge. Replace broken gear in transmission housing.”), 64:5–10 (Q. “There was no charge for these repairs on November 5, 2019, right?” A. “Yes.” Q. “AGCO paid for these?” A. “Yes.”), Ex. 5 at 0026, Ex. 13 at AGCO 00032 (Nov. 5, 2019 Maint. Work Ord.).

29. On July 20, 2020, the Tractor displayed an error code. Plaintiff had the Tractor towed to Nance. On September 28, 2020, Nance repaired the Tractor under the Limited Warranty at no cost to Plaintiff:

CLIENT NAME	ESWIN AGUILAR	ORDER DATE	ORDER NUMBER
CLIENT PHONE	(803) 238-9063	9/28/2020	WM04279
WORK LOCATION	SHOP LOCATION		
SERVICE TYPE	Warranty, No Charge		
WORK DESCRIPTION	Replaced broken shaft in transmission, software update, replaced fuel gauge		
ADDITIONAL NOTES	Service is covered under Powertrain Warranty		

Fourth Am. Compl., ¶ 44; Answer to Fourth Am. Compl., ¶ 44; Aguilar Dep. 42:1–9, 64:11–14 (Q. “There was no charge for this work, correct?” A. “Yes.”), Ex. 5 at 0032, Ex. 13 at AGCO 00033 (Sept. 28, 2020 Maint. Work Ord.).

30. On October 1, 2020, Plaintiff emailed Nance: “Not sure why AGCO has anything to do with this. These issues are workmanship problems with the mechanic or whoever worked on the [T]ractor”:

On Thu, Oct 1, 2020, 10:02 PM Eswin Aguilar <capitalstone01@yahoo.com> wrote:

Not sure why Agco has anything to do with this. These issues are workmanship problems with the mechanic or whoever worked on the tractor. Call me as soon as you can. Also would like the name of the representative you are speaking with and the number. This is not a warranty issue.

Aguilar Dep. 112:7–116:11, Ex. 10 at 0051.

31. On October 6, 2020, the Tractor was making noises and its four-wheel-drive function had issues. On October 15, 2020, Nance repaired the Tractor under the Limited Warranty at no cost to Plaintiff:

CLIENT NAME	ESWIN AGUILAR	ORDER DATE	ORDERNUMBER
CLIENT PHONE	(803) 238-9063	10/15/2020	WM04561
WORK LOCATION	SHOP LOCATION		
SERVICE TYPE	Warranty, No Charge		
WORK DESCRIPTION	Fixed 4WD issue and replaced bleeder screw		
ADDITIONAL NOTES	Service is covered under Powertrain Warranty		

Fourth Am. Compl., ¶ 47; Answer to Fourth Am. Compl., ¶ 47; Aguilar Dep. 64:15–18 (Q. “[On] October 15, 2020, no charge for this work; is that right?” A. “They didn’t charge me for anything”), 122:21–123:25, Ex. 5 at 0059, Ex. 10 at 0053–56, Ex. 13 at AGCO 00034 (Oct. 15, 2020 Maint. Work Ord.).

32. On October 20, 2020, AGCO dispatched a representative, David Sumner, to Plaintiff's property to "perform a diagnostic on the [T]ractor," update the software, and calibrate the Tractor. Fourth Am. Compl., ¶ 53; Answer to Fourth Am. Compl., ¶ 53; Aguilar Dep. 125:16–126:3, Ex. 10 at 0062; AGCO's Second Suppl. Resps. to Pl.'s First Set of Interrogatories, ¶¶ 20–21.

33. On October 30, 2020, the Tractor was taken in for repairs and a loaner tractor was provided at no cost to Plaintiff. On January 8, 2021, Nance repaired the Tractor under the Limited Warranty at no cost to Plaintiff:

CLIENT NAME	ESWIN AGUILAR	ORDER DATE	ORDER NUMBER
CLIENT PHONE	(803) 238-9063	1/8/2021	WM04649
WORK LOCATION	MET AT CUSTOMER LOCATION, FIXED AT SHOP LOCATION		
SERVICE TYPE	Warranty, No Charge		
WORK DESCRIPTION	Replaced hydraulic pump, flushed hydraulic system		
ADDITIONAL NOTES	Service is covered under Powertrain Warranty		

Fourth Am. Compl., ¶¶ 57, 61–62; Answer to Fourth Am. Compl., ¶¶ 57, 61–62; Aguilar Dep. 38:2–6, 49:16–50:9 (“A. They gave me a loaner. That’s correct.” Q. “Even though they didn’t have to?” A. “I understand.”), 55:9–12, 78:9–11, 126:23–127:16, Ex. 5 at 0071, Ex. 13 at ACGO 00035 (Jan. 8, 2021 Maint. Work Ord.).

34. On January 4, 2021, Plaintiff requested an extended warranty on the Tractor. Fourth Am. Compl., ¶¶ 60, 64; Answer to Fourth Am. Compl., ¶¶ 60, 64; Aguilar Dep., Ex. 13 at AGCO 00028–29.

35. Plaintiff did not purchase an extended warranty when he purchased the Tractor. Aguilar Dep. 198:11–13.

36. On January 8, 2021,¹ AGCO advised Plaintiff that “[Nance is] going to try to get [the Tractor] delivered to you this afternoon,” and that AGCO would provide “an enhanced warranty to extend your coverage by 1 additional year.” Aguilar Dep. 93:21–23, 126:4–25, 199:9–11, 235:2–236:14, Ex. 10 at 0069, Ex. 13 at AGCO 00051; AGCO’s Resp. to Pl.’s Second Reqs. to Admit, ¶¶ 4, 11.

37. The “enhanced” warranty covered the Tractor’s “hydraulic components” and would not “exceed 36 months or 2000 total hours, including the MFR Base Warranty Period.” It had a \$250.00 deductible, which AGCO “w[ould] cover” if Plaintiff “ever need[ed] to use it.” Aguilar Dep., Ex. 13 at AGCO 00028–31.

38. On April 21, 2021, the Tractor displayed an error code. Fourth Am. Compl., ¶ 66; Aguilar Dep. 47:23–25.

39. Plaintiff purchased the Tractor on or about April 24, 2019; thus, the Warranty period ended on April 24, 2021. *See* Aguilar Dep., Ex. 3 at p. 1.

40. On April 28, 2021, AGCO picked up the Tractor for repair. Fourth Am. Compl., ¶ 67; Answer to Fourth Am. Compl., ¶ 67; Aguilar Dep. 66:7–67:2 (Q. “And then AGCO picked up the tractor, right?” A. “Yeah.”); AGCO’s Resp. to Pl.’s Third Set of Interrogatories, ¶ 2.

41. AGCO agreed to provide Plaintiff a loaner tractor while the Tractor was being repaired. The loaner tractor was offered at no cost to Plaintiff. The day before the loaner tractor was supposed to be delivered to Plaintiff, Plaintiff informed Jacob C. Willis, an Account Manager with AGCO, that he did not want it. Fourth Am. Compl., ¶¶ 97–98; Answer to Fourth Am. Compl.,

¹ AGCO clarified in its Response to Plaintiff’s Second Requests to Admit that dates of emails, such as “January 8, 2021,” were “produced through the archive process and features of Microsoft Outlook when the emails were converted to PDF for production. The dates on these emails were not modified in bad faith or through any fraudulent action on the part of AGCO.” AGCO’s Resp. to Pl.’s Second Reqs. to Admit, ¶¶ 7–9.

¶¶ 97–98; Oct. 17, 2024 Aff. of Jacob Willis ¶ 4; AGCO’s Suppl. Resps. to Pl.’s First Set of Interrogatories, ¶¶ 22–23; AGCO’s Resp. to Pl.’s Third Set of Interrogatories, ¶ 5.

42. Plaintiff refused the loaner tractor because he did not want to insure it. Aguilar Dep. 55:12–23, 66:7–13.

43. When asked, “Did you give AGCO permission to pick up the [T]ractor?”, Plaintiff replied, “Maybe so. But I don’t remember. But what I do know, they didn’t tell me when they were coming to pick it up.” Aguilar Dep. 69:19–25.

44. Because Plaintiff’s property is fenced and gated, and requires a gate code to enter, Plaintiff or his spouse would have had to provide a gate code to AGCO or manually open the gate on that date for AGCO to pick up the Tractor. Aguilar Dep. 200:12–201:25.

45. Plaintiff “did not ask where [the] [T]ractor was going,” nor has he ever asked AGCO where the Tractor is located. However, Plaintiff is currently aware of the Tractor’s location. Aguilar Dep. 67:5–69:13, 70:1–5, 70:22–71:5; *see also* Oct. 17, 2024 Aff. of Jacob Willis ¶ 6 (“Between April 28, 2021 and October 29, 2021, Mr. Aguilar did not ask me where the Tractor was located, nor did he contact me to ask about the status of the warranty repairs to the Tractor.”).

46. The Tractor was taken to Nance on April 28, 2021. Shortly thereafter, Plaintiff requested that Nance not perform any further work on the Tractor. In response, AGCO agreed to have the Tractor taken to another dealer for repair, and the Tractor was transferred to Powell Tractor, Inc. (“Powell”) in Westminster, South Carolina in July of 2021. Powell completed warranty repairs to the Tractor by October 2021. The warranty repairs performed by Nance and Powell were completed within a reasonable amount of time in light of the COVID-19 related supply constraints that AGCO operated under in 2020 and 2021. AGCO did not tinker with the Tractor. Neither did Powell or Nance. *See* Oct. 17, 2024 Aff. of Jacob Willis ¶ 5; *see also* Aguilar

Dep. 50:20–51:7 (Plaintiff acknowledged that the repairs may have been slowed down because of COVID-19 related supply constraints.), Ex. 3 at AGCO 00042–43 (Powell Invoices); AGCO’s Suppl. Resps. to Pl.’s First Set of Interrogatories, ¶ 26; AGCO’s Resp. to Pl.’s Third Set of Interrogatories, ¶¶ 2–3.

47. A July 18, 2021 email shows that Powell “[r]eplaced [the] complete transmission” of the Tractor under the Limited Warranty and it “drives fine now.” Aguilar Dep. 150:9–152:16, Ex. 11 at AGCO 00044–46.

48. Mr. Willis contacted Plaintiff on October 29, 2021 and informed him that “Powell had completed the warranty repairs to his Tractor and that the Tractor was ready to be delivered to him.” Plaintiff responded that he did not want the Tractor, that he was pursuing legal action, and that he needed to contact his attorney. Mr. Willis has not heard from Plaintiff since that October 29, 2021 telephone call with him. Oct. 11, 2023 Aff. of Jacob Willis ¶ 3; Oct. 17, 2024 Aff. of Jacob Willis ¶ 7; Fourth Am. Compl., ¶ 79; Answer to Fourth Am. Compl., ¶ 79; Aguilar Dep. 82:2–83:12, 93:24–94:5, 94:19–95:2, 117:25–118:8, 181:16–17, 138:22–138:3 (Q. “You didn’t want the [T]ractor to be fixed and you didn’t want the [T]ractor at all, right?” A. “No. I didn’t want my [T]ractor at all. I wanted them to replace [] the [T]ractor. I didn’t want that [T]ractor.”), 211:17–212:3 (Q. “Did Jacob Willis tell you that the [T]ractor was ready to be picked up?” A. “I think he said it was ready—the [T]ractor is ready”); AGCO’s Resp. to Pl.’s Third Set of Interrogatories, ¶ 3.

49. When Mr. Willis told Plaintiff that the Tractor was ready, Plaintiff “did not ask” where the Tractor was, what condition it was in, whether Plaintiff could pick it up, or whether AGCO could deliver it to Plaintiff. Aguilar Dep. 83:20–84:10, 95:3–22, 96:1–2.

50. AGCO did not lose Plaintiff's Tractor. It has been at Powell since July 2021. Aff. of Phillip Conner ¶¶ 2–3; Oct. 17, 2024 Aff. of Jacob Willis ¶ 8; AGCO's Suppl. Resps. to Pl.'s First Set of Interrogatories, ¶ 28.

51. Plaintiff has not made any effort to pick up the Tractor. Aguilar Dep. 87:21–24, 167:9–168:22.

52. AGCO paid to repair the Tractor numerous times. Aguilar Dep. 97:21–98:2, 98:25–99:3 (Plaintiff stated, "I know they fixed the [T]ractor. I know they fixed it. . . . [I]f the answer you're looking for is they fixed my [T]ractor numerous times, I get it. They did fix the [T]ractor.>").

- a. AGCO paid \$3,510.87 for the October 11, 2019 repairs to the shaft of the Tractor when it had 20 hours on it. Aguilar Dep., Ex. 11 at AGCO 00057–58.
- b. AGCO paid \$300.00 for the October 12, 2019 repairs to the hydraulic clutches of the Tractor when it had 335 hours on it. Aguilar Dep. 159:4–15, Ex. 11 at AGCO 00059–60.
- c. AGCO paid \$3,820.89 for the September 4, 2020 repairs to the shafts, gears, and bearings of the Tractor when it had 184 hours on it. Aguilar Dep. 159:16–160:4, Ex. 11 at AGCO 00061–62.
- d. AGCO paid \$684.00 for the September 19, 2020 repairs to the rear lights of the Tractor when it had 184 hours on it. Plaintiff "claimed that a rock was thrown from a Mack truck, which busted the front windshield out of the [T]ractor while . . . on the way to [the] shop to get their hydraulic and electrical problems fixed." Aguilar Dep. 160:5–161:9, Ex. 11 at AGCO 00063–66.
- e. AGCO paid \$284.87 for the September 19, 2020 repairs to the fuel gauge of the Tractor when it had 184 hours on it. Aguilar Dep., Ex. 11 at AGCO 00067–68.

- f. AGCO paid \$305.21 for the October 15, 2020 repairs to the sleeve of the drive shaft of the Tractor when it had 185 hours on it. Aguilar Dep., Ex. 11 at AGCO 00069–70.
- g. AGCO paid \$46.87 for the October 15, 2020 repairs to the bleeder screw of the Tractor when it had 186 hours on it. Aguilar Dep., Ex. 11 at AGCO 00071–72.
- h. AGCO paid \$1,651.16 for the February 2, 2021 repairs to the hydraulic system of the Tractor when it had 220 hours on it. Aguilar Dep., Ex. 11 at AGCO 00073–74.
- i. AGCO paid \$500.00 for the March 11, 2021 “Goodwill” repairs to the hydraulic system of the Tractor when it had 230 hours on it. Aguilar Dep., Ex. 11 at AGCO 00077–78.
- j. AGCO paid \$1,536.15 for the July 28, 2021 repairs to the transmission/gear box/drive train of the Tractor when it had 335 hours on it. Aguilar Dep., Ex. 11 at AGCO 00052–53.
- k. AGCO paid \$8,483.66 for the July 21, 2021 repairs to the gears of the Tractor when it had 335 hours on it. Aguilar Dep., Ex. 11 at AGCO 00081–82.
- l. AGCO paid \$8,843.61 for the October 4, 2021 repairs to the rear housing and bearings housing of the Tractor when it had 335 hours on it. Aguilar Dep., Ex. 11 at AGCO 00054–56.

53. Plaintiff could not dispute that AGCO paid for every repair to the Tractor, and he could not identify any specific term of the Limited Warranty that AGCO breached. Aguilar Dep. 179:2–180:25.

54. “AGCO complied with the terms of its Limited Warranty for the Tractor by repairing or otherwise acting upon each purported defect in the Tractor during the warranty period.” Oct. 17, 2024 Aff. of Jacob Willis ¶ 9.

55. Plaintiff paid a \$399.00 towing charge and a \$200.00 towing charge, but has not paid for any repairs to the Tractor. Aguilar Dep. 36:20–22; 58:12–16; 86:7–16.

56. Plaintiff demanded that AGCO pay him a “[t]otal refund [of] \$72,101.76” for the Tractor:

I am requesting a full refund of \$57,101.76 and \$10,000 for the bush hog. I do not want to use the bush hog on another brand of tractor and at this point it breaking as well. I am also requesting another \$5,000.00 for the aggravation I have been through and losing some of my trees that I was not able to plant because of the tractor breaking down.

Total refund \$72,101.76. I need this immediately so I can purchase another tractor as I am ordering more trees to plant.

Aguilar Dep. 80:14–23, Ex. 8 at 0080, Ex. 10 at 0079–80, Ex. 13 at ACGO 00004; Oct. 11, 2023 Aff. of Jacob Willis ¶ 1; Oct. 17, 2024 Aff. of Jacob Willis ¶ 1.

57. AGCO offered Plaintiff the value of the Tractor, minus 200 hours of depreciation. Aguilar Dep. 58:22–60:13 (“What we can do is depreciate your [T]ractor for a new tractor.”).

58. Plaintiff confirmed there were 300 hours on the Tractor as of April 2021. Aguilar Dep. 104:4–18, 152:17–23, Ex. 10 at 0023 (“333.7 Hours on Tractor Apr. 1, 2021”), Ex. 11 at AGCO 00045 (“Unit Usage 335.00 Hours”).

59. But Plaintiff did not “take[] any efforts to determine the value of a used Massey Ferguson 4700 series, 2019 model, 335 hours.” Aguilar Dep. 164:16–19.

60. Plaintiff claims he was “threatened [] with lawyers.” Aguilar Dep. 58:17–19, 99:24–100:3. But Mr. Willis confirmed there was no such threat: “I did not inform Mr. Aguilar that ‘legal action would be futile because AGCO could afford more lawyers than him.’ Rather, once Mr. Aguilar informed me that he was involving an attorney, I responded that if he was hiring

an attorney, all future communications with AGCO would have to go through counsel.” Oct. 17, 2024 Aff. of Jacob Willis ¶ 10.

61. On June 8, 2021, Plaintiff filed the instant action. *See generally* Compl.

62. Plaintiff’s Answers to AGCO’s First Set of Interrogatories indicate that he calculated lost profits as part of his alleged damages, but he subsequently “agreed not to” seek lost profits from AGCO in this case. Rather, Plaintiff’s alleged damages include the price of the Tractor, the towing fee, and \$2,400.00 to modify the Bush Hog. Aguilar Dep. 89:22–90:11, Ex. 9 at No. 9.

63. Plaintiff agreed that AGCO is not responsible for the Bush Hog since AGCO did not manufacture it. Aguilar Dep. 132:9–20.

64. Nance paid Plaintiff \$90,000.00 to settle its portion of the case. Aguilar Dep. 76:2–4; Aguilar Continued Dep. 5:24–6:24; Aff. of Plaintiff ¶ 5.

65. AFC paid Plaintiff \$10,000 to settle its portion of the case. Aguilar Dep. 103:10–17; Aff. of Plaintiff ¶ 5.

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Columbia, South Carolina

February 24, 2025

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for AGCO Corp., do hereby certify that I have served all counsel with a copy of the pleading(s) below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Defendant AGCO Corp.'s Statement of Undisputed Material Facts
in Support of Summary Judgment

Counsel Served: Joseph G. Studemeyer, Esq.
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Counsel for Plaintiff

/s/ Kelli Diamond Martin
Administrative Assistant

Dated: February 24, 2025

Trade Practices Act, and violation of the South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.

AGCO has since moved for summary judgment. AGCO's motion for summary judgment relies in large part upon the Affidavit of Jacob Willis II. In the same sense that this sworn statement created a genuine issue of material fact such that the Plaintiff could not prevail on its motion for summary judgment, AGCO's own motion fails.

The evidentiary facts are largely in dispute. As to the facts not in dispute, there is a fundamental disagreement concerning the conclusion to be drawn from those facts. As such, AGCO is not entitled to summary judgment.

BACKGROUND

The Plaintiff resides on a 42-acre tract in Ridgeway, South Carolina. On or about April 24, 2019, the Plaintiff purchased a 2019 Massey Ferguson MF4707 tractor (the "Tractor"), which was manufactured and distributed by AGCO, from Nance Tractor and Implement, Inc. ("Nance") for the sum of \$51,200.00, which was financed by AGCO Finance, LLC ("AGCO Finance"). AGCO designs, manufactures, and distributes agricultural equipment under multiple brands, including Massey Ferguson.

The Plaintiff alleges that the terms of the retail installment contract ("RISC") presented to him at the time of purchase violated the South Carolina Unfair Trade Practices Act. It is alleged that AGCO conspired with its authorized dealers and AGCO Finance² to distribute these adhesion contracts containing unconscionable terms with the intention to mislead, deceive, and oppress consumers, including the Plaintiff.

² According to AGCO's website (www.agcocorp.com/finance.html), AGCO Finance specializes in providing loan and lease financing to AGCO's retail customers to buy tractors, combine harvesters, and other farm equipment.

The Plaintiff alleges that AGCO further violated the South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act. The Plaintiff alleges that AGCO engaged in unfair methods of competition and unfair and deceptive acts or practices declared unlawful by S.C. Code Ann. § 39-6-50, including but not limited to: allowing its authorized dealers and AGCO Finance—a joint venture of AGCO and Rabobank³—to charge administrative fees and hidden add-on fees as an additional revenue stream, and by refusing to refund or to replace the Plaintiff’s defective Tractor after two years of constant mechanical failure.

The Plaintiff alleges that AGCO breached the terms of the express “AGCO LIMITED WARRANTY” (the “warranty”) which accompanied the purchase of the Tractor because the Tractor was not “free from defects in material and workmanship” at the time of purchase or at any other time during the two-year warranty period. Finally, the Plaintiff alleges that AGCO committed actionable conversion as well as negligent bailment. AGCO hauled the Tractor away on April 28, 2021, after the fifth breakdown suffered during the warranty period. The Plaintiff demanded a refund or a replacement. Unbeknownst to the Plaintiff, AGCO spent no fewer than the next six months tinkering with the Tractor before misplacing it for two years thereafter.

STATEMENT OF UNDISPUTED FACTS

1. AGCO is engaged in the business of designing, manufacturing, and distributing farming equipment under various brands, including Massey-Ferguson. (Fourth Amended Complaint ¶ 6; Answer to Fourth Amended Complaint ¶ 6).

³ See (www.agcofinance.com/en/About-us).

2. Prior to the Plaintiff's purchase of the Tractor, AGCO advertised Massey-Ferguson branded tractors alongside the marketing slogan "The Last Tractor You'll Ever Need." (AGCO's responses to Plaintiff's Second Requests to Admit, # 1).
3. The Plaintiff needed a large tractor to mow the grass on his 42-acre tract in Ridgeway, as well as to plant and water trees he hoped to someday use in his landscaping business. (Eswin Aguilar Depo. 13: 6-19; 15: 17-25; 16: 1-3).
4. Nance is an authorized dealer of farm equipment manufactured and distributed by AGCO. (Fourth Amended Complaint ¶ 10; Answer to Fourth Amended Complaint ¶ 10).
5. On April 24, 2019, the Plaintiff visited Nance and executed a "Retail Instalment Contract and Security Agreement" ("RISC") which was to be assigned to AGCO Finance. (Fourth Amended Complaint ¶ 14; Answer to Fourth Amended Complaint ¶¶ 14).
6. Therein, the Plaintiff agreed to purchase a 2019 Massey Ferguson MF 4707 from Nance for \$51,200.00. (Fourth Amended Complaint ¶¶ 11; Answer to Fourth Amended Complaint ¶¶ 11).
7. Pursuant to the RISC, the Plaintiff agreed to pay AGCO Finance 36 monthly installments of \$1518.16. (Eswin Aguilar Depo. 20: 21-24).
8. The Plaintiff satisfied his obligation under the RISC within a matter of weeks and owned the Tractor free and clear. (Eswin Aguilar Depo. 27: 7-9 and Exhibit 10, 0022).
9. The RISC required a signature only on the first page. (Fourth Amended Complaint, ¶ 17; Answer to Fourth Amended Complaint ¶ 17).
10. The Plaintiff neither signed nor initialed any other pages of the RISC. (Eswin Aguilar Depo. 219: 15-24).

11. Unbeknownst to the Plaintiff, production of his 2019 model year Tractor took place in 2018 in Changzhou, China. (AGCO's responses to Plaintiff's First Requests for Admission, # 1).
12. This came as a surprise to the Plaintiff since there was a stamped metal plate on the Tractor which stated, "AGCO Corporation: Duluth, Georgia." (Eswin Aguilar Depo. 96: 13-24; 141: 5-12; Exhibit 10, 0084).
13. The Plaintiff would not have purchased the Tractor if he knew it had been manufactured in China. (Eswin Aguilar Depo. 100: 4-12).
14. The second page of the RISC contains boilerplate terms and conditions which are largely illegible. (Exhibit A to Answer to Third Amended Complaint).
15. On the second page of the RISC, buried in fine print, is a disclaimer of express and implied warranties. (Fourth Amended Complaint ¶ 19; Answer to Fourth Amended Complaint ¶ 19).
16. On the second page of the RISC, buried in fine print, is a limitation of damages clause purporting to bar the recovery of special, incidental, or consequential damages. (Fourth Amended Complaint ¶ 21; Answer to Fourth Amended Complaint ¶ 21).
17. On the second page of the RISC, buried in fine print, is a waiver of the right to a jury trial. (Fourth Amended Complaint ¶ 23; Answer to Fourth Amended Complaint ¶ 23).
18. The Plaintiff testified that he was unable to read the second page of the RISC at all. (Eswin Aguilar Depo. 186: 1-15; 219: 25; 220: 1-5; 224: 5-21).
19. Nobody at Nance attempted to read the terms and conditions on the second page of the RISC to the Plaintiff. (Eswin Aguilar Depo. 220: 6-9).

20. As a result, the Plaintiff had no idea what terms and conditions he had agreed to when he signed the RISC. (Eswin Aguilar Depo. 220: 10-13).
21. Even if someone had read the terms and conditions to the Plaintiff, he would not have understood them because they are in complex, boilerplate language, and he is not an attorney. (Eswin Aguilar Depo. 188: 8-25).
22. The RISC included a \$175.00 “administration fee.” (Fourth Amended Complaint, ¶ 24; Answer to Fourth Amended Complaint ¶ 24).
23. The RISC itself did not explain the purpose for the fee, except that “all or a portion of this fee may be shared between the Assignee and the Seller and that Assignee and Seller may make a profit on this fee.” (Fourth Amended Complaint, ¶ 25; Answer to Fourth Amended Complaint ¶ 25).
24. Nobody at Nance told the Plaintiff what the fee was for, but the Plaintiff understood that he had to pay the fee if he wanted to buy the Tractor. (Eswin Aguilar Depo. 219: 3-14).
25. The Plaintiff’s purchase of the Tractor was accompanied by an express warranty that the goods were “free from defects in materials and workmanship” and that the Massey Ferguson 4700 series of tractors had powertrain warranty coverage for “TWENTY-FOUR (24) MONTHS OR TWO THOUSAND (2000) HOURS WHICHEVER COMES FIRST.” (Fourth Amended Complaint, ¶ 84; Answer to Fourth Amended Complaint ¶ 84); (Eswin Aguilar Depo. Exhibit 10, 0026).
26. AGCO’s powertrain warranty stated that “the company will repair or replace, at its option, without charge for parts or labor, during normal working hours, any defective engine casting, transmission casting, drive axle casting, and/or components enclosed within these castings for an additional twelve (12) month period provided that the tractor

has not been used for more than 2000 hours, whichever comes first.” (Fourth Amended Complaint, ¶ 85; Answer to Fourth Amended Complaint ¶ 85); (Eswin Aguilar Depo. Exhibit 10, 0026).

27. The Tractor and the operator’s manual were delivered by Nance to the Plaintiff’s property in Ridgeway on April 29, 2019. (Eswin Aguilar Depo. 27: 10-14).
28. The Plaintiff began to experience mechanical problems with the Tractor almost immediately. (Eswin Aguilar Depo. 28: 1-4).
29. On October 9, 2019, the Tractor broke down for the first time. (Eswin Aguilar Depo. 29: 15-23).
30. The Plaintiff called Nance, an AGCO dealer, because he understood that the Tractor was covered by a robust warranty. (Eswin Aguilar Depo. 30: 18-25; 31: 1-25; 32: 1-5).
31. Without knowing the specifics of the warranty, the Plaintiff assumed that if the Tractor was indeed the “last [he would] ever need,” any major mechanical failure would be covered for a reasonable amount of time after purchase. (Eswin Aguilar Depo. 62: 1-15).
32. A representative of Nance directed the Plaintiff to instead contact Jacob Willis (“Willis”). (Eswin Aguilar Depo. 48: 1-17; 113: 10-25; 115: 6-17).
33. Willis, an employee of AGCO, offered the Plaintiff a loaner tractor while his Tractor underwent the first round of repairs, which the Plaintiff gladly accepted. (Eswin Aguilar Depo. 49: 12-25; 50: 1-12).
34. A maintenance work order from Nance dated November 5, 2019, confirms that a broken gear in the transmission housing needed to be replaced and the repairs were covered under the manufacturer’s warranty. (Fourth Amended Complaint ¶ 38; Answer to Fourth Amended Complaint ¶ 38); (Eswin Aguilar Depo. Exhibit 10, 0026).

35. The Tractor was not returned until January 1, 2020. (Eswin Aguilar Depo. 50: 10-12).
36. On July 20, 2020, the Tractor broke down again. (Eswin Aguilar Depo. 42: 1-18).
37. A maintenance work order dated September 28, 2020, confirms that a broken shaft in the transmission as well as a fuel gauge needed to be replaced, and that Nance was required to perform a “software update,” all of which were covered under the manufacturer’s warranty. (Fourth Amended Complaint ¶ 44; Answer to Fourth Amended Complaint ¶ 44); (Eswin Aguilar Depo. Exhibit 10, 0032).
38. A maintenance work order dated October 15, 2020, confirms that repairs to the 4-Wheel Drive (4WD) system and the replacement of a “bleeder screw” were covered under the manufacturer’s warranty once again. (Fourth Amended Complaint ¶ 47; Answer to Fourth Amended Complaint ¶ 47); (Eswin Aguilar Depo. Exhibit 10, 0059).
39. AGCO dispatched a representative, David Sumner, to the Plaintiff’s property shortly after the Tractor was returned on October 20, 2020, to perform a diagnostic inspection. (Fourth Amended Complaint, ¶ 53; Answer to Fourth Amended Complaint, ¶ 53; AGCO’s Second Supplemental Responses to Plaintiff’s First Set of Interrogatories, # 2).
40. The Tractor was subsequently taken to Nance, and a maintenance work order dated January 8, 2021, confirms that Nance replaced the hydraulic pump and flushed the hydraulic system multiple times, and that the repairs were covered under the warranty as well. (Fourth Amended Complaint ¶ 61; Answer to Fourth Amended Complaint ¶ 61); (Eswin Aguilar Depo. Exhibit 10, 0071).
41. On April 22, 2021, the Tractor broke down again, on the first occasion that the Plaintiff attempted to use it after the latest round of warranty repairs. (Eswin Aguilar Depo. 129: 13-26; 130: 1-25; 131: 1-16).

42. Although the Plaintiff contacted Willis with AGCO as previously instructed, no loaner tractor was offered this time. (Eswin Aguilar Depo. 55: 7-12).
43. When the Plaintiff inquired about a loaner tractor, he was informed that none would be provided unless he purchased insurance coverage for the loaner. (Eswin Aguilar Depo. 55: 12-25; 56: 1-3).
44. The Tractor was picked up by AGCO on April 28, 2021. (Eswin Aguilar Depo. 66: 25; 67: 1-8); (AGCO's answers to Plaintiff's Third Set of Interrogatories, # 2).
45. The Plaintiff was unaware of AGCO's plans and was not at home when the Tractor was picked up. (Eswin Aguilar Depo. 200: 12-25; 201: 1-25; 202: 1-18).
46. The Plaintiff had asked Willis for a full refund or a new tractor. (Eswin Aguilar Depo. 57: 1-25; 58: 1-5; 130: 1-25; 131: 1-25; 132: 1-25; 133: 1-25).
47. The Plaintiff was not informed where the Tractor would be taken and did not care since he wanted a refund or replacement. (Eswin Aguilar Depo. 92: 17-25; 93: 1-2).
48. For several years, AGCO reportedly "[did] not know where the [Tractor] was taken on April 28, 2021." (AGCO's responses to Plaintiff's First Set of Interrogatories, # 26).
49. For several years, AGCO reportedly "[had] no knowledge as to what repairs [had] or [had not] been performed on the [Tractor]." (AGCO's responses to Plaintiff First Set of Interrogatories, # 27).
50. Though defective, the Plaintiff did not agree to give the Tractor away in exchange for nothing. (Eswin Aguilar Depo. 68: 1-11; 139: 3-25; 140: 1; 194: 9-17; 210: 10-25; 211: 1).

51. AGCO has recently asserted that the Tractor was taken to Nance, before being transported to Powell Tractor Inc. ("Powell") in Westminster, South Carolina in July of 2021. (AGCO's Supplemental Responses to Plaintiff's First Set of Interrogatories, # 26).
52. AGCO produced what was purported to be an email sent by a representative, Willis, to the Plaintiff on July 8, 2021 (AGCO 00020) to inform him of the whereabouts of the Tractor and to provide an update. (AGCO Supplemental Responses to Plaintiff's First Set of Interrogatories, # 26); (Eswin Aguilar Depo. 203: 17-25; 204: 1-6; 207: 12-20).
53. AGCO has recently acknowledged that the email (AGCO 00020) was actually sent on *January* 8, 2021, although it denies that it engaged in any bad faith or fraud in previously presenting these emails to rebut the Plaintiff's conversion and negligent bailment claims. (AGCO Responses to Plaintiff's Second Requests to Admit, # 7 – 9).
54. AGCO further admits that it does not possess any records such as maintenance work orders which would prove that the Tractor was ever taken to Nance as claimed by Willis. (AGCO's responses to Plaintiff's Second Requests to Admit, # 6).
55. In fact, during those years, AGCO reportedly was "not aware of where the Tractor [was] currently being held." (AGCO's responses to Plaintiff's First Set of Interrogatories, # 28).
56. AGCO has since claimed that it advised the Plaintiff on October 29, 2021, that the Tractor was at Powell and had been repaired. (Affidavit of Jacob Willis I, ¶ 3).
57. Willis did not tell the Plaintiff where the Tractor was being stored. (Eswin Aguilar Depo. 166: 10-20; 167: 23-25).

58. Willis did call the Plaintiff around that time and represented that the Tractor was “ready,” but since litigation was ongoing, the Plaintiff told Willis to contact his attorney. (Eswin Aguilar Depo. 83: 1-19).
59. The Plaintiff lost faith in AGCO’s ability to repair the Tractor long before it was lost. (Eswin Aguilar Depo. 55: 1-6; 177: 10-25; 178: 10-25; 179: 1; 180: 9-15).
60. The Plaintiff no longer trusted Willis or believed anything he said. (Eswin Aguilar Depo. 209: 8-16).
61. In other words, the Plaintiff was not convinced that the Tractor had been repaired simply because Willis or AGCO said so. (Eswin Aguilar Depo. 209: 17-25; 210: 1-9; 212: 14-19; 216: 19-25; 217: 1-6).
62. AGCO has also admitted that there are work orders related to the repair of the Tractor that are dated through January 3, 2022. (AGCO’s responses to Plaintiff’s Second Requests to Admit, # 10).
63. AGCO attempted to repair the Tractor during the warranty period and replaced defective parts, but the Tractor never operated reliably. (Eswin Aguilar Depo. 174: 1-23; 177: 4-21); (Fourth Amended Complaint ¶¶ 38, 44, 47, 61; Answer to Fourth Amended Complaint ¶¶ 38, 44, 47, 61).
64. The Plaintiff was able to operate the Tractor for just 355 hours over a two-year period because the Tractor frequently broke down. (Eswin Aguilar Depo. 60: 2-6; 152: 17-23).
65. The original warranty period expired, yet the Tractor continued to experience mechanical failure due to poor workmanship and/or defective parts. (Eswin Aguilar Depo. 173: 2-15; 205: 4-14).

66. As of October 11, 2023, the Tractor was still being stored at Powell Tractor, Inc. in Westminster, South Carolina. (Affidavit of Phillip Conner, ¶ 3).

67. The Plaintiff has no idea where Westminster, South Carolina is located. (Eswin Aguilar Depo. 211: 10-12).

STANDARD FOR SUMMARY JUDGMENT

Under Rule 56, SCRCP, summary judgment is appropriate only where 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 moving party is entitled to judgment as a matter of law. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 602 S.E.2d 389 (2004). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Schmidt v. Courtney, 357 S.C 310, 592 S.E.2d 326 (Ct. App. 2003).

Summary judgment should not be granted even where there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004).

In determining whether any triable issues of fact exist, the evidence and all the inferences that can be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 579, 629 S.E.2d 375, 376 (Ct. App. 2006).

ARGUMENT

1. BREACH OF EXPRESS WARRANTY

To establish a cause of action for breach of express warranty, the buyer need only show that the goods do not conform to a promise or affirmation of fact made by the seller. Herring v. Home Depot, Inc., 350 S.C. 373, 565 S.E.2d 773 (Ct. App. 2002); See also S.C. Code Ann. § 36-2-313.

The Plaintiff's purchase of the Tractor was accompanied by AGCO's Limited Warranty. AGCO asserts that the Plaintiff has failed to establish a breach of the Limited Warranty because he has offered no support for the contention that AGCO failed to remedy the defects. In fact, AGCO asserts that the weight of the evidence would suggest that AGCO complied with the Limited Warranty.

AGCO breached the warranty by manufacturing and distributing a Tractor that did not conform to the affirmation of fact that it was "free from defects in material and workmanship," and by failing to remedy the myriad of defects which arose during the warranty period as promised. Undoubtedly, this presents a genuine issue of material fact which would preclude summary judgment in favor of AGCO.

AGCO expressly warranted that its 4700 series of tractors would be "free from defects in material and workmanship" for "TWENTY-FOUR (24) MONTHS OR TWO THOUSAND (2000) HOURS WHICHEVER COMES FIRST." (Fourth Amended Complaint, ¶ 84; Answer to Fourth Amended Complaint, ¶ 84). AGCO did not keep that promise. In fact, AGCO broke that promise when it first distributed the Tractor into the stream of commerce.

AGCO further warranted that it would "repair or replace, at its option, without charge for parts or labor, during normal working hours, any defective engine casting, drive axle casting,

and/or components enclosed within these castings for an additional (12) month period provided that the tractor had not been used for more than 2000 hours, whichever comes first.” (Fourth Amended Complaint, ¶ 85; Answer to Fourth Amended Complaint, ¶ 85). As it turns out, AGCO could not repair the Tractor and refused to replace it.

The Tractor did not conform to the express warranty because it was sold to the Plaintiff in a defective state, and AGCO failed to remedy the defects during the warranty period. In the first fifteen (15) months of the Plaintiff’s ownership of the Tractor, it underwent repairs covered by the warranty on (4) four separate occasions, including replacing faulty parts and repairing defective workmanship. (Fourth Amended Complaint ¶¶ 38, 44, 47, 61; Answer to Fourth Amended Complaint ¶¶ 38, 44, 47, 61); (Eswin Aguilar Depo. Exhibit 10: 0026, 0032, 0059, 0071). These repairs often took several months to complete. (Eswin Aguilar Depo. 42: 14-18; 52: 12-13). The Plaintiff was able to operate the Tractor for just 335 hours before it broke down for the fifth and final time in April of 2021, at the conclusion of the warranty period. (Eswin Aguilar Depo. 137: 15-25; 152: 17-23).

AGCO asserts that its unsuccessful attempts to repair the Tractor are evidence that it fulfilled its responsibility under the warranty. *A warranty fails of its essential purpose if the seller is unwilling or unable to repair or replace the product or if there is an unreasonable delay in the repair or replacement of the product.* Herring, 350 S.C. at 378-79, 565 S.E.2d at 776 [*Emphasis added*]. AGCO was unable to repair the Tractor, there was an unreasonable delay during AGCO’s attempts to do so, and AGCO refused to replace the Tractor.

By April 2021, the Plaintiff had lost faith that AGCO was able to repair the Tractor. (Eswin Aguilar Depo. 91: 6-25; 136: 2-5; 222: 2-7). The Plaintiff demanded that AGCO provide a refund or replacement tractor; AGCO indicated that it was unwilling to do either. (Eswin

Aguilar Depo. 93: 3-21; 131: 15-21; 133: 18-25; 136: 5-7). When AGCO picked up the Tractor, the Plaintiff did not ask where it was going, and AGCO did not offer that information, either. (Eswin Aguilar Depo. 67: 3-22; 68: 12-18).

AGCO asserts that the Tractor was first taken to Nance, and then to Powell Tractor when Plaintiff allegedly protested that he did not want Nance to work on the Tractor. (AGCO's Supplemental Responses to Plaintiff's First Set of Interrogatories, 26); (Affidavit of Jacob Willis II, ¶ 5). However, AGCO admits that it does not possess any records which prove that the Tractor was ever taken to Nance. (AGCO's responses to Plaintiff's Second Requests to Admit, # 6). The Plaintiff has also pleaded that "AGCO never told [him] where the Tractor was taken." (Complaint, ¶ 71).

According to AGCO, the repairs took six months to complete. (Affidavit of Jacob Willis I, ¶ 3). The six-month timeframe is the best-case scenario for AGCO—which also requires one to suspend any disbelief and imagine that AGCO actually "repaired" the Tractor.⁴ On the other hand, AGCO has admitted that there are additional work orders from Powell Tractor related to repairs performed on the Tractor which are dated in January of 2022. (AGCO's responses to Plaintiff's Second Requests to Admit, # 10). As such, it appears that the repairs may have been undertaken for a period exceeding eight (8) months. In either case, supposing AGCO managed to repair the Tractor to the extent that it would operate reliably for the first time since it had been distributed into the stream of commerce, the delay was still unreasonable.

AGCO failed to provide the Plaintiff with the benefit of his bargain—a Massey-Ferguson 4700 series tractor free of defects with respect to materials and workmanship for two years or

⁴ There appears to be a fundamental dispute in this case over what constitutes "fixing" or "repairing." The Plaintiff has testified that AGCO "failed to fix the tractor because fixing to me is you fix something and it doesn't break down again." (Eswin Aguilar Depo. 174: 1-16).

two thousand hours. The Tractor was defective at the time of purchase and throughout the warranty period which commenced immediately upon executing the RISC. What AGCO provided was so riddled with defects that the Plaintiff believed it would be immoral to sell it to anyone else. (Eswin Aguilar Depo. 164: 20-25; 165: 1-4; 169: 9-22; 217: 7-11).

In other words, AGCO, itself and through its authorized dealer, not only failed to manufacture and sell a Tractor which conformed to the warranted description at the time of sale, but subsequently failed to repair the defects as promised in the warranty. Even if the warrantor attempts many repairs, it has long been the law of this State that a warrantor “does not have an indefinite length of time within which to remedy the defect” and the buyer is not obligated to permit the warrantor to “indefinitely tinker.” Cannon v. Pulliam Motor Co., 230 S.C. 131, 138, 94 S.E.2d 397, 400 (1956).

AGCO had four previous opportunities to repair the Tractor which were unsuccessful. (Fourth Amended Complaint ¶¶ 38, 44, 47, 61; Answer to Fourth Amended Complaint ¶¶ 38, 44, 47, 61). After AGCO picked up the Tractor on April 28, 2021, it was clearly “tinkering,” which is not sufficient under South Carolina law.

2. CONVERSION

“Conversion” is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner’s rights. Hawkins v. City of Greenville, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004). Conversion is a wrongful act which emanates by either a wrongful taking or a wrongful detention. Id. 358 S.C. at 297, 594 S.E.2d at 566. Performing unauthorized repairs is an act of conversion. See Green v. Waidner, 284 S.C. 35, 324 S.E.2d 331 (1984).

AGCO asserts that the Plaintiff's conversion claim is invalid because the Plaintiff authorized AGCO to pick up the Tractor on April 28, 2021. That much is true, AGCO was authorized to pick up the Tractor the fifth time that it broke down. To the extent AGCO argues that the initial authorization to pick up the Tractor constituted permission to retain the Tractor and attempt repairs for an indefinite period of time, that is a matter of contention.

AGCO's position substantially relies upon the Affidavit of Jacob Willis II, wherein Willis attested in paragraph 5 that he called the Plaintiff in the period "shortly thereafter" April 28, 2021. Willis claims that the Plaintiff requested that Nance not perform any work on the Tractor, which resulted in the Tractor being transferred to Powell Tractor, Inc. ("Powell") in Westminster, SC in July of 2021. In paragraph 6 of the same affidavit, Willis attested: "Between April 28, 2021, and October 29, 2021" there was no communication between him and the Plaintiff regarding the whereabouts of the Tractor or the ongoing repairs.

This affidavit was filed in October of 2023, against the backdrop of AGCO facing a default judgment and in desperate need of a meritorious defense. Until October of 2023, AGCO reportedly "[did] not know where the [Tractor] was taken on April 28, 2021." (AGCO's responses to Plaintiff's First Set of Interrogatories, # 26). Furthermore, AGCO reportedly "[had] no knowledge as to what repairs [had] or [had not] been performed on the [Tractor]." (AGCO's responses to Plaintiff First Set of Interrogatories, # 27). At best, this can only create a genuine issue of material fact, because it is contrary to the allegations in the complaint that AGCO never told the Plaintiff where the Tractor was taken. (Fourth Amended Complaint ¶ 100).

The Tractor was picked up by AGCO on April 28, 2021. (AGCO's answers to Plaintiff's Third Set of Interrogatories, # 2). The Plaintiff was not at home when the Tractor was picked up, and he had no idea what AGCO intended to do with it. (Eswin Aguilar Depo. 200: 12-25;

201: 1-25; 202: 1-18). The Plaintiff had previously demanded a refund or a new tractor because he was sick of owning a lemon. (Eswin Aguilar Depo. 57: 1-25; 58: 1-5; 130: 1-25; 131: 1-25; 132: 1-25; 133: 1-25). Even though the Plaintiff believed the Tractor was a lemon, however, he never agreed to give it to AGCO in exchange for nothing. (Eswin Aguilar Depo. 68: 1-11; 139: 3-25; 140: 1; 194: 9-17; 210: 10-25; 211: 1).

AGCO has since claimed that it advised the Plaintiff on October 29, 2021, that the Tractor was at Powell and had been repaired. (Affidavit of Jacob Willis, ¶ 3). This came as a surprise, since the Plaintiff had not requested or authorized further repairs. (Eswin Aguilar Depo. 200: 12-25; 201: 1-25; 202: 1-18). See Waidner, supra. The Plaintiff has admitted that Jacob Willis called him and said something to the effect that the Tractor was “ready” around that time but denies that Willis divulged its location to him. (Eswin Aguilar Depo. 166: 10-20; 167: 23-25). By AGCO’s own admission, other than the call referenced in paragraph 5 of the Jacob Willis II affidavit—which the Plaintiff denies ever occurred—AGCO did not contact the Plaintiff again until October 29, 2021. There is even evidence to suggest that the Willis update may have been a misrepresentation—repair orders related to the Tractor have been produced which are dated in January of 2022. (AGCO’s responses to Plaintiff’s Second Requests to Admit # 10).

Notwithstanding the fact that AGCO had permission to pick up the Tractor on April 28, 2021, it did not have permission to retain the Tractor indefinitely. To the extent that AGCO asserts that the Plaintiff made no effort to travel to Powell Tractor in Westminster, South Carolina, to pick up the Tractor—which he is ill-equipped to do—AGCO likewise made no effort to return the Tractor that it was able to haul off previously. (Eswin Aguilar Depo. 211: 7-9). With all ambiguities, conclusions, and inferences arising from the evidence construed against AGCO, it is not entitled to summary judgment on this issue. Schmidt, supra.

3. NEGLIGENT BAILMENT

“A constructive bailment arises when one person has lawfully acquired possession of another person’s personal property, other than by virtue of a bailment contract, and holds it under such circumstances that the law imposes on the recipient of the property the obligation to keep it safely and redeliver it to the owner.” Bank of New York v. Sumter County, 387 S.C. 147, 158, 691 S.E.2d 473, 479 (2010).

AGCO asserts that the Plaintiff’s claims for negligent bailment fail for lack of “loss” or “damage” of the bailed property. AGCO reportedly “[did] not know where the [Tractor] was taken on April 28, 2021” until October of 2023. (AGCO’s responses to Plaintiff’s First Set of Interrogatories, # 26). It is disingenuous to argue that there was no “loss” of property when AGCO quite literally lost the Tractor for over two years after repairs purportedly concluded.

Plaintiff ultimately gave up on the possibility of the return of his Tractor and ordered a replacement tractor manufactured by Kubota. (Complaint, ¶ 78). To the extent that AGCO further claims that the economic loss rule bars any recovery by the Plaintiff for lack of any actual, incidental, or consequential damages, that is demonstrably false. The above damages are incidental to the delay in repair and subsequent loss of the Tractor, and the duties breached pursuant to the negligent bailment claim arise under operation of law, not under the warranty.

4. CIVIL CONSPIRACY

“A plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the Plaintiff.” Paradis v. Charleston County School District, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

AGCO asserts that the Plaintiff's claim fails for failure to allege an agreement to commit an unlawful act. Broadly, the Plaintiff has asserted that AGCO, its authorized dealers, and AGCO Finance were engaged in a civil conspiracy to distribute adhesion contracts, the RISC, which were to be assigned exclusively to AGCO Finance, and with the intention to mislead, deceive, and oppress consumers in South Carolina.

Specifically, the Plaintiff has alleged that "AGCO, its authorized dealers, and AGCO Finance entered into an agreement to commit an unlawful act;" that is: "AGCO conspired to distribute adhesion contracts, called a 'Retail Instalment and Security Agreement' containing unconscionable terms, to be assigned by its dealers exclusively to AGCO Finance, with the intention to mislead, deceive, and oppress consumers in South Carolina in the course of offering agricultural equipment for sale." (Complaint, ¶¶ 119-120).

Nance is an AGCO dealer, and AGCO Finance is a joint venture between AGCO and DLL, a global financial solutions provider and subsidiary of Rabobank. (www.agcofinance.com/en/About-us). It is not necessary that AGCO itself be a party to or a third-party beneficiary of the RISC. Contrary to AGCO's assertion, it is not an element of a civil conspiracy that the parties all sign a written agreement assenting to the terms of the conspiracy. To the extent AGCO would argue that it was not involved in the use of the RISC, which was distributed to and exclusively used by its authorized dealers as well as drafted by its own joint venture, that is simply nonsense. (Defendant AGCO Corp.'s Responses to Plaintiff's Second Requests to Admit, # 12).

AGCO further argues that civil conspiracy is an intentional tort, and the Plaintiff cannot show that AGCO intended to harm him. The RISC is an adhesion contract with unconscionable terms in miniscule, blurry font, designed to mislead and deceive consumers, including the

Plaintiff. *See* Exhibit A to Answer to Third Amended Complaint, (Eswin Aguilar Depo. Exhibit 10, 0017-0019). This manner of deception is unlawful under the UTPA. *See* S.C. Code Ann. § 39-5-20(a). Those unconscionable terms include: charging a bogus “administration fee” which was collected as additional profit; waiver of the right to a jury trial; waiver of the right to relief under the theory of any express or implied warranty; and waiver of the right to recover special, incidental, or consequential damages. (Fourth Amended Complaint, ¶¶ 19, 21, 23, 24-25; Answer to Fourth Amended Complaint ¶¶ 19, 21, 23, 24-25). The intent to harm and oppress the Plaintiff is obvious.

5. SOUTH CAROLINA UNFAIR TRADE PRACTICE ACT

“To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act or practice in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair acts or practices.” Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013).

AGCO claims that the UTPA claim is invalid because AGCO did not engage in unfair or deceptive practices. The Plaintiff asserts that AGCO is liable for violating the South Carolina Unfair Trade Practices Act (“UTPA”), S.C. Code Ann. § 39-5-10, et seq, in multiple respects. AGCO distributed the Operator’s Manual that accompanied the purchase of the Tractor. (Defendant AGCO Corp.’s Response to Plaintiff’s Second Requests to Admit, # 3). Contained on page 63 of the Operator’s Manual was the following language:

“When selling new products to its dealers, the manufacturer provides a warranty which, subject to certain conditions, guarantees that the goods are free from defects in material and workmanship. Since this book is published worldwide, it is impossible to detail the exact terms and conditions of warranty that apply to all

retail customers in all countries. *Purchasers of new Massey Ferguson equipment must therefore request full details from their supplying dealer.*” (emphasis added).

It is a violation of 16 C.F.R. § 702.3 to fail to provide a copy of the limited warranty before or at the time of purchase. While AGCO attempts to evade liability by declaring that the Plaintiff’s intentions for purchasing the Tractor were for commercial use, the fact is that the Plaintiff testified that he primarily used the Tractor to mow his lawn. (Eswin Aguilar Depo. 43: 1-8). The Plaintiff has further testified that his use of the Tractor during all relevant times “had nothing to do with my business.” (Eswin Aguilar Depo. 43: 17-18).

By concealing the above language on page 63 of the Operator’s Manual and then placing the onus upon consumers to request a copy of the warranty from the dealer, AGCO attempted to conceal a major exclusion in the warranty—if the equipment turns out to be defective, the consumer is responsible for the cost of towing it to the nearest AGCO dealer for repairs. (Eswin Aguilar Depo. Exhibit 10, 0026). As a result, the Plaintiff incurred charges of several hundred dollars each time the Tractor broke down due to defective workmanship or materials, even though the repairs by AGCO were the exclusive remedy under express warranty. *See* Eswin Aguilar Depo. Exhibit 10, 0026: “The remedies of the Owner set forth herein are exclusive.”

A breach of warranty may itself constitute a violation of the UTPA. Haley Nursery CO., Inc. v. Forrest, 298 S.C. 520, 524, 381 S.E.2d 906, 908 (1989); *See also* S.C. Code Ann. § 39-5-160: “The powers and remedies provided by this article shall be cumulative and supplementary to all powers and remedies otherwise provided by law”. As described above in the analysis for breach of an express warranty, AGCO further violated the UTPA by breaching the warranty.

As described above in the analysis for civil conspiracy, AGCO—through a joint venture with Rabobank to form AGCO Finance—has drafted and distributed a RISC containing

unconscionable terms in inconspicuous and illegible font on the second and third page of the RISC. The Plaintiff, like other consumers, was only required to sign the first page, so that he would be ignorant of the material terms of his purchase. (Fourth Amended Complaint, ¶ 17; Answer to Fourth Amended Complaint ¶ 17); (Eswin Aguilar Depo. 219: 15-24).

This also allowed AGCO's authorized dealers to charge consumers hidden "add on" fees as part of an arbitrary "administration fee," which was purely for profit. *See* Exhibits A - B to Fourth Amended Complaint; (Fourth Amended Complaint ¶¶ 24-26; Answer to Fourth Amended Complaint ¶¶ 24-25). The Plaintiff, and every consumer that purchased an AGCO product on credit since the iteration of this form, has been damaged by this unfair trade practice and the impact upon the public interest is clear.

Finally, as described above in the analysis for conversion, AGCO picked up the Tractor to perform repairs, but subsequently lost the Tractor and could not produce any record of ever performing any repairs. (AGCO's responses to Plaintiff's First Set of Interrogatories, # 26 – 27). AGCO previously produced what was purported to be an email sent by Jacob Willis to the Plaintiff on July 8, 2021 (AGCO 00020), informing him of the whereabouts of the Tractor and providing an update. (AGCO Supplemental Responses to Plaintiff's First Set of Interrogatories, # 26); (Eswin Aguilar Depo. 203: 17-25; 204: 1-6; 207: 12-20).

However, AGCO has since admitted that the email was sent on *January* 8, 2021, before the Tractor broke down for the final time. (AGCO Responses to Plaintiff's Second Requests to Admit, # 7 – 9). Only when faced with a default judgment after three years into this litigation did AGCO claim to have records of repairs and to have only failed to communicate with the Plaintiff for just six months after it picked up the Tractor. (AGCO's Supplemental Responses to

Plaintiff's First Set of Interrogatories, # 26); (Affidavit of Jacob Willis, ¶ 3). These actions are unfair and deceptive.

The Plaintiff plainly suffered monetary and property loss as a result of AGCO's unfair and deceptive conduct. The Plaintiff paid \$51,200.00 for the Tractor, which only operated for 355 hours over a period of two years before AGCO picked it up for the final time on April 28, 2021. (Fourth Amended Complaint ¶ 11; Answer to Fourth Amended Complaint ¶ 11); (Eswin Aguilar Depo. 60: 2-6; 152: 17-23); (AGCO's answers to Plaintiff's Third Set of Interrogatories, # 2). Between the warranty, the marketing campaign, and the price, the Plaintiff believed he had purchased a tractor which would last for the rest of his life. The Plaintiff ultimately had no choice but to order a substitute Kubota tractor, which cost quite a bit more in 2021 than the Tractor did in 2019. (Eswin Aguilar Depo. 40: 14-25; 135: 19-25; 136: 1-15; 165: 12-25).

6. VIOLATION OF THE SOUTH CAROLINA FAIR PRACTICES OF FARM, CONSTRUCTION, INDUSTRIAL, AND OUTDOOR POWER EQUIPMENT MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, AND DEALERS ACT

S.C. Code Ann. § 39-6-40 provides that “unfair methods of competition and unfair or deceptive acts or practices are unlawful as provided in Section 39-6-50.” S.C. Code Ann. § 39-6-50 further provides that “it is a violation for a manufacturer, factory branch, factory representative, distributor, or wholesaler...to engage in an action that is *arbitrary, unconscionable, or in bad faith* and that causes damage to...the public.” (*Emphasis added*).

AGCO seeks to escape liability on a summary judgment motion based on the fact that Section 39-6-120 mentions the types of agreements covered by the Act, and agreements with “consumers” are not explicitly mentioned. It is worth noting that this particular statute contains the following catch-all provision: “...and all other agreements in which the manufacturer,

distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division has any direct or indirect interest.”

AGCO is a “manufacturer” and “distributor.” It has a direct interest in the warranty. It has, at least, an indirect interest in the Retail Instalment Contract that its joint venture created and distributed to AGCO dealers.

Section 39-6-120 does not contain express language that it is meant to be read in isolation. Therefore, rather than merely adopting AGCO’s interpretation, the rules of statutory interpretation should be observed, particularly the rule that sections which are part of the same general statutory law must be construed together and each one given effect. Duke Energy Corp. v. S.C. Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 292 (2016). Section 39-6-140 states that a “person who is injured in his business or property by reason of a violation of this chapter may sue in the court of common pleas and may recover only the actual damages sustained by him and the cost of the suit, including a reasonable attorney’s fee.” In Section 39-6-20, “person” is defined as including “a natural person.” The Plaintiff is a “natural person.”

Section 39-6-140, titled “Legislative basis for unfair competition,” states that unfair methods of competition or deceptive acts or practices are unlawful as provided in Section 39-6-60 as well as “Chapters 5 and 7 of Title 39.” By invoking the Unfair Trade Practices Act, which was explicitly adopted for the purpose of consumer protection, it is clear that a comprehensive reading of the South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act is far more inclusive than AGCO would suggest.

CONCLUSION

For the foregoing reasons, this Court should deny AGCO's motion for summary judgment in its entirety.

STUDEMAYER LAW FIRM, P.C.

/s/ Ryan G. Studemeyer

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March 10, 2025

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	CASE NO.: 2021-CP-46-01792
)	
)	
Eswin Aguilar,)	
	)	PLAINTIFF’S MOTION TO
Plaintiff,	)	ALTER OR AMEND
)	
v.)	
)	
)	
AGCO Corp,)	
)	
Defendant.)	
_____)	

TO: JAKE CARROLL, ESQ., AND JAMES H. BURNS, ESQ., ATTORNEYS FOR DEFENDANT AGCO CORP.:

PLEASE TAKE NOTICE that the Plaintiff, through his undersigned counsel, will move before the Honorable William A. McKinnon, on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court, for an Order to alter or amend the Order on Defendant AGCO Corp.’s Motion for Summary Judgment pursuant to Rule 59(e), SCRPC. This motion is based upon the Order, the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, the South Carolina Rules of Civil Procedure, the hearing transcript, and such other and further case and statutory law as may be appropriate.

BACKGROUND

On February 26, 2025, Defendant AGCO Corp. (“AGCO”) filed a motion for summary judgment pursuant to Rule 56(c), SCRPC. The parties appeared before the Court for a hearing via Webex on March 13, 2025.

At the conclusion of the hearing, the Court granted summary judgment in favor of AGCO as to Plaintiff’s causes of action for conversion, civil conspiracy, violation of the South Carolina

Unfair Trade Practices Act, and violation of the South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act (the “S.C. Fair Practices Act”). Summary judgment was denied as to Plaintiff’s causes of action for breach of express warranty and negligent bailment.

The Court directed AGCO’s counsel to prepare a proposed Order. AGCO submitted the proposed Order on March 21, 2025, which was adopted by the Court verbatim and filed on March 27, 2025. The Order reflects improper burden-shifting at the hearing and cites a number of “undisputed” facts which are hotly disputed.

LAW

Pursuant to Rule 59(e), SCRPC, “ a motion to alter or amend the judgement shall be served not later than 10 days after receipt of written notice of the entry of the order.” The proper procedure for correcting factual errors in an order is to file a motion to alter or amend pursuant to the Rules of Civil Procedure. Doe v. Doe, 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996).

In Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-779 (2004), the Supreme Court of South Carolina stated the following:

“[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments. A motion under Rule 59(e) has long been viewed as a ‘motion for reconsideration’ despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.

...

There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.”

ARGUMENT

I. THE COURT ERRONEOUSLY PLACED THE BURDEN UPON THE NON-MOVING PARTY TO DEMONSTRATE THE PRESENCE OF A GENUINE ISSUE OF MATERIAL FACT

The burden placed upon the moving party in Rule 56(c), SCRCP is canonized in civil law much like the due process right to a presumption of innocence in criminal law. In both cases, the burden is on the party who seeks the judgment of the court to establish the necessary facts to a high degree of certainty. Summary judgment is appropriate when “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.” Rule 56(c), SCRCP. The party *seeking* summary judgment has the burden of clearly establishing the *absence* of a genuine issue of material fact by the above-described means. Brandt v. Gooding, 368 S.C. 618, 630, S.E.2d 259 (2006) [*Emphasis added*].

When, at the outset of the hearing, the burden is placed upon the party opposing summary judgment to convince the court that there is a genuine issue of fact, it is equivalent to requiring that a criminal defendant prove their innocence at trial. The appellate courts would never tolerate such a denial of due process. The hearing transcript, which was ordered immediately after the hearing and will be filed upon receipt, will reflect that the Court admitted at the outset that it was unfamiliar with the case and yet the burden of proof was almost immediately placed upon the Plaintiff, the party opposing summary judgment, to prove that AGCO was not entitled to the relief sought.

Only once the moving party carries its initial burden does the burden shift to the non-moving party to “come forward with specific facts that show there is a genuine issue of fact remaining for trial.” Sides v. Greenville Hosp. System, 362 S.C. 250, 255, 607 S.E.2d 362, 364

(Ct. App. 2004). AGCO did not carry its initial burden as it was not required to offer any argument in support of summary judgment as to Plaintiff's claims for conversion, civil conspiracy, violation of the South Carolina Unfair Trade Practices Act, and violation of the S.C. Fair Practices Act.

The Order states that AGCO is not liable for conversion because it was authorized to pick up the Tractor. However, in response to this precise argument, this Court previously ruled that it was a question of fact whether AGCO could keep the Tractor indefinitely thereafter.¹ The Court's subsequent ruling in the Order as to the conversion claim is inconsistent.

II. THE ORDER CONTAINS FINDINGS OF FACT WHICH ARE ALLEGEDLY UNDISPUTED YET NOT SUPPORTED IN ANY WAY BY THE RECORD

The Order contains a section titled "Findings of Fact." Therein, it is stated that "AGCO is not a party to, or third-party beneficiary of, the Instalment Contract" (hereinafter, the "RISC"). It is undisputed that AGCO is not a party to the RISC. However, it is hotly disputed whether AGCO is a third-party beneficiary of the RISC. In fact, the only matter which is undisputed with respect to this particular question of fact is that the RISCs were distributed by and exclusively assigned to AGCO Finance,² which is a joint venture of AGCO and Rabobank³. Whether that constitutes a sufficient interest to render AGCO a third-party beneficiary of the RISC has not been decided, but Plaintiff asserts that it should be sufficient.

Exhibit A to AGCO's motion for summary judgment contains a document titled "Defendant AGCO Corp's Statement of Undisputed Material Facts in Support of Summary Judgment." Paragraph 7 of these "undisputed" material facts, in identical fashion to the Order, asserts that AGCO is neither a party nor a third-party beneficiary of the RISC. Not a single

¹ August 15, 2023 Hearing Transcript: 8: 7-25; 9: 1

² See AGCO Corp.'s Responses to Plaintiff's Second Request to Admit, # 12.

³ See www.agcofinance.com/en/About-us

source cited establishes that AGCO is not a third-party beneficiary of the RISC. This was AGCO's burden to establish. The inclusion of this "undisputed" material fact in the Order on numerous occasions was a *critical error* because it served as the basis for granting AGCO's motion for summary judgment as to the Plaintiff's civil conspiracy claim and UTPA claim. **[Emphasis added]**.

The "Findings of Fact" also contain the following statement regarding the events of April 2021:

"Though Plaintiff did not inquire about the Tractor's destination, *he likely knew* it was taken to Nance, as he later requested that no more work be done there and agreed for it to be sent to Powell Tractor, Inc, for repairs."

On its vey face, this is not a statement of fact, much less is it "undisputed." This is purely argument and speculation, and it is improper to grant summary judgment on the basis of argument and speculation. To the extent this finding of "fact" influenced the Court's decision to grant summary judgment as to Plaintiff's conversion claim, it should be reconsidered.

In the section of the Order titled "Conclusions of Law," the Court states that "it is also undisputed that after completing warranty repairs, Defendant informed Plaintiff that the Tractor was ready to be returned, and Plaintiff thereafter refused to accept delivery." First, this statement does not accommodate for the undisputed fact that there are work orders related to work performed on the Tractor by Powell Tractor, Inc. ("Powell") dated through January 3, 2022.⁴

While the affidavit of Jacob Willis filed on October 18, 2024 ("Affidavit of Jacob Willis II") states that repairs were completed by October 29, 2021, this is, by definition, not an "undisputed" fact. If repairs were completed by October 29, 2021, then the work orders reflecting work performed through January 3, 2022, create a genuine issue of material fact.

⁴ See AGCO's responses to Plaintiff's Second Requests to Admit, # 10.

Second, while the affidavit of Jacob Willis filed on October 12, 2023 (“Affidavit of Jacob Willis I”) states that he called the Plaintiff on October 29, 2021, the content of that conversation is in dispute. The Affidavit of Jacob Willis I states that the Plaintiff told Willis that he did not want the Tractor. However, none of the sources cited in the Order or AGCO’s Exhibit A to the motion for summary judgment establishes that this is “undisputed” or even factual.

For instance, the Order and Exhibit A cite Paragraph 79 of the Fourth Amended Complaint, which does not contain any statement which could possibly be construed to mean that Plaintiff refused to accept delivery. There are multiple citations to the Plaintiff’s deposition transcript, but not one states that the Plaintiff refused delivery. Admittedly, the Plaintiff stated that he did not want the Tractor at the time of his deposition on June 27, 2024, and testified that he told Willis to contact his counsel, but that is not equivalent to him admitting that he refused delivery in October 2021. Given when the Plaintiff ultimately gave up on AGCO’s ability to repair the Tractor, this is a genuine issue of material fact precluding the entry of summary judgment.

III. THE COURT COMMITTED AN ERROR OF LAW WHEN IT FOUND THAT A BREACH OF WARRANTY CANNOT BE AN UNFAIR TRADE PRACTICE

The Court indicated that it was skeptical regarding the viability of Plaintiff’s breach of express warranty claim⁵ at the very outset of the hearing yet fortunately spared it from summary judgment. However, the Court granted summary judgment as to Plaintiff’s claim for violation of the South Carolina Unfair Trade Practices Act (“UTPA”) on the basis that a breach of warranty does not constitute an unfair trade practice. This conclusion contradicts the established law of this State. In Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989), which was cited in Plaintiff’s memorandum in opposition and raised during the hearing, the Supreme

⁵A lemon law claim is a breach of warranty. See S.C. Code Ann. § 56-28-30.

Court of South Carolina found that a breach of warranty can be an unfair trade practice. The impact upon the public interest is palpable due to the potential for repetition; that is, repeated publication of the misrepresentation to other consumers. 298 S.C. at 525, 381 S.E.2d at 908.

The Order recites another “undisputed” fact that Plaintiff purchased the Tractor for “commercial, not consumer, use” to support the finding that 16 C.F.R. § 702.3 does not apply and the violation thereof does not constitute an unfair trade practice. There are citations to the pleadings and the Plaintiff’s deposition, none of which establish that the Plaintiff’s intentions for the Tractor were purely “commercial, not consumer.” The Order and AGCO emphasize that there is miniscule language at the top of the RISC, in parentheses, which states: “Agricultural and Commercial Use” and seemingly considers this dispositive evidence that the Tractor was used for commercial purposes. While the Plaintiff indeed testified that he at one time intended to grow trees on approximately two acres for the benefit of his landscaping business, he also testified that one of his primary considerations was buying a tractor suitable for mowing his forty-two acres of grass.⁶ The Plaintiff bought the Tractor in his name and not in the name of his business.

CONCLUSION

For the foregoing reasons, the Plaintiff’s motion to alter or amend should be granted and the Order on Defendant AGCO Corp.’s Motion for Summary Judgment should be vacated.

The undersigned certifies pursuant to Rule 11, SCRCPP, that consultation with opposing counsel would serve no useful purpose.

Signature appears on the following page.

⁶ See Eswin Aguilar Depo. 16: 1-3; 43: 1-18

STUDEMEYER LAW FIRM, P.C.

/s/ Ryan G. Studemeyer

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April 4, 2025

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF YORK)	CASE NO. 2021-CP-46-01792
)	
Eswin Aguilar,)	
)	
)	
)	
)	
Plaintiff,)	
)	
v.	)	<u>AFFIDAVIT OF</u>
	)	<u>PHILLIP CONNER</u>
AGCO Corp.)	
)	
)	
Defendant.)	
)	

The undersigned, being duly sworn and under penalty of perjury, attests as follows:

1. I am Phillip Conner, a Field Aftersales Manager with AGCO Corporation. I held that position at all times mentioned in this affidavit.
2. Jarrad Powell is the owner of Powell Tractor Inc. in Westminster, SC.
3. I called Mr. Powell on October 11, 2023 to confirm that Powell Tractor Inc. was still in possession of Eswin Aguilar’s Massey Ferguson MF4707 tractor. Mr. Powell confirmed that Mr. Aguilar’s tractor is still located at Powell Tractor Inc. as of October 11, 2023.
4. The statements made in this affidavit are based upon my personal knowledge and I believe these statements to be true and accurate. If I learn additional information after executing this affidavit, I reserve the right to supplement or amend this affidavit.

FURTHER AFFIANT SAYETH NOT

[signature on following page]

[signature page for Affidavit of Phillip Conner]

Executed this 11th day of October, 2023


Phillip Conner

Sworn to and subscribed before me

This 11th day of October 2023.

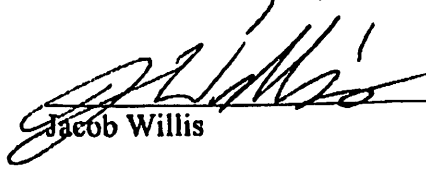

Notary Public

My Commission Expires 5/24/2025



[signature page for Affidavit of Jacob Willis]

Executed this 11th day of October, 2023


Jacob Willis

Sworn to and subscribed before me

This 11th day of October 2023.

Steven J. Cull
Notary Public

My Commission Expires 5/24/2025



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requested that Nance not perform any further work on the Tractor. In response, AGCO agreed to arrange for the Tractor to be taken to another dealer for repair. The Tractor was transferred to Powell Tractor, Inc. ("Powell") in Westminster, SC in July of 2021. Powell completed warranty repairs to the Tractor by October 2021. The warranty repairs to the Tractor performed by Nance and Powell were completed within a reasonable amount of time in light of the COVID-19 related supply constraints that AGCO operated under in 2020 and 2021. AGCO did not tinker with the Tractor, nor did Powell or Nance.

6. Between April 28, 2021 and October 29, 2021, Mr. Aguilar did not ask me where the Tractor was located, nor did he contact me to ask about the status of the warranty repairs to the Tractor.

7. I called Mr. Aguilar on October 29, 2021 and informed him that Powell had completed the warranty repairs to his Tractor and that the Tractor was ready to be delivered to him. Mr. Aguilar responded that he did not want the Tractor, that he was pursuing legal action, and that he needed to contact his attorney. Mr. Aguilar did not tell me to contact his attorney directly. I have not heard from Mr. Aguilar since my October 29, 2021 telephone call with him.

8. The Tractor has been at Powell since July of 2021, as Mr. Aguilar refused to accept delivery of the repaired Tractor. AGCO did not lose Mr. Aguilar's Tractor.

9. AGCO complied with the terms of its Limited Warranty for the Tractor by repairing or otherwise acting upon each purported defect in the Tractor during the warranty period.

10. I did not inform Mr. Aguilar that "legal action would be futile because AGCO could afford more lawyers than him." Rather, once Mr. Aguilar informed me that he was involving an attorney, I responded that if he was hiring an attorney, all future communications with AGCO would have to go through counsel.

11. The statements made in this affidavit are based upon my personal knowledge and I believe these statements to be true and accurate. If I learn additional information after executing this affidavit, I reserve the right to supplement or amend this affidavit.

FURTHER AFFIANT SAYETH NOT

Executed this 17 day of October, 2024

Jacob Willis

Jacob Willis

Sworn to and subscribed before me

This 17th day of October 2024.

Steven Jacob Currell
Notary Public
My Commission Expires 5/24/25



Certificate of Counsel

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.

December 22, 2025

STUDEMAYER LAW FIRM, P.C.

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Dec 22 2025
SC Court of Appeals

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