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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Charles J. McCutchen, Circuit Court Judge

Appellate Case No.: 2025-001629
Case No. 2024-CP-38-00640

Owl Labs, Inc.....Appellant,

v.

Orangeburg County School District.....Respondent.

INITIAL BRIEF OF RESPONDENT

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I. STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court correctly dismissed Owl Labs' negligence-based claims where the alleged duties arose solely from a contractual relationship and the claimed damages consisted of purely economic loss.

2. Whether the circuit court correctly dismissed Owl Labs' claim for attorneys' fees under South Carolina's American Rule where no contractual, statutory, or rule-based entitlement existed.

II. STATEMENT OF THE CASE

This commercial dispute arises from a fraud that a former employee of the Orangeburg County School District ("District") perpetrated against the District and the Appellant, Owl Labs. The underlying transaction arises from the District's purchase of video conferencing devices from a company, Level 8, that is not a party to this action during the COVID-19 pandemic. The District contracted with Level 8 for the devices, and paid Level 8 fully for the video conferencing equipment. Level 8 obtained the devices from Owl Labs, and did not pay fully for the devices. The parties were unaware that a former District employee set up multiple corporations and committed multiple acts of fraud and forgery to steal hundreds of thousands of dollars as part of this transaction.

According to the Complaint, District employees communicated with Owl Labs regarding pricing, educational discounts, and device quantities, and Owl Labs thereafter shipped multiple orders of Owl Devices to the District. (Compl.). Owl Labs alleges that the District used the Owl Devices in furtherance of remote instruction but failed to remit full payment for certain shipments. (Compl.). Owl Labs asserts damages in the form of unpaid invoices. (Compl.) The District denies the allegations of Owl Labs.

As part of this action, Owl Labs pled causes of action for breach of contract, quantum meruit, negligent hiring, negligent supervision, and attorneys' fees. (Compl.). As relevant to this appeal, Owl Labs alleged that the District negligently failed to supervise one of its employees and negligently failed to "verify" the vendor through which purchases were made, resulting in Owl Labs' alleged financial losses. (Compl.). Owl Labs did not allege any personal injury, property damage, or other non-economic harm arising independently of the contractual transaction.

After discovery was completed, the District moved for summary judgment pursuant to Rule 56, SCRCP, seeking dismissal of Owl Labs' claims. (Mot. for Summ. J.). Following briefing by both parties, the Court held a hearing on the District's motion for summary judgment on March 13, 2025. (Transcript.; DEFs Mem. in Supp.; Pl.'s Mem. in Opp'n). By order dated June 6, 2025, the circuit court granted the District's motion in part. (Order). Specifically, the circuit court entered summary judgment for the District on Owl Labs' negligence-based causes of action and its claim for attorneys' fees, concluding that the asserted duties arose solely from the alleged contractual relationship between the parties and that fee recovery was barred under South Carolina's American Rule. (Order). The circuit court denied the District's summary judgment motion as to Owl Labs' breach of contract and quantum meruit claims. (Id.). The parties filed cross-motions to reconsider, and the circuit court denied both motions.

Owl Labs filed a Notice of Appeal seeking review of the circuit court's dismissal of its negligence-based claims and its claim for attorneys' fees. (Notice of Appeal). Owl Labs contends the circuit court erred in dismissing those claims. The District disagrees; under a reasonable construction of the law and viewing the allegations in the light most favorable to Owl Labs, the circuit court correctly concluded that South Carolina law does not recognize the negligence-based

duties Owl Labs asserts and properly dismissed Owl Labs' fee claim in accordance with the American Rule. Accordingly, the District requests that this Court affirm the circuit court's order.

III. STANDARD OF REVIEW

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Bergstrom v. Palmetto Health Alliance*, 352 S.C. 221, 573 S.E. 2d 805 (Ct. App. 2002). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *see also Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *See Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) (looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001); *see also Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) (motion

must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case). Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. *Williams*, 347 S.C. at 233, 553 S.E.2d at 500.

IV. FACTS

The essential facts of this case are not in dispute. Both Plaintiff and Defendant were victims of a criminal wire fraud by former District employee David Marshall. On December 8, 2021, the U.S. Attorney criminally charged David Marshall with federal wire fraud arising out of his scheme to defraud and obtain monies by means of false and fraudulent pretenses. (Ex. 1 to District's Memorandum of Law in Support of Motion for Summary Judgment) As reflected in the Information, Mr. Marshall used his position with the District to steer the District to purchase video cameras from his corporate alter ego, Level 8, and used another corporate entity, Orangeburg County Purchasing, to process the fraudulent transactions, all while concealing his identity to deceive others.

As a part of his scheme, Mr. Marshall contacted Owl Labs to purchase 875 units, without disclosing that he did not have the authority to contract for the District. Mr. Marshall, through the deceptive use of his corporate alter egos, purchased these devices from Owl Labs and then sold these units to the District at a price marked up by $130,000. (Ex. 1 to District's Memorandum of Law in Support of Motion for Summary Judgment) Mr. Marshall assumed a false identity, generated false documents, and forged signatures of another District employee. (Ex. 1 to District's Memorandum of Law in Support of Motion for Summary Judgment). Mr. Marshall obtained over $550,000 through his false procurement scheme, generation of false records, and his retention of monies owed to Owl Labs.

Mr. Marshall pled guilty to the charge in the Information. (Ex. 2 to District's Memorandum of Law in Support of Motion for Summary Judgment). This criminal enterprise arose out of the District's need to purchase video conferencing devices.

During the COVID-19 pandemic, school districts across the state and country closed their schools and began to provide instruction to students virtually. This change of instructional delivery required many districts to invest in technology that would better allow teachers to provide virtual instruction to students. In the beginning of the 2020 school year, the District determined that it needed to purchase video cameras for teachers to provide virtual instruction to students who were learning from home. Eric Ham, the District's Director of Technology, provided input to Dr. Shawn Foster, the District Superintendent, as to the types of technology the District could obtain to use during COVID. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep. p. 36, line 12-p. 37, line 10). Mr. Ham had seen one of Plaintiff's products, the Owl Meeting Pro camera, and thought it was a good option for the District for the virtual instruction. (Ex. 4 to District's Memorandum of Law in Support of Motion for Summary Judgment, Ham Dep. pp. 60-62).

Because Level 8 was a third-party vendor the District had used previously for the purchase of information technology, Mr. Ham, after looking into it, told the Superintendent that Level 8 could procure video conferencing cameras manufactured by Plaintiff Owl Labs. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep., p. 41, line 25-p. 42, line 5; Ex. 4 to District's Memorandum of Law in Support of Motion for Summary Judgment, Ham Dep. p. 63). At no time did the District know that Mr. Marshall was affiliated with Level 8.

The District issued a purchase order to Level 8 on October 28, 2020, for 875 Owl Meeting Pro cameras with a purchase price, including tax, of $945,621.86. (Ex. 5 to District's

Memorandum of Law in Support of Motion for Summary Judgment). Level 8 sent the District an invoice dated October 28, 2020, for a 50% payment of $472,810.94, and a second invoice for the remaining 50% dated November 23, 2020. (Ex. 6 to District's Memorandum of Law in Support of Motion for Summary Judgment). The District paid Level 8 in full for the devices via two separate checks. Eventually, the cameras were delivered to the District warehouse and were distributed to schools to be used for virtual instruction.

At the same time that the District was purchasing the Owl cameras from the third-party vendor, Level 8, unbeknownst to the District, David Marshall, then an employee in the Communications Department, was working to defraud both the District and Owl Labs. His plan was to order the devices from Owl Labs at a discounted price and then sell them to the District through Level 8 at a higher price and then keep the difference for himself. He began by sending an email to Owl Labs on October 23, 2020, inquiring into a purchase of their cameras. (Ex. 7 to District's Memorandum of Law in Support of Motion for Summary Judgment). David Marshall used his Orangeburg County School District email address, and his signature line showed he was with Communications, Business and Community Partnerships. Bill Smith, a salesperson with Owl Labs, responded to that email and called Mr. Marshall about his inquiry. (Ex. 7 to District's Memorandum of Law in Support of Motion for Summary Judgment).

Mr. Smith eventually emailed Marshall a quote for the sale of the cameras. (Ex. 8 to District's Memorandum of Law in Support of Motion for Summary Judgment). The quote included the normal price per unit of $999.00 with a discount of $179.82 per unit for a total per unit cost of $819.18. The total price for the proposed order of 875 units was $716,782.50. In communications with Mr. Marshall, Mr. Smith agreed to a 50% pre-payment prior to shipping, instead of the normal 100% prepayment, as was typical with school districts. (Ex. 9 to District's

Memorandum of Law in Support of Motion for Summary Judgment; Smith Dep., p. 39, line 13-p. 40, line 17). The quote did not include any taxes or freight charges. (Ex. 9 to District's Memorandum of Law in Support of Motion for Summary Judgment; Smith Dep., p. 41, lines 8-25). When Owl Labs tried to add those costs, Mr. Marshall objected, resulting in the company waiving those charges. (Ex. 10 to District's Memorandum of Law in Support of Motion for Summary Judgment; Smith Dep.).

On October 28, 2020, Mr. Marshall sent Mr. Smith a purchase order. (Ex. 11 to District's Memorandum of Law in Support of Motion for Summary Judgment). Mr. Marshall also sent Mr. Smith a South Carolina Tax Exemption Form. (Ex. 12 to District's Memorandum of Law in Support of Motion for Summary Judgment). Both documents purport to have the signature of Greg Twitty, Procurement Coordinator for the District. This signature was forged by David Marshall. Owl Labs received the initial 50% payment through ACH wire transfer from "Orangeburg County Purchasing," one of Mr. Marshall's shell companies. (Ex. 13 to District's Memorandum of Law in Support of Motion for Summary Judgment; Radovan Dep., p. 20).

However, Owl Labs did not receive the second payment after the devices were shipped. Mr. Marshall communicated with Harry Meltzer, an operational associate with Owl Labs, and told him that the District had been hacked, which was causing a delay in the payment. (Ex. 14 to District's Memorandum of Law in Support of Motion for Summary Judgment, Meltzer Dep. p. 29, lines 10-25). Significantly, Mr. Meltzer testified that the sales representative was responsible for conducting the due diligence to ensure the authenticity of the purchase order and tax-exempt forms that the company received from customers. (Ex. 14 to District's Memorandum of Law in Support of Motion for Summary Judgment, Meltzer Dep. pp. 20-21). Owl Labs, presumably eager to close such a large sale, did not conduct the normal, required due diligence. Unfortunately, a single

telephone call or email to the District as part of a due diligence effort would have prevented this entire fraudulent transaction, but no such calls were made and no such emails were sent.

In the Spring of 2021, with the remaining balance still due, Owl Labs contacted the District requesting that the balance be paid. When the District received the email, it was concerned because the District had no dealings with Owl Labs to purchase these devices and had fully paid Level 8 the purchase price for the devices as of December 10, 2020. (Ex. 15 to District's Memorandum of Law in Support of Motion for Summary Judgment). In June 2023, Superintendent Dr. Foster conducted a Zoom call with Owl Labs representatives as well as David Marshall to discuss the unpaid balance owed to Owl Labs. During that call, David Marshal admitted that he defrauded the company and forged documents, namely the PO and tax-exempt certificate he sent to Owl Labs. (Ex. 10 to District's Memorandum of Law in Support of Motion for Summary Judgment, Smith Dep., p. 51, line 17-p. 52, line 11; Ex. 3, Foster Dep. p. 61, line 11-p. 62, line 5).

At his deposition, Mr. Twitty testified that the District is not tax exempt. (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment, Twitty Dep. p. 10, lines 14-15). He testified that the District used Level 8, a third-party vendor, to get the Owl cameras, because they were an approved state contract vendor listed in the District's system. (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment., p. 11, line 6 – p. 12, line 10; p. 14, line 18 – p. 16, line 1). If a vendor goes through the vetting process with the state, they receive a state contract number, and other governmental entities such as the District can use that company without having to do their own vetting. In this case, Mr. Twitty looked up Level 8 in the system and saw that it was an approved state vendor. (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment., Twitty Dep. p. 21, line 23 – p. 23, line 11).

After the fraud was uncovered, it turned out that Level 8 provided the state contract number of another company, Flex Technologies, and claimed that Level 8 was doing business as Flex Technologies. (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment., Twitty Dep. p. 40, line 1 – p. 42, line 18; Ex. 17). Mr. Twitty also testified that only he or the Assistant Superintendent of Finance can generate a purchase order. (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment., Twitty Dep., p. 23, line 20 – p. 24, line 17). He testified that he was not aware that David Marshall was communicating with Owl Labs to purchase the cameras. (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment., Twitty Dep., p. 54, line 21 – p. 55, line 19). At his deposition, Mr. Twitty reviewed the fake purchase order Mr. Marshall sent to Owl Labs and noted that an authentic PO would only contain 6 digits (the forged one had two additional digits). (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment, Twitty Dep., p. 25). He confirmed that no one from Owl Labs ever communicated with him regarding the sale to David Marshall. (Ex. 16 to District's Memorandum of Law in Support of Motion for Summary Judgment., Twitty Dep., p. 30; p. 64 lines 1-4).

In 2020, Ms. Gail Sanders served as the District's Director of Finance. (Ex. 18 to District's Memorandum of Law in Support of Motion for Summary Judgment, Sanders Dep. p. 11, line 8). She also noted in her deposition that the fake PO contained more numbers than an authentic PO from the District. (Ex. 18 to District's Memorandum of Law in Support of Motion for Summary Judgment, p. 23, lines 14-24). It also did not contain any charge for taxes or freight, which is not normal. The District is not tax-exempt. (Ex. 18 to District's Memorandum of Law in Support of Motion for Summary Judgment, Sanders Dep. p. 14). Ms. Sanders noted in her testimony that Mr. Marshall's email signature included a phone number that was not local but started with an 816-

area code. (Ex. 18 to District's Memorandum of Law in Support of Motion for Summary Judgment, Sanders Dep. p. 48). She believed that Owl Labs may have avoided this situation if they had simply called Eric Ham, the District's Director of Technology. (Ex. 18 to District's Memorandum of Law in Support of Motion for Summary Judgment, Sanders Dep. p. 51).

Dr. Foster testified that David Marshall worked for the District in its communications department and was considered support staff. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep. pp. 30 and 33). He testified that Mr. Marshall was never involved with his discussions to purchase the Owl cameras. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep. p. 33, line 23-p. 34, line 11). He also testified that David Marhsall did not have the authority to engage in the procurement of the Owls, which is why he had to forge the documents to make the purchase. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep. p. 95, line 19-p. 96, line 19). In questioning how someone from Owl Labs might have known Marhsall was not authorized to make this purchase, Dr. Foster noted the incorrect area code in Marshall's email signature and the extra numbers in the fake PO. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep., p. 89 and 94). Additionally, the District did not use electronic transfer of funds at the time. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep. p. 111, lines 7-8). Dr. Foster opined that Owl Labs could have called the District to verify the purchase order. (Ex. 3 to District's Memorandum of Law in Support of Motion for Summary Judgment, Foster Dep. p. 83, lines 5-12).

Ms. Daphne Walley was a bookkeeper in the District's IT department at the time. (Ex. 19 to District's Memorandum of Law in Support of Motion for Summary Judgment, Walley Dep. p.

10, lines 11-20). She testified at her deposition that only Eric Ham or Gail Sanders had the authority to sign off on a requisition for a purchase order. (Ex. 19 to District's Memorandum of Law in Support of Motion for Summary Judgment, Walley Dep. p. 20, line 18-p. 21, line 4). When she was shown the fake purchase order, she immediately recognized that it was not authentic because the purchase order number contained too many digits; the font of two of the extra digits was bold compared to the other numbers; and because the District is not tax exempt, so the PO should have included taxes. (Ex. 19 to District's Memorandum of Law in Support of Motion for Summary Judgment, Walley Dep. p. 27-28).

Ms. Brandi Gist served as the Assistant Superintendent of Finance during the time in question. (Ex. 20 to District's Memorandum of Law in Support of Motion for Summary Judgment, Gist Dep. p. 9, line 20-p. 10, line 23). She also recognized that the fake purchase order had too many digits in it and that the extra digits were of a different font. (Ex. 20 to District's Memorandum of Law in Support of Motion for Summary Judgment, Gist Dep. p. 31, line 2-p. 32, line 10). She testified that a new vendor might not know how many digits should be in a PO unless they used a process to verify a purchase order. (Ex. 20 to District's Memorandum of Law in Support of Motion for Summary Judgment, Gist Dep. p. 36, lines 1-20). To her knowledge she had never spoken to anyone at Owl Labs. (Ex. 20 to District's Memorandum of Law in Support of Motion for Summary Judgment, Gist Dep. p. 38, lines 5-7).

During his deposition, Mr. Smith, Owl Labs' salesperson, did not recall ever dealing with anyone other than Mr. Marshall in the District, did not recall asking Mr. Marshall to include someone from procurement or finance department in the sales conversation, and never reviewed the District's procurement policy, which is publicly available on its website. (Ex. 9 to District's Memorandum of Law in Support of Motion for Summary Judgment, Smith Dep., p. 30, line 23-p.

31, line 8; p. 35, lines 4-8; p. 36, lines 11-17). His supervisor, Kailyn McNamara, also testified at her deposition that she did not recall looking at the District website or into the finance or procurement departments, nor did she recall ever reviewing the District's policies regarding procurement or purchasing. (Ex. 21 to District's Memorandum of Law in Support of Motion for Summary Judgment, McNamara Dep., pp. 46-47). Mr. Smith never communicated with Mr. Greg Twitty, the District's Procurement Officer. (Ex. 9 to District's Memorandum of Law in Support of Motion for Summary Judgment, Smith Dep., p. 45, lines 15-18). Ms. McNamara had no direct communication with anyone at the District other than David Marshall. (Ex. 21 to District's Memorandum of Law in Support of Motion for Summary Judgment, McNamara Dep., p. 56).

V. ARGUMENTS

A. The Circuit Court Correctly Dismissed Owl Labs' Negligence-Based Claims.

1. The Circuit Court Applied *Koontz* and *Johnson* Correctly When Dismissing Owl Labs' Negligence-Based Claims.

To prevail in negligence, a plaintiff must establish (1) a duty of care, (2) breach, (3) proximate cause, and (4) cognizable injury. *Andrade v. Johnson*, 356 S.C. 238, 245, 588 S.E.2d 588, 592 (2003). The existence of a legal duty is a question of law for the court. *Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001).

The circuit court correctly determined that South Carolina law does not recognize a tort duty owed by a school district to a commercial vendor arising solely from the purchase of goods. (Order). The court relied on *Koontz v. Thomas*, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999), in which the Court of Appeals held that "[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." Id. at 711, 511 S.E.2d at 412 (holding contract breach cannot support negligence claim). Here, as the court found, "the only relationship between Plaintiff and Defendant arises from there being a

contract for Defendant to purchase the Owl Devices from Plaintiff." (Order). Because Owl Labs' asserted duties derive exclusively from the alleged contractual transaction, summary judgment was proper.

The circuit court further relied on *Johnson v. Jackson*, 401 S.C. 152, 735 S.E.2d 664 (Ct. App. 2012), for the principle that a duty sufficient to support a negligence action must arise independently of the contract. *Id.* at 160, 735 S.E.2d at 668 (duty may arise from statute, contract, status, property relationship, or special circumstance, but must exist apart from contract to support tort). Owl Labs identifies no statutory, regulatory, or special-relationship duty imposed on the District to protect vendors against an employee's personal procurement fraud. The circuit court accordingly declined to impose a new duty in this commercial context.

The nature of Owl Labs' alleged damages confirms the circuit court's ruling. Owl Labs seeks to recover unpaid invoices arising from a commercial sale of goods—losses that fall squarely within the realm of contract. Owl Labs does not allege personal injury, property damage, or any form of harm independent of its disappointed commercial expectations. South Carolina tort law protects against personal and property injuries, while contract law governs disputes over commercial performance. See *Carroll v. Isle of Palms Pest Control, Inc.*, 446 S.C. 177, 190–91 (2025) ("Where there is no duty except such as the contract creates, the plaintiff's remedy is for breach of contract."). Because Owl Labs alleges no breach of an independent tort duty, the circuit court properly confined its remedies to breach of contract and quantum meruit. (Order).

Owl Labs argues that its negligence claims should survive because the District "failed to verify" Marshall's authority to procure goods. But as the circuit court observed, Owl Labs possessed equal or superior capacity to verify procurement authority before shipping goods, and its failure to do so does not create a tort duty running from the District to Owl Labs. Assigning the

burden of transactional diligence to the buyer rather than the seller would invert settled commercial law and extend tort liability into the procurement practices of public entities in a manner South Carolina law does not recognize.

Because Owl Labs' asserted duties arose solely from the parties' alleged transactional dealings, and its claimed loss is purely economic, the circuit court correctly entered summary judgment on the negligence-based claims.

2. Owl Labs' Reliance on *Doe v. ATC* and Related Negligent Supervision Authorities Is Misplaced and Does Not Support Reversal.

Owl Labs relies principally on negligent hiring and negligent supervision cases such as *Doe v. ATC, Inc*., 367 S.C. 199, 624 S.E.2d 447 (Ct. App. 2005), and *Murphy v. Jefferson Pilot Communications Co.*, 364 S.C. 453, 613 S.E.2d 808 (Ct. App. 2005). Those cases do not support reversal because they involve entirely different forms of harm, different foreseeability categories, and different duties.

In *Doe*, the court addressed employer liability for sexual misconduct committed against a student, a physical personal injury independent of any contractual transaction. 367 S.C. at 208–10, 624 S.E.2d at 452–53. In *Murphy*, the issue was whether an employee acted within the scope of employment for purposes of personal-injury liability. 364 S.C. at 458–59, 613 S.E.2d at 811–12. Neither case involved commercial vendors, procurement disputes, or purely economic losses.

Moreover, South Carolina requires foreseeability of the category of harm at issue to support a negligent supervision claim. See *Doe*, 367 S.C. at 210, 624 S.E.2d at 453. Owl Labs identifies no evidence that the District had notice that a Media Communications Specialist would engage in procurement fraud for his personal financial benefit. South Carolina courts do not impose a duty on employers to supervise employees to protect sophisticated vendors against transactional fraud. Extending negligent supervision to commercial economic loss in this context would require

recognition of a new tort duty that the circuit court properly declined to create.

Owl Labs also cites Restatement (Second) of Torts §§ 314 and 317 for the proposition that the District assumed a duty to supervise Marshall. Those Restatement sections address duties to prevent physical harm to others under limited circumstances. South Carolina has not adopted those sections to impose duties on public entities to protect vendors from economic loss arising from employee misconduct. Because Owl Labs' authorities involve distinguishable injuries and duties, they do not support reversal.

B. The Circuit Court Properly Dismissed Owl Labs' Claim for Attorneys' Fees.

1. The Circuit Court Applied the American Rule Correctly When Dismissing the Claim for Attorneys' Fees.

Owl Labs is not entitled to recover any attorneys' fees from the District. Under the "American Rule," the parties to a lawsuit generally bear the responsibility of paying their own attorneys' fees. Attorney's fees are not recoverable unless authorized by contract or statute. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009), *citing, Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 760 (1997). Here, there is no contract or statute that would permit the recovery of attorneys' fees, and therefore, Owl Labs is barred from such recovery.

Further, the South Carolina Tort Claims Act explicitly limits recovery of attorneys' fees only as a sanction against an opposing attorney for filing baseless pleadings or other papers. S.C. Code §15-78-120(c*); See also Knoke v. S.C. Dep't of Parks, Recreation & Tourism*, 324 S.C. 136, 144, 478 S.E.2d 256, 260 (S.C. 1996); *Doe v. Spartanburg County School Dist. Three*, C.A. No.: 7:15-02764-HMH, 2015 WL 13763039 (D.S.C. Aug. 19, 2015). At this stage, there is no basis to assert a claim for attorneys' fees under this statute as there is no allegation that counsel for the District has filed any baseless pleadings.

There are no other bases, statutory, contractual, or otherwise, for the Plaintiff to obtain an award of attorneys' fees from the District. The circuit court found "there is no contract or statute that would permit the recovery of attorneys' fees for Plaintiff" and accordingly granted summary judgment to the District on this claim. (Order). No contractual fee-shifting clause exists related to any alleged agreement to purchase the Owl Labs devices, and no statute authorizes fees for breach of contract or quantum meruit claims.

Because the American Rule governs and no exception applies, summary judgment was proper as a matter of law.

2. Owl Labs Cites No Authority Supporting Reversal of the Fee Dismissal.

Owl Labs cites no South Carolina case, statute, or rule authorizing fee recovery in this context. Its appellate brief asserts that fees should be recoverable as a remedy associated with its surviving claims, but identifies no authority supporting reversal. South Carolina courts have consistently rejected attempts to recover attorneys' fees as consequential damages in the absence of a fee-shifting agreement or statutory entitlement. Owl Labs has not identified any statute that would authorize the shifting of fees in this case. Owl Labs has not produced any contract with the District for the purchase of these devices that allows for the recovery of attorneys' fees. Because Owl Labs identifies no authority permitting recovery, and the circuit court correctly applied settled law, the circuit court's ruling should be affirmed.

VI. CONCLUSION

For the foregoing reasons, the District respectfully requests that this Court affirm the circuit court's order granting summary judgment on Owl Labs' negligence-based claims and its claim for attorneys' fees.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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