THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Thomas W. McGee III, Circuit Court Judge

Appellate Case No. 2025-001912
Civil Action No. 2024-CP-32-03591

Limitless International Corp., ...Respondent,

v.

RECO Commercial Systems, LLC f/k/a RECO USA and Dunbar Road LLC, ... Appellants.

INITIAL BRIEF OF APPELLANTS

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II. EVEN IF THE APA COULD BE READ TO TRANSFER "SALE ORDERS," WAS SUMMARY JUDGMENT IMPROPER BECAUSE FACTUAL ISSUES EXIST AS TO CANCELLATION, GOVERNING TERMS, AND WHETHER ANY "SALES ORDER" EXISTED AT CLOSING?

STATEMENT OF THE CASE

This dispute centers on the rights and obligations between Respondent Limitless International Corp. ("Limitless") and non-party American Investors d/b/a RECO USA[1] ("Seller") and whether RECO Commercial Systems, LLC ("RECO Commercial Systems") and Dunbar Road LLC ("Dunbar", collectively "Appellants") assumed liability for refunding a purchase deposit paid by Limitless to Seller in May of 2019 in connection with a purchase order it initiated with Seller (the "Purchase Order"). The answer to that question involves disputed facts regarding cancellation of that Purchase Order as well as the construction of the Asset Purchase Agreement entered into on December 29, 2021, between Seller and Appellants (the "APA").

The APA is in evidence in this proceeding, and taken as a whole, is largely dispositive of this conflict. The trial court, however, failed to take into account the entire document. Rather, the trial court ruled on the arguments of Plaintiff and one line in a portion of the APA that described "Purchase Assets." Disregarding a spate of conflicting evidence surrounding the purchase deposit, cancellation of the foregoing Purchase Order by Limitless, and the full spectrum of Appellants' rights and obligations under the APA, the trial court granted summary judgment in favor of Limitless. The court's ruling presumably rests on the bases that Appellants assumed the liabilities of the Seller associated with the Purchase Order and are responsible for refunding Limitless the balance of the deposit after set-off (based on Seller's settlement with Limitless) in the amount of $49,539.95, thereby focusing only on the provisions in the APA which are most favorable to Limitless and disregarding all others. This was error, and the order below should be reversed.

[1] Although the APA defines Seller as only American Investors, LLC, the recitals acknowledge that Seller is commonly marketed and referred to as RECO USA (APA Recitals, p. 1).

Limitless initiated these proceedings with the filing of its Summons and Complaint in the South Carolina Court of Common Pleas for Lexington County on or about August 27, 2024, naming (incorrectly) Appellant RECO Commercial Systems as f/k/a RECO USA[2], Appellant Dunbar Road LLC, as well as American Investors, LLC f/k/a RECO USA[3], and Michael D. Schleinkofer, and James C. Foster, Jr., the principals of Seller.[4] In its Complaint, Limitless asserts causes of action for breach of contract, unjust enrichment, conversion, breach of constructive trust, promissory estoppel, and violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.* Limitless further alleges it is entitled to a refund of the down payment it paid to the Seller in 2019 in the amount of $94,144.37 (the "Deposit"), along with other unspecified monetary damages. (Pl.'s Compl.)

Appellants moved to dismiss Plaintiff's Complaint on the bases that they were not, nor have they ever been, formerly known as RECO USA, and they have never existed as successor entities to RECO USA or Seller. Further, Appellants argue they were never a party to a contract with Limitless, and they assumed no legal obligations to Limitless in connection with the APA.

[2] In its Complaint, Plaintiff Limitless mischaracterizes RECO Commercial Systems as f/k/a RECO USA. Pursuant to the APA, RECO USA is only a trademark assigned to RECO Commercial Systems, a separate legal entity, at closing. The f/k/a designation is misleading as it is a designation typically associated only with a wholesale purchase by RECO Commercial Systems of all liabilities and assets of the Seller via a purchase of Seller's membership interests.

[3] It is unclear why Plaintiff named America Investors, LLC as f/k/a RECO USA. The Sales Agreement between Seller and Plaintiff shows Seller as having a d/b/a of RECO USA not the f/k/a designation. The only other possible intention for the f/k/a designation is that the Seller sold the trademark RECO USA to Appellants and at the time of the pleadings, was no longer able to use that d/b/a.

[4] Limitless presumably recognized that Seller and its principals were the parties actually responsible for return of its purchase order deposit and named them as parties to this suit. It later settled with American Investors, LLC, Michael D. Schleinkofer, and James C. Foster, Jr. for $50,000. (Stipulation of Dismissal) The fact of that settlement is wholly inconsistent with the argument that Appellants bought the entire liability for the return of the full Deposit.

(Mot. to Dismiss) In its November 5, 2024 Order Denying Defendants' Motion to Dismiss, the trial court denied the motion *because it recognized a disagreement among the parties regarding the contours of Appellants' Asset Purchase Agreement and how the money at issue in these proceedings should be characterized*. (Order Denying Def.s' Mot. to Dismiss, p. 2) Thereafter, Appellants filed a motion for reconsideration of the order denying their motion to dismiss. (Def.s' Mot. to Reconsider)

Prior to the issuance of a ruling on Appellants' motion for rehearing[5], and prior to the close of discovery, Limitless moved for summary judgment, arguing that Appellants essentially acquired all the assets and liabilities of Seller, including Seller's liability to fulfill its contract with Limitless or return the down payment paid to it by Limitless. (Pl.'s Mot. for Summ. J.) The court granted that motion via Order entered August 21, 2025, and denied Appellants' motion to alter or amend via Form 4 Order entered September 11, 2025. (August 21, 2025 Order; September 11, 2025 Form 4 Order) This appeal followed.

FACTS

Limitless International Corp. entered into a Representative's Sales Agreement ("the Sales Agreement") with American Investors L.L.C. d/b/a RECO USA[6], a Virginia Corporation ("Company" aka "Seller" herein) on or about October 1, 2012. (Mot. to Dismiss, Ex. A) According

[5] Appellants filed their motion to dismiss September 12, 2014 (Def.s' Mot. to Dismiss), and Circuit Judge Keesley denied that motion via Order entered November 5, 2024. (Order Denying Def.s' Mot. to Dismiss) Respondents filed a motion to reconsider Circuit Judge Keesley's order November 15, 2024. (Def.s' Mot. to Reconsider) It does not appear from the record that the motion to reconsider was ever granted, denied, withdrawn, or otherwise disposed of. As such, it was premature for the trial court to proceed with the disposition of Plaintiff's motion for summary judgment.

[6] In the Sales Agreement, Seller is characterized as doing business as RECO USA, a proper characterization and consistent with the APA and Appellants' arguments herein.

to the Sales Agreement, Company was "engaged in the manufacture and sale of Heat Transfer and similar mechanical equipment." (*Id.*, p. 1) The Sales Agreement provided Limitless "the non-exclusive right to solicit orders" within a specified territory. (*Id.*) Limitless agreed to, among other things, "abide by all instructions, policies, and procedures established by Company. . . for the collection of down payments and other payments. . . ." (*Id.*, p. 2) Limitless was contractually barred from assigning the Sales Agreement without prior written consent, and the Sales Agreement continued in effect until terminated by one of the parties. (*Id.*, pp. 2-3)

Limitless submitted its Purchase Order, dated May 31, 2018, to Company for nine Quick Recovery Thermomaster storage heaters with a total purchase price of $376,577.47 and a required down payment of $94,144.37. (June 23, 2025 Newbauer Aff., para. 4; Aff. Ex. B) On December 8, 2020, the President and CEO of Limitless, Mohammad Alkarmi, delivered an email message to Company noting that the project had been placed on hold in light of the COVID 19 pandemic. Going further, Mr. Alkarmi requested that Company "please consider this order CANCELLED and we demand the 25% Down Payment that was paid to you last year . . . be returned back to us. . . . Kindly note that this cancellation is totally beyond our control as this is a Force Majeure due to the COVID-19 Pandemic." (Aff. para. 7; Aff. Ex. C) (emphasis in the original) Thereafter, on December 9, 2020, Mr. Alkarmi sent an email message to Company personnel memorializing the intention of Limitless to "disregard these invoices[7]. . . . [and to] keep you posted if we hear anything form [sic] the client regarding this Purchase Order." (Aff. at para. 6; Aff. Ex. C)

Nearly a year later, on November 1, 2021, Appellant RECO Commercial Systems was created as a South Carolina limited liability company. (June 23, 2025 Newbauer Aff. para. 8; Aff.

[7] Presumably Company sent invoices to Limitless prior to the December 9, 2020 e-mail for the fulfillment of (or expenses related to) the Purchase Order.

Ex. D) On December 6, 2021, RECO Commercial Systems and Dunbar created separate checking accounts with Truist Bank to facilitate planned operations for and with RECO Commercial Systems. (*Id.*, para. 9) Finally, on December 29, 2021, and more than a year after Mr. Alkarmi ostensibly canceled his company's Purchase Order with Seller, Appellants entered into the APA, which was a limited transaction involving the purchase of only limited assets and the assumption of only limited liabilities owed by Seller. By its terms, the APA did not involve the assumption of liabilities or obligations relating to adverse claims, including demands for refunds due related to orders placed with, or deposit funds received by, Seller, including the Purchase Order at issue in this appeal. (*Id.*, para. 10; Aff. Ex. E; APA Section 1.1)

LEGAL STANDARD

Appellate courts reviewing summary judgment employ the same standard as the circuit court. *Isaac v. Onions*, ___ S.C. ___, 915 S.E.2d 492, 496 (2025), citing *Braden's Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 190, 886 S.E.2d 674, 684 (2023). That standard is established by Rule 56(c) of the South Carolina Rules of Civil Procedure, which allows for summary judgment "if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (holding "that the 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule."

As our appellate courts have noted, "[s]ummary judgment is a drastic remedy that should be cautiously invoked in order not to improperly deprive a litigant of a trial of the disputed factual issues." *HK New Plan Exchange Property Owner I, LLC v. Coker*, 375 S.C. 18, 22, 649 S.E.2d 181, 183 (Ct. App. 2007) (citation omitted). Even where evidentiary facts are not disputed,

summary judgment should be denied where the conclusions or inferences to be drawn from undisputed facts are in conflict. *Id.*, citing *Baugus v. Wessinger*, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991). Furthermore, summary judgment is inappropriate "when further inquiry into the facts of the case is desirable to clarify the application of law." *HK New Plan*, 375 S.C. at 22, 649 S.E.2d at 183, quoting *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). In reviewing an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party. *Marlowe v. South Carolina Department of Transportation*, 446 S.C. 309, 919 S.E.2d 553 (2025) (citations omitted).

SUMMARY OF THE ARGUMENT

The circuit court's summary judgment order should be reversed because the record, viewed in the light most favorable to Appellants, presents genuine issues of material fact and because the order rests on an improper, piecemeal reading of the parties' Asset Purchase Agreement ("APA").

First, the APA does not establish as a matter of law that Appellants assumed Seller's alleged obligation to refund Limitless' deposit. The circuit court relied on isolated "Purchased Assets" language while disregarding the APA's integrated framework distinguishing Purchased Assets, Excluded Assets, Assumed Liabilities, and Excluded Liabilities, as well as the schedule-based limitations on assumed obligations.

Second, summary judgment was improper because material factual disputes exist regarding the underlying Purchase Order and deposit. The record includes a contemporaneous December 2020 email from Limitless cancelling the order and demanding return of the down payment, which conflicts with later assertions that the order was never cancelled. These competing versions of core facts create credibility and inference issues that cannot be resolved on summary judgment.

Third, the record is incomplete on contract terms that bear directly on refund entitlement and any offsets. The quotation documents reflect that the transaction was conditioned on RECO USA's Standard Terms and Conditions of Sale, which are not in the record. Without those terms and related factual development, the court could not determine as a matter of law whether and the extent to which Limitless may be entitled to the refund awarded.

For these reasons, the summary judgment order should be reversed and the case remanded for further proceedings.

ARGUMENT

The trial court erred in granting summary judgment given the existence of multiple genuine issues of material fact, as well as the inferences to be drawn therefrom, that are central to resolving the sole dispute in this case: whether Appellants are liable for refunding the down payment/deposit paid by Limitless to Seller in connection with a Purchase Order that Limitless canceled more than a year prior to both the formation of RECO Commercial Systems or Dunbar and the execution of the APA by the Appellants and Seller.

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE RIGHTS AND OBLIGATIONS OF THE PARTIES PURSUANT TO THE DECEMBER 29, 2021 ASSET PURCHASE AGREEMENT.

The "cardinal rule" of contract construction is to ascertain and give effect to the intention of the parties as evidenced by the contract language. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (citation omitted). In furtherance of that rule, the "contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." *Id.* (citation omitted) The order below conflicts with these principles because it effectively treats one phrase in the "Purchased Assets" definition as dispositive while disregarding the APA's

"Assumed Liabilities," "Excluded Liabilities," and schedule-based limitations. Having disregarded these rules of construction, the order below should be reversed, and this matter remanded for further proceedings.

The intention of the parties is evidenced by the entire December 29, 2021 APA for the acquisition of certain assets from American Investors, LLC as "Seller" and RECO Commercial Systems and Dunbar Road as "Purchaser."[8] The APA addresses four buckets of assets and liabilities being sold and purchased (or excluded therefrom): Purchased Assets[9], Excluded Assets, Assumed Liabilities, and Excluded Liabilities, each as defined in the APA, but all of which were interrelated. The lower court order granting summary judgment focused on just one bucket: Purchased Assets. In doing so, the lower court found, without contextual support, and in violation of the rules of contract construction, that Appellants "purchased the assets of Seller, including the [Respondent's] deposit and sales order under the Asset Purchase Agreement entered into between American and the [Appellants]." (August 21, 2025 Order, p. 4). However, despite the trial court's sole focus on the language of the APA regarding the purchase of deposits and sales orders, questions of fact as to what the APA actually transferred and what liabilities it excluded predominate this conflict, making the grant of summary judgment in this case inappropriate and reversible error.

[8] While both RECO Commercial Systems and Dunbar Road are purchasers under the APA, Dunbar Road was only included in the APA as the purchaser of the real property of Seller, while RECO Commercial Systems was the purchaser of the personal property assets of Seller.

[9] Although Purchased Assets included the trademark "RECO USA", there was no assumption of all the liabilities of Seller merely because RECO Commercial Systems purchased and used, subsequent to closing, the trademark, a distinction wholly ignored by the trial court. (*See* APA, Section 3.11 and Schedule 3.11(b))

The APA was a negotiated transaction involving the purchase of certain assets, the exclusion of other assets and the assumption of only very limited liabilities. The allocation of assets and liabilities in the APA requires a complete reading of the entire document, including relevant Schedules. Section 1.1 of the APA is a broad statement of intent, but it is not dispositive of the entire purchase transaction. The express language of Section 1.1 makes it ["s]ubject to the terms and conditions of this Agreement:

> **Subject to the terms and condition of [the APA]**, and in reliance upon the representations and warranties contained herein, at the Closing (as defined below) the Purchaser (Appellants) shall purchase from the Sellers, and the Seller shall sell, convey, transfer, assign and deliver to the Purchaser, ***free and clear of all liens, security interests, mortgages, encumbrances, adverse claims and restrictions of every kind (collectively "Liens")***, all of Sellers assets and properties of every kind, ***other than the Excluded Assets*** (collectively, the "Purchased Assets"), including without limitation the following: **(a) unrestricted cash and cash equivalents in an amount equal to $0 (the "Acquired Cash")**.

(APA, p. 1, § 1.1-1.1(a)) (emphasis added) In reviewing the APA, and relying exclusively on arguments from counsel for Limitless, the lower court mistakenly determined that the canceled Purchase Order and the Limitless Deposit were transferred at closing as assets rather than liabilities. This characterization clearly is in factual dispute, making summary judgment inappropriate. Once Limitless demanded cancellation and a return of the deposit in December 2020, any "deposit" ceased to function as a transferable "asset" in the ordinary course and instead became an adverse claim and potential refund obligation (i.e., a liability) unless expressly assumed**.** Basing its conclusion that focused on *a single line* in the Purchased Assets definition, the lower court determined that Limitless is "entitled to get that back from whoever he ordered it with. And if your folks bought the assets and liabilities[10] of that company, then they got to pay it back." (June

[10] This quote from the trial court conflates assets and liabilities and the treatment of each in the APA, assigning to Appellants a liability that was ***not*** assumed.

24, 2025 Hr'g Trans. p. 9, lines 5-7) Going further, the trial court observed "[i]f your client's got it, then they owe it. If they didn't, and it's excluded then that's a different story." (*Id.*, p. 11, lines 21-23) The correct answer to this question is clear in the APA, which was in evidence, and the court acknowledged as much. (*Id.*, p. 14, line 14) ("Yeah, I've got it right in front of me."); p. 22, lines 2-3 ("It may be in what's before me. I just don't know.")

Contrary to the lower court's legal conclusions that Appellants bought both the assets and all the liabilities of the Seller comprising and associated with the Purchase Order, and that Appellants had possession of the deposit, the APA contains language which supports contrary conclusions. For example, pursuant to the APA, Appellants only purchased limited liabilities of the Seller, and in particular, they did not buy the liabilities associated with the Purchase Order, including the return of a deposit it never received.

Section 1.1 of the APA clearly provides that the purchase of Purchased Assets should be qualified by the other terms and conditions of the APA, including specified limitations on the scope of the purchase. Section 1.1 of the APA defines "Purchased Assets" broadly to include, subject to the terms and conditions of this Agreement,…"all sale orders, customer orders, open bids, warranties, prepaid expenses, deposits, retentions and refunds," along with accounts receivable, inventory, equipment, intellectual property, books and records, and other operating assets. (APA, p. 2, § 1.1(i)) The language of Section 1.2, Excluded Assets, however, makes clear that Purchased Assets "shall **not** include however, the following assets of the Seller"…"all cash and cash equivalents" other than "Acquired Cash" which was listed as $0.00 (APA Section 1.2(a)). In a somewhat awkwardly worded exclusion, Section 1.1(a) includes a negative in the definition of Purchased Assets. Acquired Cash is listed therein, but given a value of $0.00. (APA Section 1.1(a)) Thus, even accepting that "deposits" appear in the Purchased Assets list, the APA

simultaneously confirms that no cash (and no cash equivalents) were conveyed at closing. The trial court could not assume without evidentiary support that Limitless' deposit cash was transferred to Appellants, or that Appellants "had" the deposit to refund.

Further, Section 1.3 of the APA, describes Assumed Liabilities also as "subject to the terms and conditions of this Agreement." The list of Assumed Liabilities in subparagraphs (a) through (c) are limited and specific. Assumed contract liabilities are expressly limited to the Assigned Contracts listed on Schedule 1.3(a)[11] None of the Assigned Contracts include the Limitless Purchase Order. Moreover, the APA makes it clear that contractual liabilities, even under Assigned Contracts, are limited. Section 1.3(a) states as follows: "it being understood that the ***Purchaser is not assuming and shall not be liable for any liabilities or obligations under such Assigned Contracts to the extent the same should have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arise out of any breach or default by the Seller or any of its Affiliates prior to or as of the Closing Date.***" (APA, p. 3, § 1.3(a) (emphasis added)) This limitation is dispositive for summary judgment purposes: the alleged refund obligation (if any) arose from pre-closing events (i.e., Limitless' 2020 cancellation and demand) and therefore is not within the limited assumed obligations, even for contracts that were actually

[11] Schedule 1.3(a), Assigned Contracts, expressly lists nine agreements between the Seller (RECO USA) and third parties: (1) an "unwritten agreement" with Charles Metts for office cleaning; (2) a Product Sales Agreement with American Welding & Gas, Inc.; (3) a Service Agreement with Modern Exterminating Company; (4) a Membership Agreement with Heat Transfer Research, Inc. (and Addendum); (5) a Proposal involving NaturChem; (6) a Lease Agreement with Richoh USA, Inc.; (7) a Rental Agreement with Optimum Water Solutions, Inc. (8) a Fire Protection Services Agreement with Cintas Corporation No. 2 d/b/a Cintas Fire Protection; and (9) a Lease Agreement with Norfolk Southern Railway Company. Schedule 3.8, Material Contracts, sets forth the same listing. Schedules 1.3(a) and 3.8 are devoid of *any* reference to an agreement or contract with Limitless International Corporation. This calls to mind the legal maxim *expressio unius est exclusio alterius*, or the express mention of one thing excludes all others.

assigned.

Removing any doubt regarding Appellants' obligations for Seller's liabilities, Section 1.4 of the APA entitled Excluded Liabilities provides that, "Except for the Assumed Liabilities, the Purchaser (Appellants) ***shall not assume or in any way be responsible for any other obligations or liabilities of the Seller (whether or not disclosed) of any kind***." (APA, p. 3, § 1.4) (emphasis added)

Section 1.4 of the APA also expressly excludes any Indebtedness of the Seller. "Indebtedness" is defined therein to include among other things, "all deferred revenue", "all accounts payable outstanding in excess of sixty (60) days" and all credit cards, in each case as of immediately prior to Closing, reinforcing that unearned customer payments and other payables <u>are not</u> part of the Assumed Liabilities. All of these liabilities were included as part of the definition for Excluded Liabilities and were required to be discharged by Seller as part of the Seller's pre-closing liabilities. (APA Section 1.4) A customer deposit that is subject to refund or performance is, in substance, deferred revenue and a contingent refund obligation. It is not a free-and-clear asset. At minimum, the interplay between § 1.1(i), §§ 1.2-1.4, and the schedules creates competing reasonable interpretations that must be resolved at trial, not on summary judgment.

In summary, neither the APA nor its Schedules identify Limitless by name in any list of Assigned Contracts, Assumed Liabilities, or even Material Customers as of year-to-date in 2021, when the transaction closed, perhaps due to the fact that the Limitless Purchase Order was canceled prior to the APA being signed. Specifically, Schedule 1.3(a) (Assigned Contracts) lists only vendors and service agreements – not customer sales orders – and none mention Limitless. (APA, p. 3, § 1.3) Schedule 1.3(b) (Assumed Liabilities) is narrow, limited to trade accounts payable incurred in the ordinary course and certain third-party sales commissions. (*Id.*) That Schedule does

not list customer deposits, deferred revenue, or customer refund obligations. (*Id.*) Moreover, Schedule 1.2(i) (Excluded Assets) confirms that cash (other than "Acquired Cash", which was listed as $0.00) was excluded from the sale to Appellants. (APA, p. 2, § 1.2(a)) Furthermore, the list of "Material Customers" included in Schedule 3.14(a) of the APA does not include Limitless. (APA, Schedule 3.14(a)) Finally, there is no separate "customer deposit" or deferred revenue schedule in the APA or other closing document that identifies any deposit of Limitless being transferred to Purchaser under the APA. No cash deposit was listed in the APA. Acquired Cash was $0.00. The absence of the acceptance of the Limitless Purchase Order refund liability from any aspect of the APA or its associated Schedules makes it clear, or at a minimum, a material issue of fact, that neither the liability nor the deposit transferred to Purchaser at closing.

The trial court's conclusion that the Limitless deposit is due by Appellants because of the inclusion in the APA of "all sale orders [and] customer orders." (APA, p. 2, § 1.1(i)) fails to take into account the exclusion of liabilities associated with the Limitless Order and deposit. Moreover, there is nothing in the record that would show that Purchaser ever received any cash deposit from Seller. The APA makes it clear that ***no cash*** was transferred as part of the purchase and sale.

The demand for a refund of the Limitless deposit was made to Seller by Limitless ***before*** the sale to Purchaser was consummated. Therefore, any pre-closing obligation to refund the Limitless deposit, as demanded by Limitless in 2020, is the sole liability of the Seller absent an express assumption thereof by Appellants in the APA. The record is simply devoid of any language which supports the assumption of any liability to repay a prepaid deposit by Appellants, and the lower court's order granting Summary Judgment against Appellants is clear error.

The record further confirms that Limitless demanded cancellation and a refund more than a year before closing, underscoring that any obligation to refund arose (if at all) pre-closing and

thus falls within the APA's excluded obligations absent an express assumption**.** Limitless also demanded the return of the deposit held by Seller at the time of cancellation. That demand converted what could have been a contract asset into a liability, which liability was expressly ***excluded*** by Appellants by the terms of the APA. Even in Limitless' Reply to the Motion to Alter or Amend filed by Defendants, Limitless characterized Appellants' obligations with respect to the Purchase Order and the attendant deposit as liabilities, stating that "once they purchased the company and a majority of the company's assets, they are **liable** for performing Plaintiff's Order, the deposit of which has already been paid." (Pl.'s Reply to the Mot. to Alter or Amend, p. 2)

There is simply no evidentiary support in the APA and its attached schedules, the pleadings, or other submissions, including Affidavits, that would conclusively constitute a rational basis for a court to find as a matter of law that Appellants assumed any liability to refund the deposit paid by Limitless. In spite of this lack of evidentiary support, the lower court ruled as a matter of law that Appellants were liable for the return of the deposit solely because "all sale orders [and] customer orders were purchased." The lower court simply ignored evidence in the record that the Limitless Purchase Order was not viable as of December 29, 2021, the date of the APA. Disputed facts regarding the express language of the APA, which was in evidence before the trial court, as well as the continued viability of the Limitless Purchase Order precluded summary judgment and warrant reversal. South Carolina law does not support successor liability unless one of four elements is present. *See Simmons v. Mark Lift Industries, Inc.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (citation omitted):

> South Carolina law is explicit that a successor or purchasing company is not liable for the debts of a selling company unless (1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrants a finding of a consolidation or merger of the two corporations; (3) the successor company was a mere continuation of the predecessor, or (4) the transaction was entered into

fraudulently for the purpose of wrongfully defeating creditors' claims.

No fact in the record supports Appellants' successor liability for the Limitless deposit. For all of these reasons, the order granting summary judgment should be reversed.

II. EVEN IF THE APA COULD BE READ TO TRANSFER "SALE ORDERS," SUMMARY JUDGMENT WAS IMPROPER BECAUSE FACT ISSUES EXIST AS TO CANCELLATION, GOVERNING TERMS, AND WHETHER ANY "SALE ORDER" EXISTED AT CLOSING.

Even if this Court concludes Appellants bought all the assets and the liabilities of the Seller, a conclusion the record does not remotely support, additional questions of fact regarding the debt claimed by Limitless preclude summary judgment. Limitless' own documents placed an irreconcilable version of competing facts before the trial court: an immediate, contemporaneous written cancellation of the Purchase Order by Limitless in December 2020, and a later, self-serving sworn affidavit submitted by Mr. Alkarmi submitted in support of the summary judgment motion in which he makes the unsubstantiated assertion that the order "has never been cancelled." (Pl.'s Memo. in Support of Mot. for Summ. J., pp. 4-5, Ex. B to Memo (Alkarmi Aff.), § 6) These contradictory statements of key facts create quintessential disputes regarding credibility and competing inferences that cannot be resolved by summary judgment. The lower court order should be reversed on this basis.

Critical terms and conditions of the contract governing the relationship between Seller and Limitless are missing from the record and create unresolved factual disputes. The 2019 quotation states it was "expressly conditioned on the RECO USA Standard Terms and Conditions of Sale," but discovery below was in its infancy, and those terms and conditions have yet to be produced. It is entirely likely their content would govern terms of deposits, cancellation, force majeure, deposit application, liquidated damages, and offsets for specially manufactured goods, among others. The

record confirms the reference[12] to the Standard Terms and Conditions of Sale (Pl.'s Memo. in Support of Mot. for Summ. J., Ex. B to Memo); however, the terms themselves are absent and create an evidentiary gap precluding a merits determination at the summary judgment stage. These issues matter because without the controlling terms, the court could not fairly determine: (i) whether Limitless was entitled to an immediate refund upon the Limitless-initiated cancellation; (ii) whether any liquidated damages or cost-plus offset applied; or (iii) whether force majeure language excused performance or allowed cancellation with restitution – all material and disputed.

It bears mentioning that Limitless relies upon two checks – check numbers 1650 and 1652 with reference number SA 030/790 ("the order") – which it alleges were drawn to cover the required down payment for its order with Seller. (*See, e.g.*, June 23, 2025 Aff. of W. Newbauer, Ex. B. to Aff.) Those checks are referenced at numerous places in the record; however, it was not until after the summary judgment hearing that Limitless provided some evidence that the checks were negotiated, presumably by Seller. Appellants however, have never had access to Seller's banking records[13] to see where that money was deposited or how, if at all, it was used, and Limitless has settled its claims against the Seller and related defendants. This presents additional factual issues that render summary judgment inappropriate. On this score, even Limitless conceded

[12] Limitless relies on the Standard Terms and Conditions reference, but without the text thereof, the trial court could not decide whether a deposit was automatically refundable or subject to offset. Similarly, the trial court could not assess how force majeure or cancellation remedies were to be exercised – precisely the kind of "essential facts" gap Rule 56 and case law admonish against resolving at summary judgment.

[13] Schedule 3.26 of the APA is a schedule of Bank Accounts owned by the Seller, as of the closing date. (APA, Schedule 3.26) Tellingly, that Schedule lists four Seller bank accounts with Truist Bank in Richmond, Virginia, as well as the signers on those accounts (former Defendant James C. Foster, Jr., former Defendant Michael D. Schleinkofer, Dan Krebs, Kevin D. Smith, and Robert Platt). No discovery has occurred with respect to the owner of these accounts into which the checks were deposited.

"there may be some, some question in the air about where that money went." (June 24, 2025 Hr'g Trans., p. 6, lines 6-8)

Even if the record included evidence that Limitless entered into the Purchase Order with Seller, a question of fact exists regarding whether Limitless canceled its Purchase Order with Seller before the asset sale to Appellants occurred. As set out herein, on December 8, 2020, the President and CEO of Limitless sent an email to Seller indicating that "[f]or now, please consider this order CANCELLED and we demand the 25% Down Payment . . . be returned." (June 23, 2025 Aff. of W. Newbauer, Ex. C to Aff.) Further, "this cancellation is totally beyond our control as this is a Force Majeure due to the COVID-19 Pandemic." (*Id.*) This correspondence was apparently sent in direct response to an "open invoices" email from Seller that same afternoon, and Limitless has not adduced any additional contemporaneous writing to refute the cancellation email. The following morning, Mr. Alkarmi wrote again, this time indicating "[a]s per our phone conversation today, we will disregard these invoices. I will keep you posted if we hear anything from the client regarding this Purchase Order." (*Id.*) This message does not indicate the cancellation was withdrawn or rescinded. Instead, it merely addresses invoices and potential client feedback. In a later self-serving affidavit, Limitless asserts "[t]he order was placed on hold during COVID-19 and has never been canceled." (Pl.'s Memo. in Support of Mot. for Summ. J., p. 5; Ex. A to Memo. (Alkarmi Aff.), § 6) This sworn statement was offered in support of the motion for summary judgment, but it directly conflicts with the December 8, 2020 written cancellation in the record.

The summary judgment hearing transcript underscores the dispute between the parties on these critical facts. For example, Limitless took the position that the order was placed on hold in 2019 and that RECO Commercial purchased RECO USA while the order remained on hold; thus, RECO Commercial should be responsible for refunding the deposit money. (Hr'g Trans. p. 5, lines

11-14, 19-21) At the same time, Limitless admits there are questions about "where that money went. . . . I got an email from the, the original RECO Commercial's [sic] team. He -- and this is just an email from there, their lawyer saying that you know, he believes that that money was spent on engineering costs and payroll." (*Id.*, p. 6, lines 6-9, 15-20). Thus, the transcript underscores that the parties squarely disputed whether Limitless canceled the order in 2020 (in spite of the clearly worded email correspondence to that effect) and how, if at all, Seller made use of any Limitless funds on deposit. Furthermore, it demonstrates that a reasonable inference to be drawn from the facts is that the Seller, and not Appellants, was responsible for returning whatever portion of the deposit that may have been due back to Limitless at cancellation. That live, material disagreement confirms the presence of a triable issue of fact that militates against the granting of summary judgment.

Under South Carolina's Rule 56 framework, summary judgment is improper where credibility determinations or competing inferences are required. The December 8, 2020 Limitless email contains explicit cancellation language, and demand for a return of the deposit. The later correspondence from Mr. Alkarmi noting his intention to "disregard these invoices" did nothing to retract that cancellation or demand. In point of fact, telling Seller that Limitless intended to disregard open invoices actually supports that Limitless intended to cancel the order. Questions as to whether Limitless intended to cancel the purchase order, to pause invoices, or to rescind cancellation after a phone call present the classic questions of intent and credibility that are best suited for determination by a jury and not as a matter of law by the court at summary judgment.

The contradiction is not ancillary or unimportant; instead, it is outcome-determinative. If the Purchase Order was canceled in December of 2020, there would have been no "Purchase Order" to convey at the December 2021 closing of the APA. Moreover, the liability for a refund,

if any, would have arisen as to the Seller, prior to closing and that liability was **specifically excluded** from purchase by the Appellants in the APA. Further, the calculation of a refund, if any, would necessarily involve questions of fact regarding offsets and costs rather than an automatic full refund as demanded by, and awarded by the trial court to, Limitless. Finally, the Appellants did not purchase any cash from Seller and any unused deposit would have had to constitute cash, however, $0.00 cash was transferred at closing.

Even the summary judgment standard recited by Limitless reinforces that credibility disputes raised by contradictory or competing record evidence are for resolution at trial, not at the summary judgment stage pursuant to Rule 56. (Pl.'s Memo. in Support of Mot. for Summ. J., p. 3) (collecting cases) Inasmuch as this record is replete with credibility disputes and factual questions, the order below granting summary judgment should be reversed.

CONCLUSION

For the reasons stated herein, Appellants RECO Commercial Systems, LLC and Dunbar Road LLC urge the Court to reverse the order granting summary judgment and to remand this matter to the trial court for further proceedings.

Respectfully submitted,

February 5, 2026 By: s/ Carmelo B. Sammataro

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