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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

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

Eswin Aguilar, Appellant,

v.

AGCO Corp., Respondent.

FINAL BRIEF OF APPELLANT

STUDEMAYER LAW FIRM, P.C.

s/ Ryan G. Studemeyer

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF THE ISSUES ON APPEAL.....1

STATEMENT OF THE CASE.....1

STANDARD OF REVIEW.....10

ARGUMENTS

I. DID THE CIRCUIT COURT ERR BY ADOPTING RESPONDENT’S FACTUAL ALLEGATIONS, INCLUDING THOSE WHICH LACK SUPPORT IN THE RECORD, AS “UNDISPUTED MATERIAL FACTS”?11

 a. There was a genuine issue of material fact as to whether Respondent was a third-party beneficiary of the RISC which precludes summary judgment on three of Appellant’s causes of action12

 b. Speculation as to what Appellant “likely knew” after Respondent picked up the Tractor was not sufficient grounds to grant summary judgment as to conversion.....15

 c. There is no support in the record for the finding of fact that Appellant refused delivery of the Tractor so as to bar his cause of action for conversion18

 d. There is no support in the record for the finding of fact that Appellant purchased the Tractor for commercial use and not consumer use20

II. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN HOLDING THAT A BREACH OF WARRANTY CANNOT BE THE BASIS OF AN UNFAIR TRADE PRACTICES ACT VIOLATION?21

CONCLUSION 22

CERTIFICATE OF COUNSEL.24

TABLE OF AUTHORITIES

Cases

<u>Boyd v. BellSouth Telephone Telegraph Co., Inc.</u> , 369 S.C. 410, 633 S.E.2d 136 (2006).....	10
<u>BPS, Inc. v. Worthy</u> , 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).....	11, 23
<u>Brandt v. Gooding</u> , 368 S.C. 618, 630 S.E.2d 259 (2006).....	10
<u>Cannon v. Pulliam</u> , 230 S.C. 131, 138, 94 S.E.2d 387, 400 (1956).....	17
<u>Conner v. City of Forest Acres</u> , 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002).....	10
<u>Fleming v. Rose</u> , 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).....	10
<u>Green v. Waidner</u> , 284 S.C. 35, 324 S.E.2d 331 (1984).....	5
<u>Haley Nursery Co, Inc. v. Forrest</u> , 298 S.C. 520, 524, 381 S.E.2d 906, 908 (1989).....	21, 22
<u>Sides v. Greenville Hosp. System</u> , 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004)	10, 11
<u>Tiger, Inc. v. Fisher Agro, Inc.</u> , 301 S.C. 229, 237-38, 391 S.E.2d 538, 543 (1989).....	12

Statutes

S.C. Code Ann. § 39-5-20.....	22
S.C. Code Ann. § 39-6-10.....	3
S.C. Code Ann. § 39-6-50.....	4, 14
S.C. Code Ann. § 39-6-120.....	14

Rules

Rule 55(c), SCRCP.....	2
Rule 56(c), SCRCP.....	10, 11
Rule 59(e), SCRCP.....	6

Other Authorities

16 CFR § 702.3.....	20, 22
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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR BY ADOPTING RESPONDENT'S ALLEGATIONS, INCLUDING ALLEGATIONS WHICH LACK SUPPORT IN THE RECORD, AS "UNDISPUTED MATERIAL FACTS?"
- II. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN HOLDING THAT A BREACH OF WARRANTY CANNOT BE THE BASIS OF AN UNFAIR TRADE PRACTICE ACT VIOLATION?

STATEMENT OF THE CASE

This is an appeal from the Order on Defendant AGCO Corp.'s Motion for Summary Judgment ("Order") entered by the Honorable William A. McKinnon on March 27, 2025, granting partial summary judgment in favor of Respondent AGCO Corp., dismissing Appellant's causes of action for conversion, civil conspiracy, violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), and violation of the South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act ("Farm Equipment Manufacturers, Distributors, and Dealers Act"). Appellant's remaining causes of action are breach of express warranty and negligent bailment.

This case arises from Appellant's purchase of a defective 2019 Massey Ferguson MF4707 tractor (the "Tractor") from Nance Tractor and Implement, Inc. ("Nance"), which was manufactured and distributed by Respondent, and financed by AGCO Finance, LLC ("AGCO Finance"). AGCO Finance is a joint venture of Respondent and DLL, the finance subsidiary of Rabobank. (R. pp. 892, 1344).

This action was initiated by the filing of a summons and complaint on June 8, 2021. Therein, the Appellant stated causes of action against Respondent, Nance, and AGCO, alleging that Respondent distributed a retail installment contract ("RISC") to its authorized dealers (including Nance) containing an arbitrary "administration fee" and other unconscionable, non-

conspicuous terms; manufactured and distributed the defective Tractor; and breached the Limited Warranty which accompanied Appellant's purchase by refusing to replace the Tractor after its many attempts to repair failed to remedy the trouble. On August 10, 2021, Appellant served an amended complaint containing the addition of several new factual allegations. On September 26, 2022, Nance was dismissed as a party to the action.

On November 17, 2022, the circuit court granted leave for Appellant to serve a second amended and supplemental complaint containing new factual allegations which arose from Respondent's initial discovery responses and causes of action for conversion and civil conspiracy. On December 2, 2022, Respondent filed a motion to dismiss.

On March 10, 2023, with leave of the circuit court, Appellant served a third amended complaint containing an additional cause of action against the Respondent for negligent bailment. The Respondent subsequently moved to dismiss the third amended complaint on March 24, 2023. AGCO Finance was dismissed as a party to the action on May 9, 2023.

The circuit court denied Respondent's motion to dismiss in its entirety on August 17, 2023. Respondent subsequently filed a late answer on September 12, 2023. On September 13, 2023, Appellant moved for the entry of default and a default judgment. Respondent subsequently filed a motion to enlarge the time to respond to the third amended complaint and to strike the affidavit of default pursuant to Rule 55(c), SCRCF. On September 19, 2024, Respondent filed an amended and supplemental motion.

On October 10, 2023, Appellant filed a memorandum in opposition, arguing, *inter alia*, that Respondent had failed to offer a satisfactory explanation for the default, and that the good cause standard under Wham had not been met because Respondent had offered no meritorious defense other than to refer to the arguments raised in its unsuccessful motion to dismiss.

Appellant further brought to the circuit court's attention Respondent's failure to supplement its answers to the Appellant's first set of interrogatories—inquiring as to where the Tractor had been taken on April 28, 2021; the repairs performed on the Tractor since April 28, 2021; and the present location of the Tractor.¹ The answers, served on October 13, 2021 and incorporated into the Third Amended Complaint as Exhibit C, stated that Respondent did not know where the Tractor was taken on April 28, 2021; Respondent had no knowledge of what repairs had been performed on the Tractor; and that Respondent was unaware of where the Tractor was being held. The answers all referred to an ongoing “investigation” and stated that the answers would be supplemented when the investigation was complete.

On October 11, 2023, Respondent filed a response with exhibits containing supplemental discovery production and affidavits of Respondent's employees Jacob Willis and Phillip Conner. With respect to the negligent bailment claim, Respondent suddenly broke with previous representations and claimed, “it has been and is aware of the location of the tractor, which is in Westminster, South Carolina.”² The parties appeared before Judge McKinnon on October 16, 2023, for a motions hearing. The circuit court denied Appellant's motion for default judgment and granted Respondent's motion for relief from the entry of default pursuant to Rule 55(c), SCRPC.

On February 20, 2024, Appellant served a fourth amended complaint containing an additional cause of action under the Farm Equipment Manufacturers, Distributors, and Dealers Act, S.C. Code Ann. § 39-6-10, et seq. Respondent filed an answer to the fourth amended complaint on March 5, 2024.

Appellant alleges that the terms of the RISC presented to him at the time of purchase violated the South Carolina Unfair Trade Practices Act. Appellant alleges that Respondent

¹ (R. pp. 65 – 66, par. 26 – 28).

² (R. p. 842).

conspired with its authorized dealers and AGCO Finance³ to distribute these adhesion contracts containing non-conspicuous, unconscionable terms with the intention to mislead, deceive, and oppress consumers.

Appellant alleges that Respondent further violated the Farm Equipment Manufacturers, Distributors, and Dealers Act. Appellant alleges that that Respondent broadly engaged in unfair methods of competition and unfair and deceptive acts or practices declared unlawful by S.C. Code Ann. § 39-6-50, including: allowing its authorized dealers and AGCO Finance—a joint venture of the Respondent and DLL—to charge administrative fees and hidden add-on fees as an additional revenue stream; retrieving the Appellant’s Tractor on April 28, 2021, without providing any sort of update as to whereabouts or repair status for at least six (6) months; and by refusing to refund or replace Appellant’s defective Tractor after two years of constant mechanical failure.

Appellant alleges that AGCO breached the terms of the express “AGCO LIMITED WARRANTY” (the “warranty”) which accompanied the purchase of the Tractor because although Respondent attempted to repair it many times, the Tractor nevertheless continued to break down throughout the two-year warranty period and the trouble was never remedied. Finally, Appellant alleges that Respondent committed actionable conversion by failing to advise of the repair status or account for the whereabouts of the Tractor after April 28, 2021, when Respondent arrived at the Appellant’s residence and hauled the Tractor away without any sort of explanation as to what would happen next.

On September 16, 2024, Appellant filed a motion for summary judgment and memorandum in support which was based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits—including the affidavit of Jacob Willis previously filed on October 12, 2023

³ 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.

(hereinafter, “Affidavit of Jacob Willis I”). A hearing was scheduled for Monday, October 21, 2024.

On Friday, October 18, 2024, Respondent filed a second affidavit of Jacob Willis (hereinafter, “Affidavit of Jacob Willis II”). Therein, Willis attested to the content of communications he allegedly had with Appellant in 2021 which were omitted from the prior affidavit.⁴ Nevertheless, Willis’ eleventh-hour recollections created the appearance of a genuine issue of material fact.

The parties appeared before the Honorable Marvin H. Dukes, III, for a hearing on Appellant’s motion for summary judgment via Webex. On October 30, 2024, Judge Dukes issued a Form 4 order denying Appellant’s motion for summary judgment.

On February 26, 2025, Respondent filed a motion for summary judgment. The parties appeared before Judge McKinnon for a hearing via Webex on March 13, 2025. The burden of proof was almost immediately placed upon Appellant to convince the circuit court that Respondent was not entitled to summary judgment.

At the conclusion of the hearing, the circuit court directed Respondent’s counsel to submit a proposed order granting summary judgment in favor of Respondent as to four (4) out of six (6) of Appellant’s causes of action. On March 27, 2025, the circuit court adopted Respondent’s proposed order nearly verbatim. The Order reflects the improper burden-shifting which took place at the hearing and adopts several “undisputed” facts which Appellant adamantly disputes. As to

⁴ In paragraph 5, Willis attested: “Shortly thereafter [April 28, 2021], during a phone call I had with Mr. Aguilar, he requested that Nance not perform any further work on the Tractor.” (Aff. Jacob Willis II, ¶ 5). In response, AGCO agreed to arrange for the Tractor to be taken to another AGCO dealer for repair. If AGCO performed unauthorized repairs as suggested by Willis, then AGCO admits that it is liable for conversion. See Green v. Waidner, 284 S.C. 35, 324 S.E.2d 331 (1984).

the facts not in dispute, there was a fundamental disagreement concerning the conclusion to be drawn from those facts.

On April 4, 2025, Appellant filed a motion to alter or amend pursuant to Rule 59(e), SCRCF. The parties appeared before Judge McKinnon for a hearing via Webex on June 11, 2025. On June 27, 2025, the circuit court denied Appellant's motion to alter or amend. This appeal followed.

STATEMENT OF THE FACTS

Appellant resides on a 42-acre tract in Ridgeway, South Carolina, with his wife. (R. p. 207, line 23 – p. 208, line 2). Appellant needed a large tractor to mow the grass. (R. p. 211, line 6 – p. 212, line 3). Appellant owns a landscaping business; he admittedly contemplated using the Tractor to plant and water trees on approximately one or two acres of his property for the benefit of his business. (R. p. 203, line 18 – p. 204, line 14; p. 209, lines 6 – 9).

On or about April 24, 2019, Appellant purchased the Tractor from Nance, which was manufactured and distributed by Respondent and financed by AGCO Finance, for the sum of \$51,200.00. (R. p. 68, par. 11). Pursuant to the terms of the RISC, Appellant agreed to pay AGCO Finance thirty-six (36) monthly installment payments of \$1518.16. (R. pp. 86 – 88). The RISC required a signature only on the first page. (R. pp. 86 – 88). The Appellant neither signed nor initialed any other pages of the RISC. (R. p. 415, line 15 – p. 416, line 13).

The second page of the RISC, buried in fine print, contained a limitation of damages clause purporting to bar the recovery of special, incidental or consequential damages, as well as a waiver of the right to jury trial. (R. p. 69, par. 21 – 22). Appellant was unable to read the terms on the

second page of the RISC at all. (R. p. 416, lines 2 – 5). Nobody at Nance attempted to read the terms on the second page of the RISC to Appellant.⁵ (R. p. 415, lines 3 – 14).

The RISC contained a \$175.00 “administration fee.” (R. p. 69, par. 24). The RISC 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.” (R. p. 70, par. 25). Nobody at Nance told Appellant what the fee was for, but he understood that he had to pay the fee if he wanted to buy the Tractor. (R. p. 415, lines 3 – 14).

Appellant’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.” (R. p. 76, par. 84; R. p. 547). Respondent’s powertrain warranty further 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 had not been used more than 2000 hours, whichever comes first.” (R. p. 76, par. 85; R. p. 547).

The Tractor and the operator’s manual were delivered by Nance to Appellant’s property in Ridgeway on April 29, 2019. (R. p. 70, par. 32). Appellant understood that the Tractor was covered by warranty, but Appellant was not provided with a copy of the warranty before or at the time of purchase. (R. p. 227, lines 4 – 13). Unbeknownst to Appellant, page 63 of the operator’s manual required the purchaser to request a copy of the warranty from the dealer in order to see it. (R. p. 75, par. 75). The warranty itself provides that “the remedies of the Owner set forth herein

⁵ Upon information and belief, nobody could fully read the terms because they are illegible. Even Respondent’s counsel had to concede this point during Appellant’s deposition. (R. p. 383, lines 10 – 22).

are *exclusive*” and required Appellant to pay for the cost of towing the Tractor back and forth to the nearest AGCO dealer, even when repairs were necessitated by product defects and covered by the warranty. (R. p. 548).

Appellant began to experience mechanical problems with the Tractor almost immediately. (R. p. 70, par. 33). Over the two-year warranty period, in which the Tractor was warranted to be free of defects for up to 2000 hours, Appellant was able to operate the Tractor for just 355 hours. (R. p. 256, lines 2 – 6; p. 348, lines 17 – 23). On October 9, 2019, the Tractor broke down for the first time. (R. p. 71, par. 34). A representative of Nance directed Appellant to call Jacob Willis (“Willis”), an agent of Respondent. (R. p. 244, lines 2 – 12). This became Appellant’s standard practice thereafter. (R. p. 244, lines 15-17). The Tractor was towed to Nance and a maintenance work order 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. (R. p. 71, par. 38). The Tractor was not returned until January 1, 2020, and was not used again until the spring. (R. p. 71, par. 39 – 41).

On July 20, 2020, the Tractor broke down again. (R. 71, par. 42). 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 performed a “software update,” all of which were covered under Respondent’s warranty. (R. p. 72, par. 46). The Tractor broke down very shortly upon its return. (R. p. 72, par. 46). 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 Respondent’s warranty once more. (R. p. 72, par. 47).

Respondent dispatched David Sumner (“Sumner”) to Appellant’s property shortly after the Tractor was returned on October 20, 2020, to perform a diagnostic inspection. (R. p. 241, line 22

– p. 242, line 4). The Tractor was towed back 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. (R. p. 73, par. 61). On or about January 12, 2021, Respondent agreed to extend the warranty. (R. p. 74, par. 65).

On April 21, 2021, the Tractor broke down on the first occasion that Appellant attempted to use it after the most recent warranty repairs. (R. p. 74, par. 66). Convinced that the Tractor was a lemon, Appellant called Willis and demanded that Respondent either “replace” the Tractor or refund him. (R. p. 252, line 23 – p. 253, line 4). Respondent refused to do either. (R. p. 253, lines 11 – 22). The Tractor was picked up by Respondent on April 28, 2021. (R. p. 74, par. 68). For several years, none of the parties knew where the Tractor was taken or whether any repairs had been performed, although Respondent later claimed that the Tractor had been taken to Nance, before being transported to Powell Tractor Inc. (“Powell”) in Westminster, South Carolina. (R. p. 1039, par. 26 – 27; R. p. 1054, par. 26). Respondent cannot produce any documents which would prove that the Tractor was ever taken to Nance. (R. p. 1042, par. 6).

In any case, there was no further contact between the parties between April 28, 2021, and October 29, 2021. (R. p. 1364, par. 6 – 7). On October 29, 2021, Willis called Appellant. (R. p. 1364, par. 7). The content of the conversation is in dispute, but Respondent has asserted that Appellant was informed that the Tractor was at Powell and was “ready” to be returned. (R. p. 1361, par. 3). Appellant denies this and Respondent has further admitted that there are work orders from Powell related to the repair of the Tractor which are dated through January 3, 2022. (R. p. 362, line 10 – p. 363, line 25; R. p. 1044, par. 10).

STANDARD OF REVIEW

“In reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRPC.” Boyd v. BellSouth Telephone Telegraph Co., Inc., 369 S.C. 410, 415, 633 S.E.2d 136, 138 (2006).

Under Rule 56(c), SCRPC, a party is entitled to summary judgment if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact.” Rule 56, SCRPC. 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, 626, 630 S.E.2d 259, 263 (2006). [emphasis added]. 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).

In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Fleming v. Rose, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002); Conner v. City of Forest Acres, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002).

ARGUMENT

I. DID THE CIRCUIT COURT ERR BY ADOPTING RESPONDENT'S ALLEGATIONS, INCLUDING ALLEGATIONS WHICH LACK SUPPORT IN THE RECORD, AS "UNDISPUTED MATERIAL FACTS?"

"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." BPS, Inc. v. Worthy, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

Respondent was never compelled to offer any argument in support of its motion as to Appellant's claims for conversion, civil conspiracy, violation of the SCUTPA, and violation of the Farm Equipment Manufacturers, Distributors, and Dealers Act. The movant must satisfy its "*initial burden*" under Rule 56 by showing the absence of a genuine issue of material fact before the burden shifts to the non-moving party to identify specific facts in dispute. Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). [*Emphasis added*]. Respondent was only required to argue as to Appellant's breach of warranty cause of action before the circuit court intervened and shifted the burden to the Appellant to rebut the entirety of Respondent's motion.

Respondent has asserted that it did, in fact, satisfy its initial burden by submitting a "well-supported motion" prior to the hearing. The circuit court expressed that it was familiar with the contents of Respondent's motion, supporting memoranda, and exhibits—while also expressing it was not familiar with the arguments in Appellant's memorandum in opposition. (R. p. 144, lines 1 – 10; p. 146, lines 12 – 14). Exhibit A ("Exhibit A") to Respondent's motion for summary judgment was titled "Statement of Undisputed Material Facts in Support of Summary Judgment."

Had the circuit court considered the "pleadings, depositions, answers to interrogatories, and admissions on file" as required by Rule 56(c), SCRPC, it would have concluded that Appellant had good cause to dispute much of Respondent's version of the "undisputed material facts," many

of which lacked any support whatsoever, as well as the conclusions which should be drawn from the facts not in dispute. Instead, the circuit court relied upon Exhibit A to form its conclusions and repeated many of these “facts” contained therein verbatim in the Order.

a. **THERE WAS A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER RESPONDENT WAS A THIRD-PARTY BENEFICIARY OF THE RISC WHICH PRECLUDES SUMMARY JUDGMENT ON THREE OF APPELLANT’S CAUSES OF ACTION.**

Paragraph 7 of Exhibit A claims that Respondent is neither a party nor a third-party beneficiary of the RISC. (R. p. 1309, par. 7). If this were indeed true, any claims arising out of the contents of the RISC and directed towards Respondent would be meritless (e.g., civil conspiracy, violation of the SCUTPA, and violation of the Farm Equipment Manufacturers, Distributors, and Dealers Act). While Respondent cited a number of sources in Exhibit A to support the assertion that it is not a party to the RISC, it failed to cite even one source supporting the assertion that it was not a third-party beneficiary of the RISC.

Appellant asserts that, with the evidence and all inferences which can reasonably be drawn therefrom and viewed in the light most favorable to him, there is a genuine issue of material fact as to whether Respondent is a third-party beneficiary of the RISC. The RISCs were distributed to Respondent’s authorized dealerships by AGCO Finance and exclusively assigned to AGCO Finance. (R. pp. 1044 - 1045, par. 12). AGCO Finance is a joint venture of Respondent and DLL. (R. p. 892; R. p. 1344).⁶

The Supreme Court of South Carolina has previously characterized joint ventures as “partnerships” which are “governed by partnership law.” Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237-38, 391 S.E.2d 538, 543 (1989). AGCO Finance is a partnership between Respondent

⁶ In addition to being pled by the Appellant, this joint venture is prominently advertised by AGCO Finance. (www.agcofinance.com/en/about-us).

and DLL. Partners share profits. Thus, the partners in AGCO Finance, Respondent and DLL, share profits. Despite the circuit court classifying the joint venture relationship as mere “conjecture” of Respondent’s third-party beneficiary status, Appellant raised a genuine issue of material fact whether Respondent is a beneficiary of the RISCs. (R. p. 19). The RISCs are distributed by the joint venture to Respondent’s authorized dealers and exclusively assigned back to the joint venture. (R. pp. 79 – 80, par. 119).

i. Unfair Trade Practices Act

Appellant asserted that Respondent violated the SCUTPA by disseminating the RISC containing unfair and oppressive terms, including an arbitrary “administrative fee.” The Order states that “the evidence establishes that [Respondent] is neither a party to, nor a beneficiary of, the Instalment Contract.” (R. p. 9). The Order further states that Appellant failed to provide any “evidence demonstrating [Respondent’s] involvement in charging administrative fees or any act likely to mislead consumers related to this fee.” (R. p. 14).

Evidence of Respondent’s partnership status in a joint venture which distributed the RISC exclusively to Respondent’s authorized dealerships is sufficient for purposes of establishing a genuine issue of material fact. Further, the RISC itself states 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.” (R. pp. 86 – 88). The Assignee, AGCO Finance, is a joint venture of Respondent. Thus, Respondent shared the profit from this arbitrary fee and was a beneficiary of the RISC.

ii. Civil Conspiracy

Appellant asserted that Respondent engaged in a civil conspiracy to distribute the RISCs with the intention to mislead, deceive, and oppress consumers in South Carolina. In addition to the administration fee collected purely for profit, the RISC contained unfair and oppressive terms

in miniscule, illegible font, including a disclaimer of express and implied warranties, a limitation of damages clause, and a waiver of the right to a jury trial. (R. pp. 86 – 88).

The circuit court granted summary judgment in favor of Respondent on this claim based once more upon the finding that [Respondent] was “neither a party to, nor beneficiary of, the [RISC].” (R. p. 9). The circuit court further found that the evidence “merely reflect[ed] [Respondent’s] role as a manufacturer, separate from the entities that charged any fees or signed the [RISC].” (R. p. 12). As discussed above, AGCO Finance is a joint venture involving Respondent. Stated another way, Respondent is a partner in a business venture which both distributed *and* accepted assignment of the RISCs containing arbitrary terms and fees. [*emphasis added*]. This was sufficient to demonstrate a genuine issue of material fact.

iii. Violation of the Farm Equipment Manufacturers, Distributors, and Dealers Act

Appellant asserted that Respondent is a “manufacturer” and “distributor” which violated the Farm Equipment Manufacturers, Distributors, and Dealers Act by engaging in unfair or deceptive acts or practices as defined by S.C. Code Ann. § 39-6-50, including engaging in action that is “arbitrary, unconscionable, or in bad faith and that causes damage to ... the public.” Appellant asserted that Respondent has a direct interest in the unfair and deceptive warranty as well as, at least, an indirect interest in the RISC created, distributed, and assigned to its joint venture with DLL.

The circuit court granted Respondent’s motion for summary judgment as to this cause of action because: “The Instalment Contract at issue was executed between Plaintiff, Nance, and [AGCO Finance] – entities not within the scope of agreements covered by the Act.” (R. p. 15). First, Appellant asserts that Respondent is a third-party beneficiary of the RISC based on the joint venture relationship. Further, S.C. Code Ann. § 39-6-120 states that the Act applies to “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*.” Respondent is a manufacturer and distributor of Massey-Ferguson tractors. Based on the joint venture relationship, Respondent has at least an indirect interest in the RISC. Respondent very clearly has a direct interest in the warranty as the author and obligor of the same.

b. SPECULATION AS TO WHAT APPELLANT “LIKELY KNEW” AFTER RESPONDENT PICKED UP THE TRACTOR WAS NOT SUFFICIENT GROUNDS TO GRANT SUMMARY JUDGMENT AS TO CONVERSION

The “Findings of Fact” section in the Order includes the following finding of fact:

“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.” (R. p. 10). [emphasis added]. This speculation was a product of the circuit court adopting the version of events described in paragraph 46 of the Respondent’s Exhibit A. (R. pp. 1317 – 1318, par. 46). However, the circuit court’s guess about what the Appellant may have known did not even purport to be a statement of fact.

This passage demonstrates that the circuit court applied something like the preponderance of the evidence standard in the context of a motion for summary judgment, which is plainly inappropriate. Appellant unequivocally disputes that he had **any** communication with Respondent wherein he was informed that the Tractor was taken to Nance after April 28, 2021, or that he agreed for the Tractor to be sent to Powell. (R. p. 264, lines 9 – 10; p. 288, line 17 – p. 289, line 2; p. 335, lines 4 – 9; p. 390, lines 9 - 19). On the contrary, Appellant did not even know who Powell was on the date of his deposition. (R. p. 354, lines 21 – 25).

Appellant’s version of the facts is consistent with paragraph 6 of the Affidavit of Jacob Willis II, filed by Respondent: “Between April 28, 2021, and October 29, 2021, [Appellant] did

not ask where the Tractor was located, nor did he contact me to ask about the status of the warranty repairs to the Tractor.” (R. p. 1364, par. 6). Not only was there no basis for the circuit court’s conclusion that Appellant “likely knew” where the Tractor was taken, the Affidavit of Jacob Willis II directly contradicted this so-called “undisputed” fact. To the extent that this finding of “fact” influenced the circuit court’s decision to grant summary judgment as to Appellant’s conversion claim, this was a critical error.

i. Conversion

Appellant asserted that Respondent converted the Tractor after hauling it away on April 28, 2021, and thereafter failed to account for its whereabouts until October of 2023, when Respondent filed the affidavit of Phillip Conner. (R. p. 1359, par. 3). Context was key to the timing of this disclosure. Respondent had to conjure up a “meritorious defense” to avoid a default judgment.

For over two (2) years, based on its discovery responses, Respondent purportedly did not know where the Tractor was taken on April 28, 2021; had no knowledge of what repairs had been performed on the Tractor; and was unaware of where the Tractor was being held. (R. p. 1272 – 1273, par. 26 – 28). Respondent further referenced an ongoing “investigation” into these matters. (R. p. 1272 – 1273, par. 26 – 28). Appellant asserted that Respondent’s “unauthorized assumption and exercise of right of ownership” over the Tractor under these circumstances constituted conversion.

The circuit court found that there was “no genuine issue of material fact regarding the authorization element of [Appellant]’s conversion claim” because it was undisputed that Respondent was authorized to pick up the Tractor on April 28, 2021. (R. p. 11). However, virtually everything that transpired once the Tractor was retrieved from Appellant’s property in

Ridgeway is disputed; including whether there was any further communication between the parties until October 29, 2021, the contents of those communications, and the actual whereabouts of the Tractor. Respondent has admitted it cannot produce a single document which suggests that the Tractor was taken to Nance, yet the circuit court determined this to be an undisputed fact. (R. p. 1275, par. 6).

Given that Respondent could not account for the Tractor's whereabouts for over two (2) years, the circuit court's conclusion that Appellant knew or likely knew the whereabouts is devoid of any rational basis. In any event, nothing in the record could possibly have been construed to mean that Appellant authorized Respondent to exercise rights of ownership over the Tractor for years in exchange for nothing. Simply because Respondent was permitted to pick up the Tractor to perform warranty repairs does not mean that the Respondent was permitted to tinker with it indefinitely. *See Cannon v. Pulliam*, 230 S.C. 131, 138, 94 S.E.2d 387, 400 (1956). Appellant demonstrated a genuine issue of material fact as to the authorization element of the conversion claim.

The circuit court further found that there was "no evidence that [Respondent]'s initial possession was unauthorized or that [Respondent] refused to return the Tractor upon [Appellant]'s request." (R. p. 12). It tried the initial authorization of possession by the Appellant as dispositive evidence that no conversion had occurred. This came as a surprise to Appellant.

On August 15, 2023, the parties appeared before Judge McKinnon on Respondent's motion to dismiss. Respondent's counsel made the precise argument that no cause of action for conversion could arise because Respondent was authorized to take possession of the Tractor. Judge McKinnon was openly critical of this argument, asking rhetorically: "So your argument is if they brought it to you to fix you can keep it forever?" (R, p. 133, line 14 – p. 134, line 1). The

motion to dismiss was denied, and Judge McKinnon deemed this issue to be “a question of fact.” (R. p. 134, line 1). Appellant is frankly puzzled as to what has changed in the last two years.

Further, to the extent the circuit court granted summary judgment in favor of Respondent on the conversion claim based on Appellant’s failure to demand the return of the Tractor after it was lost, this clearly would have clearly been futile. (R. p. 12). Further, Appellant is unaware of any case law to the effect that it is necessary to demand the return of lost property in order to preserve a conversion claim.

c. THERE IS NO SUPPORT IN THE RECORD FOR THE FINDING OF FACT THAT APPELLANT REFUSED DELIVERY OF THE TRACTOR SO AS TO BAR HIS CAUSE OF ACTION FOR CONVERSION.

A section of the Order titled “Conclusions of Law” states that “it is also undisputed that after completing warranty repairs, [Respondent] informed [Appellant] that the Tractor was ready to be returned, and [Appellant] thereafter refused to accept delivery.” (R. p. 12). To the extent this also formed the basis for the circuit court granting summary judgment in favor of Respondent as to Appellant’s cause of action for conversion, this was an error.

Appellant admittedly testified that he did not want the Tractor back at the time Respondent picked it up on April 28, 2021. (R. p. 252, line 23 – p. 253, line 4). He was frustrated after the Tractor turned out to be defective time and time again, regardless of how many warranty repairs Respondent undertook. (R. p. 253, lines 5 – 10). Appellant admittedly testified that he did not want the Tractor back at the time of his deposition on June 27, 2024, as years had passed and he had already purchased a substitute tractor. (R. p. 290, lines 20 – 24). Against this backdrop, it was improper for the circuit court to construe either of these statements as the foundation for an undisputed finding of fact that Appellant refused delivery of the Tractor in **October 2021**.

The Order further states two contradictory findings of fact in this regard: (1) “It is undisputed that after completing warranty repairs, [Respondent] informed [Appellant] that the Tractor was ready to be returned;” and (2) “Even so, the record shows only that [Respondent] ceased direct communication when [Appellant] engaged counsel.” (R. p. 12; p. 14). Respondent asserts that repairs were completed on October 29, 2021. (R. p. 1361, par. 3). Appellant’s counsel filed the summons and complaint on June 8, 2021. Either Respondent did not contact Appellant after June 8, 2021, when Appellant’s counsel formally filed a notice of appearance, or Respondent called Appellant on October 29, 2021. Clearly, both cannot be true. It is axiomatic that a finding of fact cannot be based upon a contradiction.

The content of the conversation between Appellant and Jacob Willis is also a matter of dispute and therefore a genuine issue of material fact. Respondent asserts that Jacob Willis informed Appellant that the Tractor was repaired and Appellant refused to accept delivery. (R. p. 1361, par. 3). If true, this would be futile to Appellant’s conversion claim. However, there is scant evidence to suggest this assertion is true.

Appellant testified that the parties spoke on the phone, at which time Jacob Willis represented that the Tractor was “ready.” (R. p. 279, lines 2 – 7). Appellant further claims that he directed Jacob Willis to contact his attorney since this action had already been filed. (R. p. 279, lines 2 – 7). In addition, the work orders from Powell dated January 2022 create a genuine question of fact as to whether the Tractor actually had been repaired in October of 2021 as Respondent claims.

Respondent has not asserted that it ever attempted to deliver the Tractor to Appellant’s property in Ridgeway, where Respondent initially picked it up. Appellant has testified that he did not know where the Tractor was prior to his deposition, and even if he had known, he did not have

the means to tow the Tractor back to Ridgeway. (R. p. 364, line 20 – p. 365, line 6; p. 407, lines 7 – 9). With all inferences viewed in the light most favorable to the Appellant, this was a genuine issue of material fact which ought to have been reserved for the factfinder.

d. THERE IS NO SUPPORT IN THE RECORD FOR THE FINDING OF FACT THAT APPELLANT PURCHASED THE TRACTOR FOR COMMERCIAL USE AND NOT CONSUMER USE

It is a violation of 16 CFR § 702.3 to fail to provide a copy of the warranty before or at the time of purchase. Appellant has asserted that Respondent violated this regulation, and by extension, the SCUTPA, because Respondent concealed on page 63 of the Operator’s Manual that the onus was placed upon the purchaser to request a copy of the warranty from their local dealer. (R. p. 75, par. 75). Appellant has asserted that Respondent’s conduct was unfair and deceptive because it intended to conceal major exclusions in the warranty in this manner. (R. pp. 80 – 81, par. 127(b)). For instance, the warranty itself claims that repairs are the exclusive remedy for defective equipment, and that the purchaser must incur the cost of having their equipment towed back to the dealership for repairs which are covered by the warranty. (R. p. 548).

Appellant testified that he primarily used the Tractor to mow his lawn. (R. p. 207, line 23 – p. 208, line 2; p. 239, lines 1 – 19). However, the Order states that Appellant’s intentions for the Tractor were purely “commercial, not consumer,” so as to render 16 CFR § 702.3 inapplicable. (R. p. 6). Both the Order and Respondent’s Exhibit A emphasize that diminutive language appears at the top in the RISC, in parentheses, which states: “Agricultural and Commercial Use.” (R. p. 6).

Apparently, both the circuit court and Respondent considered this evidence dispositive, despite Appellant’s testimony to the contrary. Just like paying the bogus “administration fee,” Appellant had no choice but to agree to the terms and the form of the RISC if he wanted to purchase

the Tractor. It is undisputed that Respondent's joint venture prepared the form, not Appellant. (R. pp. 1277 – 1288; par. 12). It is disputed whether Appellant used the Tractor for his personal benefit or that of his business. This is a genuine issue of material fact which ought to have precluded summary judgment in favor of Respondent on Appellant's SCUTPA claim.

II. DID THE CIRCUIT COURT COMMIT AN ERROR OF LAW IN HOLDING THAT A BREACH OF WARRANTY CANNOT BE THE BASIS OF AN UNFAIR TRADE PRACTICE ACT VIOLATION?

Appellant has asserted a cause of action for breach of warranty which was preserved by the circuit court for trial. Specifically, Appellant asserts that the Tractor did not conform to the promise in the warranty that it would be “free from defects in material and workmanship,” and Respondent failed to “repair or replace” defective equipment as promised. (R. p. 76, par. 85; R. p. 547). The warranty term was for a period of twenty-four (24) months or two thousand (2000) hours. (R. p. 76, par. 84; R. p. 547). Respondent could not repair the Tractor—it underwent extensive repairs under the warranty on four (4) separate occasions within fifteen (15) months of purchase—and refused to replace it when the Tractor broke down for the fifth time on April 22, 2021. (R. p. 71 – 73; par. 38 – 61; p. 289, lines 3-21; p. 327, lines 15 – 21; p. 329; lines 18 – 25; p. 331, lines 5 – 7). Appellant was able to use the Tractor for just 355 hours during those fifteen (15) months. (R. p. 256, lines 2-6; p. 348, lines 17-23).

The Supreme Court of South Carolina has held that a breach of warranty can form the basis of an unfair trade practice if it affects the public interest. See Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 524, 381 S.E.2d 906, 908 (1989). The circuit court nevertheless agreed with Respondent that the “public-facing deception” present in Haley Nursery Co., Inc. was absent here. (R. p. 20). This decision was erroneous.

Failing to provide a copy of the warranty at or before the time of purchase in order to conceal oppressive terms is a deceptive act prohibited by S.C. Code Ann. § 39-5-20(a) and a violation of 16 CFR § 702.3. Burying the details of how to obtain a copy of the warranty on page 63 of the operator’s manual is a deceptive act prohibited by S.C. Code Ann. § 39-5-20(a). Requiring purchasers to incur the cost of towing heavy equipment when repairs are caused by a covered defect is an unfair practice prohibited by S.C. Code Ann. § 39-5-20(a). In Haley Nursery Co., Inc., the Supreme Court noted that the nursery’s warranty was “printed on Haley’s invoices to all customers” and “Haley’s breach of warranty impacts the public interest because of the potential for repetition.” 298 S.C. at 524, 381 S.E.2d 906.

Similar facts are present in this case. Page 63 of the operator’s manual states as follows:

“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 materials 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].

The potential for repetition here is clear. On the face of the operator’s manual, which Respondent claims is distributed worldwide, Respondent states that purchasers of new equipment manufactured by Respondent are not furnished with copies of the warranty unless purchasers request it, and purchasers of new equipment only know that they must request a copy from the dealer if they read page 63 of the operator’s manual.

CONCLUSION

The circuit court accepted allegations in an exhibit to Respondent’s Motion for Summary Judgment to be as Respondent represented them – “undisputed” and “material” facts. The circuit court did not evaluate these allegations in light of others present in the “pleadings, depositions,

answers to interrogatories, and admissions on file, together with the affidavits,” but, instead, took them at face value (even when those allegations are self-contradictory and unsupported by the record), combined them with its own speculation, and incorporated them almost verbatim into the Order. This was an error of law.

By incautiously invoking a drastic remedy, the circuit court has improperly deprived the Appellant of a trial on disputed factual issues. BPS, Inc. v. Worthy, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005). These disputed factual issues are not peripheral or esoteric but rather go to the heart of Appellant’s case.

Based upon the foregoing, this matter should be reversed and remanded.

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Certificate of Counsel

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
SCACR.

December 30, 2025

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