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 REPLY BRIEF

STUDEMEYER LAW FIRM, P.C.

s/ Ryan G. Studemeyer

J. Gregory Studemeyer
S.C. Bar No.: 5416
Ryan G. Studemeyer
S.C. Bar No.: 102578
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4393

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

I. RESPONDENT'S INITIAL BRIEF CONTAINS FRAGMENTARY AND FALSIFIED REFERENCES TO THE HEARING AND DEPOSITION TRANSCRIPTS INTENDED TO MISLEAD THE COURT INTO DRAWING INACCURATE CONCLUSIONS

A revolving door of counsel has represented the Respondent in this case, but while counsel has changed, Respondent's "win at all costs" approach to litigation has not. The record is replete with examples of evidence fabrication by the Respondent, references by the Respondent to "undisputed facts" which lack support in the record, and now, misrepresentation of the content of deposition and hearing transcripts by the Respondent. (R. p. 74, par. 72 – 73; R. p. 891, fn. 9; R. pp. 1354 – 1356).

Respondent's brief cites "evidence" that Respondent's counsel knows or should know to be false. *See* Rule 407, SCACR, Rule 3.3(a)(3). The duty of candor described in Rule 3.3 (a)(3) of the South Carolina Rules of Professional Conduct "is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence." Id. at Cmt. 5. Respondent's counsel has quoted select excerpts of the undersigned's oral arguments at the March 13, 2025, summary judgment hearing while omitting or misrepresenting the remaining portions which are not favorable to Respondent. This is a calculated effort to mislead the Court into drawing inaccurate conclusions.

For example, Respondent claims that the "exchange" from the hearing transcript identified on page 6 of its brief "confirms Appellant identified no predicate unlawful act to support a civil conspiracy claim" during the motion hearing. Respondent quotes the undersigned's admission to the Court that distribution of an adhesion contract "is not in and of itself illegal." Respondent neglected to quote, however, the substantive portion of the undersigned's statement, which continued: "...but what makes it unconscionable is if it also contained oppressive in [sic] one-

sided terms, which -- ." (R. p. 153, lines 15 – 16). The undersigned *did* in fact identify an "unlawful act" to support a civil conspiracy claim, whereas Respondent has attempted to mislead the Court into believing that Appellant voluntarily conceded its claim.

On page 6 of its brief, the Respondent purports to quote the trial court and Appellant's counsel discussing the claim arising under the South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act (the "Fair Practices Act"). In this instance, the trial court questioned Appellant's counsel as to whether it was arguing that the Fair Practices Act should apply to every sales contract in South Carolina. The Respondent quotes Appellant's counsel as replying "No." In fact, Appellant's counsel replied:

> "If it involves the sale of farm, construction, industrial, or outdoor power equipment and there's a distributor or manufacturer involved, I would agree with that. That's quite limited." (R. p. 157, lines 11 – 14).

The word "no" is not present anywhere in that portion of the hearing transcript, and the Respondent's purported quotation is a fabrication. As discussed below, Respondent also selectively references or outright ignores certain excerpts from Appellant's deposition to such an extent that it completely taints its analysis with respect to the claim arising under the South Carolina Unfair Trade Practices Act ("SCUTPA").

a. South Carolina Unfair Trade Practices Act

Respondent argues on page 18 of its brief that the SCUTPA does not apply because Appellant "confirmed in deposition that the contract was for 'Agricultural and Commercial Use'." A plain reading of the excerpt of Appellant's deposition shows the Appellant only confirmed that the *title* of the contract was "Retail Installment Contract and Security Agreement Agricultural and Commercial Use" (hereinafter, "RISC"). (R. p. 214, line 21 – p. 215, line 15).

The irony is not lost on the Appellant that elsewhere in Respondent's brief, it accuses Appellant of emphasizing form over substance. Appellant's counsel is informed and believes that no reported South Carolina opinion holds that the title of any contract—much less a contract of adhesion—is itself a term of the contract. None of the cases cited by Respondent support that conclusion. It should also be noted that Appellant has asserted that the RISC was unconscionable, in part, due to absence of meaningful choice as to the form of the contract.

Respondent further misrepresents the Appellant's testimony when it asserts that page 6 of Appellant's initial brief "concedes [Appellant] used the Tractor 'for the benefit of his business'." That is half true. Respondent fails to mention that page 6 of Appellant's brief states *first* that he primarily "needed a large tractor to mow the grass" on his 42-acre tract. (R. p. 11, line 5 – p. 16, line 3). Thereafter, the Appellant's brief states that Appellant "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. 209, lines 6 – 9).

Per the face of the RISC, the Tractor was purchased by the Appellant, not his business. The Tractor was used exclusively at the Appellant's residence, primarily for cutting grass. There is at least a genuine issue of material fact whether Appellant's primary purpose was personal or commercial so as to afford Appellant standing to assert a UTPA claim. The Respondents have never before disputed whether Appellant has standing to assert claims in his personal capacity with respect to the Tractor.

II. THE ARGUMENTS OF COUNSEL ARE NOT EVIDENCE

The Respondent substantially relies upon counsel's arguments at the March 13, 2025, motion for summary judgment hearing and the June 11, 2025, motion to alter or amend hearing as evidence that Respondent was entitled to summary judgment on four of Appellant's causes of

action. Time and time again, South Carolina appellate courts have held that "arguments made by counsel are not evidence." South Carolina Dept. of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003); *see also* In re Gonzalez, 409 S.C. 621, 763 S.E.2d 210 (2014), Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991), Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986), McManus v. Bank of Greenwood, 171 S.C. 74, 89, 171 S.E.2d 473, 475 (1933).

In Hicks Unlimited, Inc. v. UniFirst Corp., a Mass. Corp., No. 2021-001042, 2023 WL 3987465 (June 14, 2023), the South Carolina Supreme Court underscored the need for a court's conclusion to be based upon the evidence properly before the court. In reversing the Court of Appeals' determination that a contract involved interstate commerce, the Court noted that certain points relied upon by the Court of Appeals were inappropriate to consider because they were entirely based upon oral arguments made by counsel for UniFirst. The assertions were not based on the pleadings, not apparent from the language of the underlying contract, nor supported by affidavits or other evidence.

Nevertheless, to the extent these select excerpts of the undersigned counsel's argument are either misleading or outright false, Appellant is compelled to address them.

a. Civil Conspiracy

Respondent asserts that it was entitled to summary judgment on the Appellant's civil conspiracy claim because the court "pressed" Appellant to identify an "unlawful act," and "none was offered." Appellant notes that the burden of proof should have been shouldered by the Respondent to demonstrate the absence of any genuine issue of material fact, yet Respondent's own brief confirms that the burden was improperly shifted to the Appellant to disprove Respondent's theory of the case.

First, whether Appellant identified an "unlawful act" at the hearing to the trial court's satisfaction is irrelevant since the arguments of counsel are not evidence. In agreeing that the distribution of an adhesion contract, in and of itself, is not "unlawful," Appellant was setting the stage for his argument that the distribution *is* the beginning of such an analysis. (R. p. 153, lines 5-15); Simpson v. MSA of Mytle Beach, Inc., 373 S.C. 14, 27, 644 S.E.2d 663, 669 (2007).

However, the record reflects that the trial court interjected when Appellant sought to clarify such a contract is indeed unconscionable and unenforceable when the terms are also oppressive and one-sided. (R. p. 153, lines 12 – 18); *see* Simpson, 373 S.C. at 25, 644 S.E.2d at 668. This example perfectly encapsulates *why* the arguments of counsel are not considered evidence—arguments of counsel can only be developed so far as the trial court allows. In this instance, the trial court decided that it was not interested in hearing any more of the Appellant's argument before the Appellant had an opportunity to fully present it.

Second, Respondent's assertion regarding the Appellant's purported failed to offer an unlawful act is blatantly false; an unlawful act was "offered," but the lower court was not satisfied, in part, because the alleged unlawful act was not a "crime."[1] The trial court was correct that an adhesion contract is not *per se* illegal. The trial court asserted that an adhesion contract is unenforceable, which is not necessarily correct under South Carolina law as discussed below. (R. p. 153, lines 9 – 10). An adhesion contract is only unenforceable if it is also unconscionable. Nevertheless, the trial court also found that a contract which is "unconscionable" is not "unlawful," which was plainly incorrect. (R. p. 153, lines 10 - 20).

---

[1] "THE COURT: "Do you – I'm really skeptical of that. Do you have any case law? I mean, you – I mean, an adhesion contract's not illegal, it's just not enforceable. I mean, it's not a crime to sign an adhesion contract and I'm extremely skeptical that qualifies as an unlawful act." (R. p. 153, lines 8 – 12).
MR. STUDEMEYER: "Well, Your Honor, my understanding is that an adhesion contract, you're correct, is not in and of itself illegal but what makes it unconscionable is if it also contains oppressive in [sic] one-sided terms, which --." (R. p. 153, lines 8 – 12).

An adhesion contract is unenforceable if it is *unconscionable*. [*emphasis added*].

An analysis of unconscionability is two-pronged approach based on both procedure and substance. An adhesion contract is standard form offered on a take-it-or-leave-it basis with terms that are not negotiable, and as such, is procedurally unconscionable. *See* Simpson, *supra*, 373 S.C. at 26-27, 644 S.E.2d at 669 (2007). Procedural unconscionability is not, on its own, an obstacle to enforceability. The adhesion contract is only unconscionable if the terms of the contract—the "substance"—happen to be one-sided and oppressive. In this instance, that is precisely the argument that the Appellant attempted to make. (R. p. 153, lines 15 – 16).

In Simpson and in Damico v. Lennar Carolinas, LLC, 437 S.C. 596, 620, 879 S.E.2d 746, 759 (2022), respectively, the Court appeared to conflate the term "unconscionable" in the context of an adhesion contract with the terms "illegality" and "illegal." "Unlawful" is defined as "not authorized by law" or, coincidentally, "illegal." *See* Black's Law Dictionary (12th ed. 2024), "unlawful." While "criminally punishable" is another possible definition of "unlawful," it is not the first or the only definition. Appellant thus satisfied the "unlawful act" prong of the civil conspiracy claim when it asserted that Respondent conspired to distribute unconscionable contracts.

In Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), the Supreme Court clarified that the commission of "an unlawful act or a lawful act by unlawful means" was an element of civil conspiracy. The Court in Paradis did not limit "unlawful acts" to crimes; rather, it reversed the trial court's dismissal of a former public school teacher's civil conspiracy claim, noting that the unlawful act prong was satisfied based on the former teacher's allegation that "the principal and assistant principal...targeted her for an unwarranted and invasive performance evaluation...causing her to be blacklisted and ostracized and, ultimately, terminated

from her teaching position." 433 S.C. at 564-65, 861 S.E.2d at 775. The alleged "unlawful acts" were not crimes.

The Court of Appeals has recently affirmed judgment in support of a claim for civil conspiracy based upon a horizontal property regime's wrongful designation of a member's rooftop terrace as a "common element." Griffin v. Giovino, 446 S.C. 533, 920.S.E.2d 418 (Ct. App. 2025). In fact, the Court of Appeals stated that the same facts which supported a claim for breach of contract accompanied by a fraudulent act also supported the claim for civil conspiracy. Id., 446 S.C. at 569, 920 S.E.2d at 437. Clearly, a civil conspiracy case need not assert that any "criminal" act occurred in order to establish the "unlawful act" prong identified in Paradis.

A. MISAPPLICATION OF ESTABLISHED LAW

The remaining arguments of Respondent's counsel are primarily based upon misapplication of the established law.

a. Conversion

As to Appellant's conversion claim, Respondent asserts that it was entitled to summary judgment because: (1) Appellant's counsel conceded that Respondent initially had permission to pick up the Tractor; and (2) Appellant failed to demand the return of the Tractor and outright refused to accept it.

As to the first argument, it has long been the law of this State that a bailment—a relationship wherein the bailee initially possesses property of the bailor with permission—can later give rise to an action for conversion. *See* Powell v. A.K. Brown Motor Co., 200 S.C. 75, 20 S.E.2d 636 (1942). The Appellant has asserted a claim for negligent bailment which survived Respondent's motion for summary judgment, thus establishing a basis for a bailment relationship.

As to the second argument, demand of the property's return is not an element of

conversion.[2] Conversion is defined as "the unauthorized assumption and exercise of the rights of ownership over goods or personal chattels belonging to another, to the alteration of their condition or to the exclusion of the rights of the owner." Griffin, 920 S.E.2d at 436. In Griffin, the Court of Appeals specifically concluded that establishing what happened to converted property after it was converted is not an element. 920 S.E.2d at 428. In effect, the Court of Appeals declined to place the onus upon the party whose property has been converted to inquire as to its current state.

In any case, Appellant's demand would have been futile since Jacob Willis misrepresented that the Tractor was "ready" on October 29, 2021. (R. p. 278, line 2 – p. 279, line 12). Work orders from Powell Tractor Inc. ("Powell") indicate that repairs were ongoing into January of 2022. (R. p. 362, line 10 – p. 363, line 25; R. p. 1044, par. 10). Of course, neither Jacob Willis's affidavit nor the repair orders are necessarily reliable because, according to the Respondent's discovery responses, it was unaware of the Tractor's whereabouts until October 19, 2023. (R. pp. 1039 – 1040, par. 26 – 28; R. p. 1054 – 1055, par. 26 – 28).

In any case, there is zero evidence to suggest that the Appellant was aware that his Tractor was located at Powell. (R. p. 364, line 20 – p. 365, line 6). Appellant never testified that he refused delivery—he told the Respondent to contact his attorney since this action had already been filed. (R. p. 279, lines 2 – 7). Somehow, the trial court and the Respondent have both erroneously conflated the two.

Respondent asserts that Appellant refused delivery on page 17 of the Respondent's brief wherein it asserted that the Appellant "told AGCO he did not want the Tractor returned." No source is cited by Respondent, and the only possible source is the October 12, 2023, affidavit of

[2] In Oxford Finance Companies, Inc. v. Burgess, 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991), the Supreme Court stated that "[a] claim for conversion *can* be based on unauthorized detention of property, after demand." [*emphasis added*]. In Griffin, *supra*, the Court of Appeals did not mention a requirement that the party asserting a conversion claim must demonstrate that demand was made for the return of its property.

Jacob Willis, an employee of the Respondent. (R. p. 1361). On an appeal from the grant of summary judgment in its favor, it is striking that the Respondent relies so substantially upon disputed allegations.

b. Fair Practices Act

Respondent asserts that it was entitled to summary judgment on Appellant's claim for violation of the Fair Practices Act because another "exchange" on page 6 of its brief confirms that the statute is inapplicable to the transaction at issue.

As discussed above, Respondent's counsel rewrote this "exchange." Apart from this unscrupulous behavior, the Respondent is incorrect with respect to the merits. Respondent asserts that S.C. Code Ann. § 39-6-120, which discusses the types of agreements to which the Act applies, does not expressly mention "consumers." Thus, according to Respondent, a consumer cannot seek relief under the Fair Practices Act.

While S.C. Code Ann. § 39-6-120 does not mention "consumers," it contains a catch-all provision which states that it applies to: "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." Further, S.C. Code Ann. § 39-6-50(A) explicitly contemplates actions which affect "the public." Clearly, Respondent is a manufacturer and distributor which has a direct interest in the warranty distributed to members of "the public." Respondent has at least an indirect interest in the RISC since it is assigned exclusively to its joint venture, AGCO Finance, LLC.

Based on Respondent's position on the Fair Practices Act, it appears Respondent would argue that a consumer cannot bring an action under the Regulation of Manufacturers, Distributors, and Dealers Act, because S.C. Code Ann. § 56-15-80, titled "Agreements to which chapter

applies," does not mention "consumers," either. There is an abundance of case law to the contrary, wherein consumers have brought actions against automobile dealers arising under S.C. Code Ann. § 56-15-40, which is the functional equivalent of S.C. Code Ann. § 39-6-50.[3] The Fair Practices Act should not be treated differently simply because the amount of case law around it has not yet had time to develop. In fact, Appellant is informed and believes that there are no reported cases whatsoever arising from any statute in the Fair Practices Act.

CONCLUSION

Based on the foregoing, the Appellant requests that the trial court be reversed and this matter be remanded for trial on each of Appellant's six causes of action.

STUDEMEYER LAW FIRM, P.C.

s/ Ryan G. Studemeyer

J. Gregory Studemeyer
S.C. Bar No.: 5416
Ryan G. Studemeyer
S.C. Bar No.: 102578
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4393

Attorneys for Appellant

December 30, 2025

[3] S.C. Code Ann. § 56-15-40: 'It shall be deemed a violation of Section 56-15-30(a) for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.
S.C. Code Ann. § 39-6-50: "It is a violation of Section 39-6-40 for a manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative to engage in an action that is arbitrary, unconscionable, or in bad faith and that causes damage to any of the parties, the equipment dealer, or to the public.

Certificate of Counsel

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

December 30, 2025

STUDEMEYER LAW FIRM, P.C.

s/ Ryan G. Studemeyer
J. Gregory Studemeyer
S.C. Bar No.: 5416
Ryan G. Studemeyer
S.C. Bar No.: 102578
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4393

Attorneys for Appellant