THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-002251

Thomas Wade Long and Clyde Kiser, individually and on behalf of TnW and More, LLC, ...Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, ...Defendants,

of which Timothy D. Kettner and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, are..... Appellants.

INITIAL BRIEF OF APPELLANT TNT AND MORE, INC.

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Statement of Issues

I. A joint venture requires a common purpose distinct from the parties' separate businesses, mutual control, and shared profits and losses. Here, the parties ran separate businesses, lacked any joint ownership structure, exercised no mutual control, and kept separate profits and losses. Did the circuit court err in denying a JNOV on the jury's finding that a joint venture exists?

II. Assuming a joint venture agreement exists, the proper party to enforce it is the joint venture or one of its parties proceeding on its behalf. Neither the alleged joint venture nor anyone proceeding on its behalf is a party to this case. Did the circuit court err in denying a JNOV as to Respondents' breach of joint venture agreement claim?

III. Agreements which cannot be performed within one year or which transfer an interest in real estate must be in writing. The jury found the alleged agreement cannot be performed within one year and transfers an interest in real estate. Because the agreement is not in writing, did the circuit court err in denying a JNOV on Respondents' claim for breach of it?

IV. Respondents sued for tortious interference with a $10,000 month-to-month lease. But they signed a new lease shortly after the lessee left, and there is no evidence of how long the lease would have continued or any other losses Respondents suffered. Still, the jury awarded $600,000, constituting five years of lost revenue. Did the circuit court err in denying a JNOV on this claim or in failing to remit the verdict amount?

Statement of the Case

This case began with a falling out between Respondents Wade Long and Clyde "Chris" Kiser, and Appellant Tim Kettner in September 2020. The rift quickly expanded to include their corporate entities, Respondent TnW and More, LLC, and Appellant TNT and More, Inc. On March 21, 2021, Respondents sued TNT, Kettner, and current and former owners of TNT, Donald Kettner, Jose Morales, Casey Kuzmik, and Robert Benoit. Compl. Respondents amended their complaint on April 29, 2021, and again on July 6, 2022. 1st Am. Compl.; 2d Am. Compl. The Second Amended Complaint alleges six causes of action against TNT and Kettner—promissory estoppel, breach of joint venture agreement, economic interference, assault, misappropriation, and nuisance—and one against Kettner for breach of fiduciary duty. TNT answered the Second Amended Complaint on September 13, 2022, and amended its answer on December 12, 2023. Answer to 2d Am. Compl.; Am. Answer to 2d Am. Compl.

The parties tried the case to a jury over 10 days in June 2024 before the Honorable B. Alex Hyman. During the trial, Respondents dropped all claims except breach of joint venture, economic interference, promissory estoppel, and breach of fiduciary duty, and dismissed all individual defendants except Kettner. Trial Tr. at 268–69. TNT moved for a directed verdict at the close of Respondents' case and after the close of all evidence. *Id.* at 891–922, 1184. The circuit court denied both motions. *Id.* at 943–44, 1194–1203.

The jury found for Respondents on all remaining claims, awarding damages against TNT totaling $4,060,000 and against Kettner totaling $390,000. Jury Verdict Form at 2–3. The jury first found that a joint venture existed between TNT and TnW, TNT breached the joint venture agreement, and TnW's damages were $3,100,000. *Id.* at 1, 3. Next, the jury found there was a clear and unambiguous promise for "cooperation between TNT and TnW" through "consolidation of

debt," "guarantee of the loan," the "shared use" of facilities, and the "future economic benefit to all parties." *Id.* at 1. The jury found this promise included a transfer of real property and could not have been completed within one year. *Id.* at 2. It made no other findings as to promissory estoppel beyond the existence and content of the promise. The jury then awarded TnW $480,000 and $120,000 from TNT and Kettner respectively, with matching amounts in punitive damages, for Respondents' economic interference claims. *Id.* Lastly, the jury awarded TnW $50,000 from Kettner for breach of fiduciary duty, with an additional $100,000 in punitive damages.

TNT timely moved for judgment notwithstanding the verdict, a new trial absolute, or a new trial nisi remittitur, which the circuit court denied on September 30, 2025. TNT JNOV Mot. TNT then moved for reconsideration of this denial. TNT Mot. for Reconsid. In both motions, TNT raised the impossibility of a joint venture based on the evidence, Respondents' failure to proceed on behalf of the joint venture, the Statute of Frauds, and the lack of evidence supporting the jury's economic interference damages. The circuit court denied TNT's motion for reconsideration on November 5, 2025. Order, Nov. 5, 2025. TNT timely filed its notice of appeal with this Court on November 12, 2025. Notice of Appeal.

STATEMENT OF FACTS

I. 2016: Long and Kettner organize TnW to operate a marina under the name Little River Water Sports next to TNT's restaurant, Crab Catchers.

Tim Kettner and his brother-in-law Tony established TNT [Tim n' Tony] and More, Inc. d/b/a Crab Catchers on the Waterfront in Little River, South Carolina around 1997. Trial Tr. at 973. Beginning as a small riverside shack, Crab Catchers developed into a thriving business, including a successful seafood restaurant and fish market. *Id.* at 974. Through this business, Kettner developed a close personal and professional relationship with Wade Long, a professional

fisherman, operator of Longshot Charters, and host of "Longshot TV." *Id.* at 981. The parties often described their relationship in familial terms and had common interests in the outdoors, hunting, and fishing. *Id.* Professionally, the two operated symbiotically but separately, with Long catching fish for Crab Catchers and Kettner sponsoring Long's businesses. *Id.* at 236, 798. As their personal and professional relationship grew, Long was more willing to help Crab Catchers. For example, in 2014—years before Long and Kettner went into business—Long helped fill in a pond for Crab Catchers to use as additional parking spaces. *Id.* at 1046–47.

Through their conversations—largely over lunch at Crab Catchers or during a hunt—Long and Kettner devised a new way to make money. Their idea was to form a separate company which would buy the land behind the restaurant, develop a marina to capitalize on the waterfront, and eventually grow to include charter fishing, dolphin tours, fuel tanks, jet ski rentals, and more. Trial Tr. at 262. If time and money allowed, they wanted to build an ice cream shop; a separate building which would house another restaurant, a dock master's office, space for Long to sell merchandise, a tackle shop; and an ice house for Long to offload fish from his fishing business. Trial Tr. at 661–62, 666–68. These plans were the product of Long and Kettner "talking on the dock about a dream that grows." *Id.* at 553–54. On June 30, 2016, Kettner and Long organized TnW [Tim n' Wade] and More, LLC. TnW operated under the name Little River Watersports.[1] *Id.* at 982. All their grand plans would be part of TnW's business. *Id.* at 258–59, 262, 664–68.

[1] A separate corporation named Little River Watersports, Inc. was formed because of a miscommunication with TnW's employees. It was never intended to function as a separate entity and was dissolved in October 2020. Trial Tr. at 652–53; *see also id.* at 408–10.

In this picture, TnW's property is bordered by the red lines above and to the left of the docks and the walkway to the right of them. TNT's property is the adjacent building (the Crab Catchers restaurant) and the remaining marsh and open space above TnW's property and to the left of the road, which served as a parking lot. Photos of Marina Area Ex. at 3; *see also* Kettner Ex. 7 at 2 (plat showing the property boundaries of TNT and TnW's parcels). Although TnW and TNT drafted and recorded a recombination plat which would have combined these parcels, they never exchanged deeds or otherwise completed that process. Trial Tr. at 541–42, 865, 1031–32; *see also id.* at 1054 (stating that the recombination plat was for "future business … if things worked out, we were moving forward").

II. 2016–2020: "We weren't in business with Crab Catchers, but they were a sponsor of ours, and we supported them."

Taking to heart the adage that a rising tide lifts all boats—and understanding that each business's own success would drive more revenue to the other—TNT helped TnW where it could. As Kiser said, "[w]e weren't in business with Crab Catchers, but they were a sponsor of ours, and we supported them." *Id.* at 800; *see also id.* at 443 (Long testifying, "I didn't nose in their business, but – and then they didn't get in my business. We supported each other.").

The first way TNT showed its support was with access to a loan. Long and Kettner had advanced money to TnW "to get the project rolling." Trial Tr. at 1055. But TnW could not obtain an outside loan to fund its continued expansion. *Id.* at 249–50, 262, 1125. So in 2017, TNT agreed to be a co-borrower and pledge its real estate as additional collateral to help secure the loan. *Id.* at

704–05. To ensure the bank had priority on this real estate, TNT paid off its existing mortgages using part of the loan proceeds and granted the bank new mortgages. *Id.* at 704. Roughly 25% of the loan proceeds refinanced TNT's existing mortgages (about $280,000) and the bulk of the loan (about $820,000) went toward TnW's marina operations and planned expansion. *Id.* at 1230–31. TNT and TnW's respective monthly payments on the loan mirrored this 25/75 split to ensure each party was responsible for its part of the loan. Kettner Ex. 2 at 2 (stating the total loan payment was $7,058); Trial Tr. at 262–63 (TnW paid $5,033 per month and TNT paid the remaining $2,025 after Tim and Donny Kettner figured out how to split the payment). At no point were TnW's funds used to pay any portion of TNT's mortgage debt, and TNT received none of the loan's remaining balance for its own operations.

The second way TNT helped was with access to land. TnW had used part of Long and Kettner's contribution to buy the .75-acre parcel next to Crab Catchers for $150,000. Trial Tr. at 250, 541; TNT Ex. 14 at 20–21. But TnW needed access to additional upland frontage, bathrooms, and a parking lot to receive a marina permit. Trial Tr. at 1258, 1264. It also needed upland property where it could place its fuel tank and run its jet ski rental business. *Id.* at 1337-38. Because TnW could not afford to buy or lease that property, it reached a deal with TNT: TnW could use TNT's parking lot for parking and upland frontage, and temporarily use TNT's office space and bathrooms, and TNT's customers could use TnW's boat slips while dining at the restaurant. Trial Tr. 272–73. This arrangement allowed the businesses to complement one another. TNT (Crab Catchers) served the dining and boating public, while TnW (Little River Watersports) offered marina services. Each company would increase consumer traffic in the area, thereby leading to

increased business for both individually. *Id.* at 605-05, 739. Highlighting the informal nature of this arrangement, no written agreement exists between TNT and TnW. *Id.* at 838–39.

The third way TNT helped TnW was with after-hours support. Because Crab Catchers remained open later than the marina office, TNT trained some staff members to pump fuel and process sales after TnW's staff left for the day. Trial Tr. at 597–98, 646–47, 736. Providing coverage for fuel and sales was in TNT's interest so after-hours visitors to the marina could patronize Crab Catchers.

But TNT's mutualistic assistance did not change a fundamental fact: TNT and TnW's businesses remained separate. Neither company had an ownership or membership interest in the other. Trial Tr. at 443, 493, 839, 991. Neither company had a right to control the business or operations of the other. *Id.* at 543, 1012, 1150. Each maintained separate books, bank accounts, and credit cards, and each filed separate tax returns. *Id.* at 373–74, 399–400, 853, 964. Similarly, each retained its separate profits, losses, and business operations. *Id.* at 497–98, 543–44, 560–61, 1012, 1150. Each company's tax returns and commercial insurance policies also represented that neither of them was a joint venture. *Id.* at 979, 990. The loan application likewise did not show it was for a joint venture. *Id.* at 720, 1117. Finally, none of the parties received a K-1 from any separate joint venture, which would have been required if one existed. *Id.* at 956–963.

Long therefore had it right: TnW and TNT remained "totally separate businesses. They owned TNT. We opened TnW. They did their business. We did our business." Trial Tr. at 443–44. The mutual support they provided was for their own benefit.

III. 2020-2021: Respondents fall out with Kettner and extend their "war" to TNT, even though their evidence is "a little scarce," "loosey-goosey," and "a bit lacking."

The parties "had a great relationship" before October 2020. Trial Tr. at 282. Respondents do not allege TNT engaged in any wrongdoing during that time. *Id.* at 426–27. But TnW had been losing money for years: $27,530 in 2016, $141,183 in 2017, $377,036 in 2018, and $48,773 in 2019. Kettner Ex. 26; Kettner Ex. 28; Kettner Ex. 30; Kettner Ex. 32. In May 2019, TnW's bank account did not have enough money to cover the company's expenses. Trial Tr. at 992. Covid then pushed the parties to the breaking point. *See id.* at 992–93 ("The bank account was almost zero. Everybody needed money.").

Long and Kiser offered to sell their shares in TnW to Kettner for $150,000 each in September 2020. Trial Tr. at 801, 993. Kettner refused because he was unwilling to pay Long and Kiser when the company was losing money. *Id.* In response, Long and Kiser "relieved [Kettner] of his responsibilities" and accused him of stealing money. *Id.* at 853, 994–95; *see also id.* at 996 (Kettner testifying that he was "[l]ocked out, kicked out, and called a thief"). Although Kettner kept his interest in TnW, he sold his interest in TNT so he could move back to Wisconsin to care for his parents.[2] *Id.* at 971.

At that point, it was "war." Trial Tr. at 282 ("And it was war for both parties."); *id.* at 994 ("It's a war – it sickens my stomach – caused by Wade Long and Chris Kiser. I'm sorry, it's the truth."). The battle began between Long, Kiser, and Kettner. *See* Trial Tr. at 1068 (Kettner

[2] Kettner and his brother-in-law Tony sold their interests in TNT to Kettner's son Donny (37% interest), Donny's half-brother Casey Kuzmik (25% interest), long-time server at Crab Catcher's Justine Vaitis (20% interest), and extended family member Robert Benoit (18% interest). Trial Tr. at 975–78. At one point, Jose Morales owned 20% of TNT, but he sold his interest back to the company. *Id.* at 624.

sending a text message in September 2020, "Remember, Wade hates me only."). But it quickly extended to TnW and TNT. Questions arose about access to TNT's property and the legality of fixtures which TnW installed on it (for which TNT was fined). *Id.* at 465–66, 531, 1145. Hoping to resolve these matters, TNT proposed that the parties sign a lease "where things were spelled out and everyone knew what they were doing." *Id.* at 1146. TnW refused. *Id.* So TNT filed an ejectment action in magistrate's court because TnW's actions "put us in jeopardy and liability. The restaurant is our bread and butter. If something happened, we were liable." *Id*. at 1145; *see also id.* at 1146 (stating TNT sued because "we had to take care of these violations, make things were [sic] right, keep our restaurant protected and our property protected"). Respondents thereafter filed this case on March 12, 2021. Their lawsuit superseded the magistrate's court case, and the circuit court granted a preliminary injunction allowing TnW to remain on TNT's property pending this litigation. *Id*. at 1336–37; *see also* Consent Order for Preliminary Injunction.

Much of the war, and the focus of Respondents' case, was on Kettner's actions, the actions of individuals whom Respondents voluntarily dismissed from this case, and claims which Respondents voluntarily dismissed. In the end, Respondents went to trial against TNT on just three narrow claims.

First, Respondents claimed TNT breached a "joint venture agreement" regarding the development of TnW's marina business by ejecting TnW from TNT's property. Trial Tr. at 844, 1146, 1257, 1336. Respondents admitted that the evidence of a joint venture is "a little scarce" and asked the jury to "buckle up" when considering it. Trial Tr. at 1338. As pled in all three complaints and testified to by Long, the joint venture was TnW. Compl. ¶5; 1st Am. Compl. ¶5; 2d Am. Compl. ¶5; Trial Tr. at 432-33, 255, 853–54. Then came the first swerve. Kiser testified—and

Respondents' counsel argued and the circuit court found—that the joint venture was the sharing of the parking lot and boat slips. *Id.* at 1337; JNOV Order at 3. Then another. The jury found that the joint venture was "cooperation between TNT and TnW" through "consolidation of debt," "guarantee of the loan," the "shared use" of facilities, and the "future economic benefit to all parties." Jury Verdict Form at 1. At no point did anyone identify a common enterprise separate from either TnW or TNT's individual businesses.

Second, Respondents alleged that TNT should be estopped from denying its promise that TnW could use its property. Trial Tr. at 1338-39. This claim mirrors, and was pled in the alternative to, TnW's breach of joint venture claim. *Id.*

Third, Respondents alleged TNT "interfered with the economic relations" of TnW "by blocking access to the parking lot and its buildings by blocking water sports business activities, including the sale of fuel, and threatening and harassing [Respondents], customers, and employees." 2d Am. Compl. ¶30. But generic "economic inference" is not a recognized claim. Respondents therefore recognized at trial that they only had claims for interference with contract and prospective contractual relations. Trial Tr. at 1214 ("[T]he economic inference, I couldn't find that cause of action. I think what [a prior lawyer] stated, maybe in-artfully, is you interfered with our contract.").

Respondents conceded that their evidence is "a little loosey-goosey" and that "we're a bit lacking in the [evidence of damages] department." Trial Tr. at 1214. While they tried to make generic "economic interference" a theme of their case, and likely will do so in their opposition brief here, their claim only concerns a single contract with Eric Rolf. *Id.* at 1253. Rolf ran a jet ski rental company called East Coast Atlantic Jet Skis. *Id.* at 304. He began operating out of TnW's

docks in 2021, after the "war" began. *Id.* at 753–54. He had a written lease with TnW from March 2021 through March 2022 at $10,000 per month, at which point it became month-to-month. *Id.* at 304–05, 753–54; Respondents' Ex. 37 at 1–2. Rolf continued to lease the property as a carryover tenant until he terminated the lease in the second half of 2022 due to Respondents' alleged interference with his business.[3] *Id.* at 756–57, 760. The record does not show how long Rolf would have continued his lease without the alleged interference. But right after Rolf left, TnW entered a new lease with a replacement jet ski operator. *See id.* at 1175 (Long testifying at trial in June 2024 that he had been leasing to the jet ski operator who "took Eric Rolf's position" two earlier). The new business has operated without interference. *Id.*

Standard of Review

When reviewing the denial of a motion for directed verdict or JNOV, this Court must use the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *See, e.g., Steinke v. S.C. Dep't of Lab., Licensing & Regul.,* 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999); *Gastineau v. Murphy,* 331 S.C. 565, 567, 503 S.E.2d 712, 713 (1998). In deciding a motion for JNOV, the trial judge is concerned with the existence of evidence, not its weight. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Burns v. Universal Health Servs.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct.

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[3] This appeal does not concern the alleged underlying interference. While TNT vigorously disputed the evidence presented at trial, it recognizes that Respondents presented enough to create a jury question on this issue. TNT therefore did not seek a JNOV on it and, as a result, does not raise it here. Because there is no appellate question which involves those facts, TNT does not address them in its brief. *See McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make any difference, doesn't matter.").

App. 2004). This Court will reverse the trial court only when no evidence supports the ruling below. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000).

Similarly, "[w]hether to grant a new trial is a matter within the discretion of the trial judge, and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 49, 691 S.E.2d 135, 149 (2010). The same standard applies to motions for a new trial nisi remittitur. *Jolly v. Gen. Elec. Co.*, 435 S.C. 607, 655, 869 S.E.2d 819, 845 (Ct. App. 2021).

Summary of Argument

Respondents brought this case under expansive theories of years-long general economic interference. By the end of trial, however, they had whittled their claims against TNT to three narrow theories: (1) TNT breached a joint venture agreement by ejecting TnW from its property in 2021; (2) TNT did not honor its promise to share its property with TnW; and (3) TNT interfered with a single $10,000 month-to-month lease between TnW and a jet ski rental business. So where this case started and the broad themes which Respondents pushed at trial do not match where this case ended against TNT.

Properly viewing this case through the limited claims submitted to the jury confirms that the circuit court erred in denying TNT a JNOV on the jury's $4,060,000 verdict against it.

1. There was no joint venture. A joint venture requires a common purpose, right of control, and sharing of profits and losses, all separate from the parties' individual interests. No evidence supports *any* of those elements, much less all of them. First, Respondents never identified a separate common purpose of the alleged joint venture. Any acts which allegedly constituted the joint venture were taken so TNT and TnW could individually profit, which by definition is not a joint venture. Second, it was undisputed that TNT and TnW could not control each other's

business and did not have equal control over the shared property. And absent a separate common purpose, there was nothing else for the parties to control. Third, it was undisputed that the parties never shared profits or losses—again, either individually or from the non-existent separate common purpose. As a matter of law, no joint venture existed between them. Finding that one existed under these facts will fundamentally change the implications of businesses sharing resources in this State. The circuit court therefore erred in sustaining the jury's verdict for breach of a joint venture agreement.

2. Even if a joint venture agreement exists, it is unenforceable under the Statute of Frauds. Agreements which cannot be completed within one year or which transfer real estate must be in writing. The jury found the joint venture agreement falls within both categories. Because the agreement is not in writing, it is unenforceable. Respondents' argument that the doctrine of part performance saves the agreement fails for two reasons. First, part performance does not apply to agreements which cannot be performed within one year. Second, Respondents did not have the jury make a finding as to part performance. So as the record stands, the Statute of Frauds applies and no exception exists. The circuit court again erred in denying TNT's motion for JNOV.

3. And even if an enforceable joint venture agreement exists, Respondents are not the proper party to enforce it. Rule 23(b)(1), SCRCP, requires that individuals bring actions belonging to unincorporated associations like joint ventures derivatively. Respondents' claim for breach of the joint venture agreement belongs to the joint venture because the alleged harm is to the joint venture. But Respondents brought their claim individually, not derivatively on behalf of the joint venture. The circuit court therefore erred in not granting a JNOV under Rule 23(b)(1).

4. Respondents failed to prove damages caused by any interference with the jet ski lease. The lease was $10,000 per month and, at the time it ended, was month-to-month. Respondents offered no evidence of how long they expected it would continue but for the interference. They offered no evidence of other damages caused by the alleged interference with this contract. Respondents also immediately signed a new lease with a different jet ski rental business after the original tenant left. Still, the jury awarded $600,000 for interference with that contract, which is five years of lost lease revenue. Because no evidence supports those damages, the circuit court erred in denying TNT's JNOV motion as to this verdict or not remitting the amount.

ARGUMENT

I. The circuit court erred in upholding the jury's finding of a joint venture because there is no evidence that one exists.

A joint venture must have (1) a common purpose distinct from that of its members, (2) equal right to control the conduct of the other members regarding the common purpose, and (3) an agreement to share profits coupled with the duty to share losses. *See Spradley v. Houser*, 247 S.C. 208, 212, 146 S.E.2d 621, 623 (1966) ("It has been repeatedly held by this court that in order to constitute a joint enterprise … there must be a common purpose and a community of interest in the object of the enterprise and an equal right to direct and control the conduct of each other with respect thereto."); *U.S. for Use of Altman v. Young Lumber Co.*, 376 F. Supp. 1290, 1296 (D.S.C. 1974) ("To constitute a joint venture, there must be an agreement to share in the profits and losses … [and] [b]efore a joint venture can exist, each party to the undertaking must be accountable to the other for his acts in carrying it out, and each must have a power of control."); *Golson v. Thorne*, 288 S.C. 463, 465, 343 S.E.2d 451, 453 (Ct. App. 1986) ("An agreement between two parties

constitutes a joint venture only if each party enjoys an equal right to control the conduct of the other regarding their common purpose."); *Long v. Carolina Baking Co.,* 190 S.C. 367, 3 S.E.2d 46, 48 (1939) (holding a joint enterprise exists between two individuals, such that the negligence of one is imputed to the other, "if two or more persons unite in the joint prosecution of a common purpose under such circumstances that each has authority, express or implied, to act for all in respect to the control of the means and the agencies employed to execute such common purpose").

Critically, "[t]he mere sharing of an economic interest is not sufficient to form a joint venture, since there must be some evidence that the parties participate and have control over the enterprise. Similarly, the assertion of a mutually beneficial relationship, without more, is insufficient to establish an equal right and control of a venture." 46 Am. Jur. 2d *Joint Ventures* § 15; *see also* 46 Am. Jur. 2d *Joint Ventures* § 16 (stating that the profits for a joint venture are "a net financial gain or return for the joint venture, not merely for the parties individually" and "must be joint and not several"); *see also* JNOV Order at 2–3 ("[C]ontrol is limited to the common purpose of the joint venture, not the separate businesses of the members to the joint venture.").

Respondents proved none of these elements. The circuit court therefore erred by not granting a JNOV on Respondents' breach of joint venture agreement claim.

A. No version of the alleged joint venture has a common purpose distinct from TNT's and TnW's independent businesses.

"A party's argument should not be a moving target." *Finnigan Corp. v. Int'l Trade Comm'n*, 180 F.3d 1354, 1363 (Fed. Cir. 1999). Yet that is precisely what Respondents' case was, as the definition of the joint venture shifted throughout trial. Even so, Respondents cannot prevail as a matter of law under any definition of a joint venture used.

1. The joint venture pled by Respondents and testified to by Long fails as a matter of law because it identifies TnW's business and not a separate common enterprise.

From the start of this case until trial, Respondents defined the alleged joint venture as "the development and operation of business activities on the real properties owned by [TNT and TnW] for which [TNT and TnW] combined their respective real properties for the operation of water sports rentals, ice cream shop, fishing charters, and other related business activities." 2d Am. Compl. ¶5; *see also* Compl. ¶5 (same); 1st Am. Compl. ¶5 (same). Respondents never moved to amend these allegations. Water sports rentals, ice cream shops, fishing charters, and other related business activities were TnW's business, not TNT's business. Trial Tr. at 255, 261–62, 553–54. Consistent with these allegations, Long testified that the joint venture was TnW. Trial Tr. at 432–33, 556; *see also id.* at 684 (architect who drew plans for the marina expansion testifying that he understood the joint venture was just Tim and Wade, who were the original members of TnW); Respondents' Ex. 10 (Kettner texting Long one month before organizing TnW that he told a surveyor "we[']re a joint venture/business").

Because TnW is organized as an LLC, it cannot be a joint venture. *See Gordon v. Rothberg*, 213 S.C. 492, 503, 50 S.E.2d 202, 207 (1948) (defining a joint venture as a "special combination of two or more persons, where in some specific venture a profit is jointly sought *without any actual partnership or corporate designation.*") (emphasis added). A joint venture must also have its own purpose separate from its members. 46 Am. Jur. 2d *Joint Ventures* §§ 15–16. But the alleged joint venture has no separate purpose from TnW—it is TnW. Either way, TnW cannot be a joint venture as a matter of law.

2. The joint venture argued by TnW's counsel, testified to by Kiser, and identified by the circuit court fails as a matter of law because it is only an agreement to share resources for each company's individual benefit.

Sensing defeat if TnW were the joint venture, Kiser (who testified a few days after Long) took a different position. To him, the joint venture was each business profiting from the shared use of the marina and the parking lot. Trial. Tr. at 826–27, 853–55. It was no different than neighboring stores benefiting each other:

> Q. Back home, when I go to Lowe's, there is a Wendy's in the parking lot, and sometimes I pick stuff up and get a frosty. Now, is Lowe's and Wendy's in a joint venture? Are they both profiting by the fact that I'm there?
>
> A. They are profiting because there is Lowe's and there is Wendy's. They attract each other. You wouldn't be going to Lowe's if you didn't want to go to Wendy's. They share a common interest. They want you to come together. That is the reason why restaurants are beside each other. I don't know if you see the beachwear stores down here, why do you think the beachwear stores are right beside another? They want to work together.
>
> Q. And that is the kind of relationship that exists between TNT and TnW?
>
> A. That's right. You know, it is for the good of both.

Id. at 854–55.

Respondents' counsel adopted Kiser's version of the joint venture. He argued that the joint venture was "we [TnW] get to use the parking lot. They [TNT] get to use the marina." Trial Tr. at 923; *see also id.*at 1226–27 ("Our claim with the joint venture is that they allowed us to use the parking lot, and we allowed them to use the dock…. The joint venture was just land usage."); *id.* at 1248–49 ("Wade and Chris testified that the deal was you get the benefit of the marina, we get the benefit of the parking lot, and we will both share in the benefits."). Counsel agreed that the joint venture "was just in terms of being able to use [the parking lot and marina] for the benefit of

each company, not necessarily to operate a single business on that property that they both shared profits from." *Id.* at 937–38.

The circuit court's order denying JNOV adopted this view too, holding that the alleged joint venture consisted of only "the use of the docks built by TNW and the parking lot owned by TNT" to allow "both separate businesses to enjoy the benefits and make more profits through those separate companies." JNOV Order at 3.

This version of the joint venture fails as a matter of law too. "The mere sharing of an economic interest is not sufficient to form a joint venture," and "the assertion of a mutually beneficial relationship, without more, is insufficient to establish an equal right and control of a venture." 46 Am. Jur. 2d *Joint Ventures* § 15; *see also Long*, 3 S.E.2d at 48 (holding a joint enterprise exists where "two or more persons *united in the joint prosecution of a common purpose* under such circumstances that each has authority, express or implied, to act for all in respect to the control of the means and the agencies employed *to execute such common purpose*") (emphasis added); 46 Am. Jur. 2d *Joint Ventures* § 16 (stating that the profits for a joint venture are "a net financial gain or return for the joint venture, not merely for the parties individually" and "must be joint and not several").

Every business has an interest in increased profits. Still, two businesses' independent interests in increasing their own profits fail the fundamental requirement for a joint venture: that it generates *joint* profits or losses, not separate ones. As the circuit court charged the jury, "[t]he mere sharing of an economic interest is not sufficient to form a joint venture." Trial Tr. at 1397. And in its JNOV order, the court agreed that "control is limited to the common purpose of the joint venture, *not the separate businesses of the members* to the joint venture." JNOV Order at 3

(emphasis added). But the court inexplicably abandoned its correct understanding of the law two sentences later when it held that a joint venture can be the sharing of property so "separate businesses" can "make more profits through separate companies." *Id.* This was an error of law requiring reversal.

3. The joint venture found by the jury fails as a matter of law because the jury also identified no common enterprise.

The jury took yet another path. It found a joint venture between these companies which consisted of "cooperation between TNT and TNW through consolidation of debt via the loan, guarantee of the loan, shared use of all properties and facilities including the Docks, Parking lot, Recombination plat, and Crab Catchers' restrooms and office space and future economic benefit to all parties."[4] Jury Verdict Form at 1, 3. None of these items are enough to form a joint venture, either individually or collectively.

The loan is not evidence of a common purpose

The business loan obtained by TnW, and collateralized by TNT as a co-borrower, does not evidence a joint purpose. The jury focused on two aspects of the loan in its finding: the "consolidation of debt via the loan" and "guarantee of the loan." But the evidence shows only (1) TnW never paid for TNT's mortgage debt and (2) TNT was not a guarantor on the loan, but merely a tertiary repayment source as a fail-safe. The evidence therefore signals TnW and TNT's intent to keep their financing separate.

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[4] Although the jury made this finding in the context of Respondents' promissory estoppel claim, Respondents argued that the promise was for the same arrangement as the joint venture. *E.g.*, Trial Tr. at 1257. The jury's finding therefore reflects its understanding of the joint venture.

The loan had two parts: about 25% of the loan was to refinance TNT's existing mortgages to give the lender priority on the property TNT pledged ($280,000), and 75% was a business loan for TnW's future endeavors ($820,000). Trial Tr. at 1230. TnW's part of the $7,058 monthly payment on the loan was $5,033, and TNT paid the remaining $2,025. *Id.* at 262–63; Kettner Ex. 2 at 2. By design, this payment allocation mirrors the 75/25 division of the loan proceeds. *Id.* at 263 ("Tim allowed Donny to figure what portion we paid, and what portion the Crab Catchers paid."). This means none of TnW's payments were applied toward TNT's mortgage refinancing, which was merely a requirement to secure the loan. As a result, no reasonable jury could have found that TnW paid TNT's debt or that the debt was "consolidated."

TNT also did not guarantee the loan. It was co-borrower. The guarantors were all individuals: Tim and Donny Kettner, Justine Vaitis, Wade Long, and Clyde Kiser. *Id.* at 716. TNT's only risk was through foreclosure on its property if all other avenues of payment failed. *Id.* at 715–19.

Shared use of the facilities does not evidence a joint venture

Next, the jury found that the "shared use of all properties and facilities" was part of the joint venture. Jury Verdict Form at 1, 3. This is both factually incorrect and legally baseless.

To be sure, TNT and TnW each allowed the other to use its property and facilities. But this is not proof of a joint venture when the parties shared their property simply to drive more customers to their respective businesses. Trial Tr. at 827; *see also supra* pp. 5–7, 17–19 (discussing the parties' intent). At most, the parties created a license to use each other's property. *See* 51 Am.

Jur. 2d *Licenses and Permits* § 2 ("[A] license is a revocable interest."). And a license is not a joint venture.

Future economic benefit is not evidence of a joint venture

Finally, the jury relied on the "future economic benefit to all parties" to find a joint venture. Verdict Form at 1, 3. Well-established law, as stated in the circuit court's charge to the jury, compels rejecting that finding as a matter of law.

The jury's finding improperly equates individual financial benefit to TNT and TnW with a joint venture. Once again, sharing an economic interest or hoping to individually profit does not create a joint venture. 46 Am. Jur. 2d *Joint Ventures* §§ 15–16. The circuit court agreed that this is the law. JNOV Order at 2–3 ("[C]ontrol is limited to the common purpose of the joint venture, *not the separate businesses of the members* to the joint venture.") (emphasis added); Trial Tr. at 1398 (charging the jury that "[t]he mere sharing of an economic interest is not sufficient to form a joint venture."). Any "economic benefit" to each entity because of their mutual success therefore cannot be evidence of a joint venture.

B. TNT and TnW did not share profits or losses, and neither company had an equal right to control the alleged joint venture business.

Even assuming a reasonable jury could find that TNT and TnW came together for a common purpose, there still is no joint venture because there were no shared profits and losses or equal control.

TNT and TnW shared no profits or losses. Trial Tr. at 827, 963. Nor is there evidence of profits or losses generated by some other "common purpose" between them. To the contrary, the purpose of the claimed joint venture was for TNT and TnW to profit *independently*. *See supra* pp. 5–7, 17–19. That should end the discussion. But the circuit court's order denying JNOV misdirects

the issue. The court held, "Defendants argued, repeatedly, that TNW never made a profit. Now they seek a dismissal for the failure of TNW to share these non-existent profits. This cannot be the law as it would require 'profit' before any relationship can be deemed a joint venture." JNOV Order at 4. TNT, however, never argued that profits are required for a joint venture. Instead, TNT correctly argued that failing to share profits (which were TNT's) *or* losses (which were TnW's) defeat any claim that a joint venture exists. *E.g.*, TNT JNOV Mot. at 6, 15–16, 26; TNT Mot. for Reconsid. at 9–11, 17. The circuit court's myopic focus on profits alone is contrary to the record and the law. As a matter of law, there is no joint venture here. *See Young Lumber Co.*, 376 F. Supp. at 1296. ("To constitute a joint venture, there must be an agreement to share in the profits and losses."); 46 Am. Jur. 2d *Joint Ventures* § 15; *see also* 46 Am. Jur. 2d *Joint Ventures* § 16 (stating that the profits for a joint venture are "a net financial gain or return for the joint venture, not merely for the parties individually" and "must be joint and not several").

Control is the right "to exercise restraining or directing influence over" or "to have power over." *Control*, Merriam-Webster, https://www.merriam-webster.com/dictionary/control (last visited Jan. 29, 2026). The right of control in a joint venture must be equal among the parties. *See Golson*, 288 S.C. at 465, 343 S.E.2d at 453 ("An agreement between two parties constitutes a joint venture only if each party enjoys an equal right to control the conduct of the other regarding their common purpose."). Under this standard, the circuit court correctly found that "[t]he joint venture was never to combine the businesses, control the businesses jointly, or allow either business to assert control over the core functions of the others' business." JNOV Order at 3. With that in mind, the court shifted focus to control over its version of alleged joint venture (not the joint venture as pled, testified to by Long, or found by the jury): sharing the parking lot and boat

slips. *Id.* at 2–3. But even if sharing the parking lot and docks so each business can profit separately is a joint venture—and it isn't—the court still missed the mark.

First, the circuit court confused the right to use property with the right to control it. *See Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015) ("[W]hen a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights."). Long admitted that TNT controlled the parking lot. Trial Tr. at 599. The court also incorrectly found that TnW shared control of the parking lot based on signage. JNOV Order at 3. The signs merely allowed TnW customers to park; they did not grant TNW any control. *E.g.*, Respondents' Ex. 8.

Second, TNT and TnW did *not* have equal control over the docks, as required for a joint venture. For example, TnW leased boat slips to third parties without consulting TNT, which it could not do if the docks were part of a joint venture. *Id*. at 365; *see also Searson v. Webb*, 208 S.C. 453, 460–61, 38 S.E.2d 654, 658 (1946) ("The fiduciary relationship between coadventurers ordinarily precludes one of them from purchasing or leasing property related to the enterprise, either for himself or another, in the absence of a full disclosure to his associates.") (quotation omitted). Also, DHEC required TnW to retain control and authority over the docks. *E.g.*, Kettner Ex. 22 at 5 (TnW's mandatory marina Operations and Maintenance Manual identifying Long, Kiser, and Rolf as managing and overseeing the docks, including fuel sales and day-to-day operations); Kettner Ex. 23 at 9 ("An experienced operator shall be in charge of the marina and be responsible for compliance with the issued Operations and Maintenance Manual and with all conditions of the permit."); *id.* at 12 ("The permittee [TnW], in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all

responsibility and liability … from all claims of damage arising out of operations conducted pursuant to this [marina] permit."). At bottom, one cannot separate TnW's marina business from control of the docks. If TNT cannot control TnW, then TNT cannot control the docks. Because it was undisputed that TNT did not control TnW, Trial Tr. at 543–44, TNT's lack of control over the docks is self-evident.

The circuit court improperly relied on TNT employees providing part-time coverage for the fuel pump and sometimes processing credit card sales to create a jury question on control. Those facts are not evidence of control, much less equal control. *See* JNOV Order at 4. By law, any help which TNT provided was subject to TnW's oversight and authority. The court's finding that TNT "controlled the fuel operations of TNW" or "controlled the jet ski operations" by providing occasional assistance has no foundation in law or fact. *See id.*

* * *

Allowing a joint venture on these facts will have sweeping implications by creating joint ventures among any businesses sharing resources for their own benefit. For example, how many bars or shops share restrooms? How many businesses share a parking lot? How many stores move to a shopping center to take advantage of foot traffic generated by an anchor tenant? Under the circuit court's view, these businesses are all in a joint venture. This is a sea change in the law that will undermine business expectations throughout the State. This Court therefore should hold that the circuit court erred in denying TNT's motion for a JNOV on Respondents' joint venture claim.

II. Even if a joint venture agreement exists, the circuit court erred in upholding the jury's verdict for its breach because neither the joint venture nor anyone acting on its behalf is a plaintiff.

Assuming a joint venture agreement exists, the next question is whether Respondents had to bring their claim for its breach derivatively on the joint venture's behalf under Rule 23(b),

SCRCP, rather than independently. The circuit court held that Rule 23(b) does not apply because derivative actions are only for corporations, LLCs, non-profit corporations, and limited partnerships—not joint ventures. JNOV Order at 15–16. This was an error of law which ignores Rule 23(b)'s plain language. And because the harm alleged is to the joint venture and neither the joint venture nor anyone proceeding for it is a plaintiff, Rule 23(b) bars Respondents' claims.[5]

Rule 23(b)(1), SCRCP, expressly allows a derivative action "to enforce a right of a corporation *or of an unincorporated association.*" (emphasis added). A joint venture is an unincorporated association. *See Gordon*, 213 S.C. at 503, 50 S.E.2d at 207 (stating a joint venture has no "corporate designation"). While South Carolina courts have not addressed whether joint ventures fall within Rule 23(b), other jurisdictions have applied the derivative framework to joint ventures and their cousin, general partnerships. *See Yudell v. Gilbert*, 99 A.D.3d 108, 116, 949 N.Y.S.2d 380, 384 (App. Div. 2012) (holding joint ventures are subject to Rule 23 derivative analysis, and the classification of a claim turns on who suffered the harm and who would receive the benefit of recovery); *Diamond v. Pappathanasi*, 78 Mass. App. Ct. 77, 88, 935 N.E.2d 340, 350 (2010) (applying Rule 23 derivative framework to claims on behalf of a general partnership); *Thomasson v. Mfrs. Hanover Tr.*, 845 F.2d 1020, 1031 (5th Cir. 1988) (affirming dismissal where general partners lacked standing to sue individually because the alleged injury belonged to the partnership); *Murray v. Sevier*, 145 F.R.D. 563, 575 (D. Kan. 1993) (accepting plaintiffs' allegation that the Bass Anglers Sportsman Society is "an unincorporated association," and reasoning that because Rule 23.1 "expressly applies" to derivative actions by "members … of an unincorporated

[5] Long and Kiser seek to individually recover damages for breach of the joint venture agreement. They were not a party to the agreement, and any damages flow only to TnW.

association," the suit is governed by Rule 23.1); *see also Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 238, 391 S.E.2d 538, 543 (Ct. App. 1989) ("Relations among joint venturers are governed by partnership law."). Further, the circuit's court observation that the Uniform Partnership Act has no express right to bring a derivative action is of no moment. *Allright Mo., Inc. v. Billeter*, 829 F.2d 631, 637 (8th Cir. 1987) ("A limited partner's right to bring a derivative suit had its origin at the common law; we therefore need not find an express legislative grant of authority in order to be able to conclude that Allright can bring this suit.") (citing *Klebanow v. N.Y. Produce Exch.*, 344 F.2d 294, 295 (2d Cir. 1965)). And finally, the circuit court's related observation that derivative suits protect minority shareholders, and there are no minority shareholders in a joint venture because all parties have equal control, is of no moment. JNOV Order at 16. Rule 23(b)(1) allows "*one or more* … members to enforce a right … of an unincorporated association." (emphasis added). It sets no minimum or maximum interest threshold. The circuit court erred to the extent it imposed this "minority interest" restriction beyond Rule 23(b)'s plain language.

The circuit court therefore erred as a matter of law by holding that Rule 23(b) does not apply to joint ventures. It also erred in finding that Respondents cured their failure to plead Rule 23(b) through a motion to amend. JNOV Order at 16. Respondents' "motion to amend" only concerned Long and Kiser's failure to plead that it was futile to ask for consent before filing the complaint. Trial Tr. at 929; *see also id.* at 69–71 (identifying Respondents' failure to plead demand futility); Rule 23(b)(1), SCRCP ("The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the

action or for not making the effort."). The motion did *not* seek to add the joint venture as a party or change Respondents' status to proceeding on behalf of the joint venture.

As applied here, Rule 23(b) bars Respondents' individual action for breach of the joint venture agreement. A plaintiff can bring an individual rather than a derivative claim "only if his loss is separate and distinct from that of the corporation." *Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001) (quotation omitted). Losses to the entity, however, belong to the entity and must be brought by the entity or derivatively. *Id.* A claim is derivative even if the plaintiff maintains that the misconduct harmed the value of his interest in the entity. *Rivers v. Wachovia Corp.*, 819 F. Supp. 2d 484, 487 (D.S.C. 2010). To distinguish an individual claim from a derivative one, courts examine who suffered the harm and who will receive the benefit of any recovery. *Patterson v. Witter*, 425 S.C. 213, 232, 821 S.E.2d 677, 687 (2018); *see also Wilson v. Gandis*, 430 S.C. 282, 311, 844 S.E.2d 631, 647 (2020) (holding that any loss suffered by LLC members from a minority member's misconduct was derivative and not distinct); *Stewart v. Ficken*, 151 S.C. 424, 149 S.E. 164, 165 (1929) ("It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs *directly*, or as their interests were submerged in the corporation whose assets were thus dissipated.").

If the Court finds that a joint venture agreement exists, then the damages Respondents seek for breach of it are damages to the joint venture itself. The $3.1 million awarded for that breach was for the loss of TnW's marina business. *E.g.*, Trial Tr. at 1338. As Respondents have argued, the joint venture included the marina business. *Supra* pp. 16–19. So any harm to that business is a harm to the joint venture which Respondents must sue for derivatively.

Simply put, Respondents cannot have it both ways. They cannot simultaneously maintain that TnW's business is sufficiently intertwined with TNT such that a joint venture exists, but any harm to TnW's business is independent. In any event, a JNOV is required—either the businesses were sufficiently separate such that no joint venture exists as a matter of law, *see supra* pp. 16–24, or the alleged harm is to the joint venture and Respondents' claim fails as a matter of law because they did not proceed derivatively.

III. Even if Respondents can bring a claim for breach of a joint venture agreement, the oral agreement is unenforceable because the jury found it falls within the Statute of Frauds.

The Statute of Frauds requires that a contract which cannot be performed within one year or which transfers an interest in real estate be in a writing signed by the parties. S.C. Code Ann. § 32-3-10; *Springob v. Univ. of S.C.*, 407 S.C. 490, 757 S.E.2d 384 (2014). The statute applies to joint venture agreements which will extend beyond one year or which are formed to transfer interests in real estate. 72 Am. Jur. 2d *Statute of Frauds* § 29; *see also Turner v. The Rams-Head Co.*, No. 3:05-2893-CMC-BM, 2007 WL 61014, at *5 (D.S.C. Jan. 5, 2007) (citing cases holding that a joint venture of indefinite duration violates the Statute of Frauds). To satisfy the statute, there must be a writing signed by the party against whom enforcement is sought. *Cash v. Maddox,* 265 S.C. 480, 484, 220 S.E.2d 121, 122 (1975) (citing *Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975)). Even though the Statute of Frauds is an affirmative defense, the burden to show that the statute has been satisfied is with the plaintiff. *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007). Any factual disputes about the statute must be submitted to the jury. *Benya v. Gamble*, 282 S.C. 624, 628–29, 321 S.E.2d 57, 60 (Ct. App. 1984).

Here, the jury found that the joint venture agreement cannot be performed within one year *and* involves the transfer of an interest in real estate.[6] Verdict Form at 4. Respondents therefore had to prove either that a signed writing exists or an exception to the statute applies. But there is no signed writing. So Respondents argued, and the circuit court found, that part performance of the oral contract satisfied the Statute of Frauds. JNOV Order at 4–5. This finding was wrong for two independent reasons.

First, the doctrine of part performance does not save a contract which cannot be performed within one year from the Statute of Frauds; only full performance by one party will. *See S. States Life Ins. v. Foster*, 229 F.2d 77, 81 (4th Cir. 1956) ("Again, for part performance to put the agreement beyond the pale of the statute, the claimant must, save under exceptional circumstances first acquit himself of his burdens in full, leaving only the other party in non-compliance.") (applying South Carolina law); *see also Coker v. Richtex Corp.*, 261 S.C. 402, 406, 200 S.E.2d 231, 232 (1973) ("Our courts have long recognized the majority rule that full performance by one side will take the entire contract out of the one year clause of the statute of frauds."). Because there is no suggestion that the parties fully performed the agreement, the Statute of Frauds bars Respondents' claim. For this reason alone, the circuit court erred in upholding the jury's verdict on breach of the joint venture agreement.

Second, TnW failed to put the question of part performance to the jury. The parties asked the jury to decide whether the agreement could be performed within one year or involved a

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[6] Respondents do not want title in TNT's land, but they do want an easement over it. Trial Tr. at 926. Easements are subject to the Statute of Frauds. *Rogers v. River Hills Ltd. P'Ship*, No. 4:09-cv-1540-JMC, 2011 WL 4808207, at *3 (D.S.C. Oct. 7, 2011); *Trammell v. Trammell*, 45 S.C.L. (11 Rich.) 471, 474–75 (1858).

real-estate interest. But Respondents never asked the jury to make a finding on part performance even though whether and how much the parties partially performed their alleged oral agreement was a contested issue. It was Respondents' burden to obtain this finding from the jury. *Benya*, 282 S.C. at 628–29, 321 S.E.2d at 60. Because Respondents did not obtain that finding, the only record before the circuit court and this Court is that the Statute of Frauds applies and there is no written agreement. Those findings require that a JNOV be entered on this claim.

Because the Statute of Frauds bars Respondents' claim for breach of a joint venture agreement, the court erred in denying a JNOV.

IV. The circuit court erred in upholding the jury's interference with contract verdict because the jury awarded damages for five years of losses when the contract at issue is a month-to-month lease with no evidence of how long it would last and TnW promptly entered a new lease.

The circuit court put both tortious interference with contract and interference with prospective economic relations to the jury. A tortious interference claim requires proof of a valid contract, the defendant's knowledge of the contract, the defendants' intentional procurement of its breach without justification, and resulting damages. *Dutch Fork Dev. Grp. II, LLC v. SEL Props. LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012). The elements of an interference with prospective contractual relations claim are "(1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff." *United Educ. Distribs., LLC v. Educ. Testing Serv.*, 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2022). There also must be "an identifiable contract or expectation." *Id.* The contract therefore must be "a close certainty" and not speculative. *Id.* at 17, 564 S.E.2d at 330. For either claim, "neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation." *Austin*, 387 S.C. at 43, 691 S.E.2d at 146; *see also Rd., LLC v.*

Beaufort Cnty., 433 S.C. 164, 177, 857 S.E.2d 371, 377 (Ct. App. 2021), *aff'd on other grounds*, 443 S.C. 11, 902 S.E.2d 366 (2024) (affirming JNOV where "the jury would have been left to speculate as to what damages [Plaintiff] suffered"); *Collins Music Co. v. Ingram*, 292 S.C. 537, 541, 357 S.E.2d 484, 486 (Ct. App. 1987) (holding that a plaintiff must prove "it is reasonably certain that profits would have been realized but for the tort" and that the amount can be calculated "with reasonable certainty").

Respondents limited their claim to one alleged contract: a $10,000 month-to-month lease with Eric Rolf to conduct jet ski rentals using TnW's docks. *See* Trial Tr. at 304–05, 355; Respondents' Ex. 37 at 2. Respondents offered no evidence of how long TnW and Rolf expected this contract to continue but for TNT's alleged interference. Regardless, Respondents promptly entered a new lease after Rolf left. *Id.* at 1175. The jury's $600,000 award, which represents 60 months of lease payments from Rolf, therefore is speculative and unsupported by the evidence.

In its order denying a JNOV, the circuit court held the award was reasonable because the jury was charged with unforeseen damages, damage to reputation, and damage from loss of employees, customers, and goodwill. JNOV Order at 6–7. But Respondents introduced no evidence supporting any such damages, much less how they were caused by any interference with Rolf's contract which resulted in little to no interruption of jet ski rentals.

Therefore, the jury's verdict awarding damages for tortious interference is unreasonable, unsupported by the record, and should be overturned. At a minimum, the circuit abused its discretion by not granting a new trial nisi remittitur because the verdict is excessive considering the evidence presented. *See Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 637, 529 S.E.2d 758, 762 (Ct. App. 2000).

Conclusion

This Court should reverse the judgment against TNT. The evidence established separate businesses operating alongside one another—not a joint venture with a distinct common purpose, mutual control, and shared profits and losses as South Carolina law requires. Adopting the circuit court's position would drastically alter business relationships throughout the State and have dramatic downstream effects well beyond the parties here. Because no reasonable jury could find a joint venture exists under the proper standard, the circuit court erred in denying TNT's motion for a JNOV.

Other errors require reversal as well. The jury found the alleged agreement could not be performed within one year and was to transfer of an interest in real property, but there is no signed writing or evidence exempting the agreement from the Statute of Frauds. Nor are Respondents even the proper party to bring a claim for breach of a joint venture agreement, as they are not the injured party—the joint venture, which is not a plaintiff, is. Finally, the five years' worth of damages awarded for interference with contract are unsupported by, and contradicted by, the record which shows no interruption in jet ski rentals.

This Court should reverse and remand for entry of a JNOV as to TNT on all claims, or a JNOV as to the breach of joint venture agreement claim and a new trial nisi remittitur on the interference claim.

[Signature page follows]

Respectfully submitted,

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