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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Thomas William 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 RESPONDENT

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I. Whether the Trial Court properly granted summary judgment to Respondent.

STATEMENT OF THE CASE[1]

This matter comes before this Court pursuant to a Notice of Appeal filed by RECO Commercial Systems, LLC f/k/a RECO USA ("RECO") and Dunbar Road, LLC ("Dunbar") (collectively, "Appellants") on September 18, 2025. Appellants seek to reverse summary judgment granted in favor of Limitless International Corp. ("Limitless" or "Respondent").

On August 27, 2024, Limitless filed a summons and complaint with the Lexington County Court of Commons Pleas alleging breach of contract and several other causes of action against Appellants and other defendants. [8/27/24 Summons and Complaint.] Appellants appeared and filed a motion to dismiss under Rule 12(b)(6), SCRCP, on September 12, 2024. [9/12/24 Mot. to Dismiss.] Respondent filed a memorandum in opposition on November 1, 2024. [11/1/24 Memo. in Opp.] The motion to dismiss was denied by the Honorable William P. Keesley by order signed and filed November 5, 2024. [11/5/24 Order.] On November 15, 2024, Appellants filed a motion to reconsider. [11/15/24 Mot. to Reconsider.] That motion, which is procedurally extraneous, was never ruled upon and Appellants have never answered.[2] Meanwhile, Respondent was able to settle with the other defendants in the case and stipulated to their dismissal. [11/9/24 Stipulation.]

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[1] To the extent that Appellants' Statement of the Case contains contested matters or criticisms of the Lower Court, it should be disregarded or stricken to comply with Rule 208(b)(1)(C), SCACR. Furthermore, Appellants' attempt to shoehorn Respondent's settlement with other defendants in the case as some sort of evidence of the merits of this case in Note 4 of their brief is inappropriate. *See* Rule 408, SCRE.

[2] Appellants appear to believe this motion to reconsider tolled their deadline to answer, but the law provides for no such extension. *See* Rule 12(a), SCRCP (tolling for a motion to dismiss extends only until "15 days after notice" of the Court's denial); Rule 59(e) (applying only to a "judgment"); Rule 54(a) (defining "judgment" as an order "which dismisses the action as to any party or finally determines the rights of any party"). Appellants never filed an answer following the denial of their

Two months later, on January 16, 2025, Respondent, as plaintiff, filed a motion for summary judgment against Appellants. [1/16/25 Mot. for S.J.] The motion was supported by the affidavit of Mohammad Alkarmi, the president and CEO of Respondent, filed the together with the motion. [1/16/25 Aff. of Alkarmi.] Following a change of Appellants' counsel and a continuance, Respondent filed a memorandum supporting its motion for summary judgment on April 14, 2025. [4/14/25 Memo. in Sppt.] On the same day, Appellants filed a memorandum in opposition, supported by the affidavit of William E. Newbauer III, the CEO of The Nudyne Group, LLC, f/k/a HEH Holdings, LLC, the parent company of RECO. [4/14/25 Memo. in Opp. & Aff. of Newbauer I.] Following a ruling on Respondent's motion to compel, a further continuance, and a second change of Appellant's counsel, a second affidavit by Mr. Newbauer was filed on June 23, 2025. [Aff. of Newbauer II.]

A hearing on the motion for summary judgment was held by the Honorable Thomas William McGee III on June 24, 2025. [6/25/25 Form 4; Transcript.] The Trial Court allowed the parties to submit supplemental briefing following the hearing. [*Id.*] On July 1, 2025, Appellants filed a supplemental brief. [7/1/25 Brief.] On July 3, 2025, Respondent filed a supplemental reply. [7/3/25 Reply.] On July 24, 2025, Judge McGee filed a form order stating that Respondent's motion would be granted and directing the filing of a formal order. [7/24/25 Form 4.] On August 21, 2025, a formal order granting summary judgment was filed. [8/21/25 Order.]

Following this order, Appellants' counsel changed for the third time. [8/29/25 Notice.] Appellants filed a motion to alter or amend on August 29, 2025. [8/29/25 Motion.] Respondent

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motion to dismiss, which they were required to do because the denial of a motion to dismiss is not a judgment. Because Defendants have failed to timely file a responsive pleading, Defendants are arguably in default pursuant to Rule 55(a), SCRCP. However, because the trial court ruled on the merits of a summary judgment motion, this procedural issue need not be addressed at this time.

filed a reply on September 8, 2025. [9/8/25 Reply.] On September 11, 2025, Judge McGee denied the motion to reconsider. [9/11/25 Form 4.] This appeal followed. The parties have agreed that Appellants will deposit the amount of the judgment with the Clerk of Court pending the outcome of this appeal to forestall the necessity of any execution proceedings during the appeal. [10/17/25 Order.]

STANDARD OF REVIEW

This appeal concerns orders granting summary judgment to Respondent, as plaintiff. Thus, the Rule 56(c), SCRCP, standard of review applies. Under this rule, "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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." Rule 56(c), SCRCP. Our Supreme Court has recently reaffirmed the "genuine issue" standard contained in this rule, ruling that "a mere scintilla" standard is not applicable under this rule. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). When reviewing a Rule 56(c) case, the appellate court applies the same standard as the trial court. *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024) (citing *Knight v. Austin*, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012)). "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc*., 443 S.C. 424, 434, 904 S.E.2d 889, 895 (2024) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). "It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Id.* (citation omitted). Rather, a non-moving party must set forth specific facts that show a genuine issue for trial. *Id.*

STATEMENT OF THE FACTS

This case is about a deposit of nearly $100,000.00 that was made with a company called RECO Commercial Systems in Cayce, South Carolina. RECO fabricates tanks and systems related to the heating and storage of water and thermal energy in both the domestic and large-scale commercial arenas. Respondent acted as a third-party sales representative for RECO, bridging the gap between industrial equipment manufacturers like Appellant and commercial customers with potential applications for that equipment. In 2012, Respondent entered into a "Representative Sales Agreement" with "RECO USA" whereby it would market RECO's commercial products in specified countries and regions in the Middle East. [Sales Agreement.] In 2018, Respondent negotiated the purchase of more than a quarter million dollars in equipment from RECO. [Purchase Order]. As part of the transaction, 25% of the purchase price was required as a down payment. [Purchase Order]. One check of $37,657.75 was cut to RECO USA on May 31, 2019, followed by a check to RECO USA for $56,486.62 on June 19, 2019. [Purchase Order.] Respondent's bank statements from the bank, that was then known as BB&T, show both check amounts being debited from Respondent's account. [Bank Statements.] These checks totaled a deposit of $94,144.37 from Respondent to RECO USA.

Unfortunately, the equipment order had to be placed on hold and, due to the ongoing Covid-19 pandemic, ultimately never came to fruition.[3] [Aff Alkarmi, 6.]. Over time, Limitless made requests for the refund of the down payment, which was a significant sum of money that RECO received for nothing in exchange. [Aff. Alkarmi, 12; Email from Alkarmi.] Eventually,

[3] There is some semantic discussion in the record of whether this end result constituted a "cancellation," and if so, when. Regardless, of the terminology, it is undisputed and indisputable that the order was never fulfilled, that RECO retained the funds, and that Limitless is owed a refund.

RECO changed from one owner to another. This was memorialized in a January 2022 press release stating that HEH Holdings, LLC had acquired RECO USA. [Press Release.] The release indicated that "RECO's production will remain in South Carolina and the business will operate as RECO Commercial Systems, LLC." [*Id.*] Interestingly, the press release indicated that the company has been acquired as one of a portfolio of hot water storage-related companies. [*Id.*] The release did not say that it was merely a purchase of assets or a trade name, but suggested a wholesale purchase of the company. [*Id.*]

Following the press release, Respondent's role as outside sales representative continued uninterrupted for another year and a half. Eventually, however, RECO determined that it did not wish to continue the sales representative relationship and sent a letter to that effect. [Letter from Butcher.] At that time, Respondent reminded RECO of the outstanding deposit issue and requested a refund. [Letter to Butcher.] Because RECO refused to refund the six-figure amount that had been paid without receiving anything in return, Respondent was forced to file suit. The Circuit Court found that Appellant unambiguously owed a refund to Limitless based on Appellant's own Asset Purchase Agreement, which transferred to Appellant existing deposits. [08/21/2025 Order.] This appeal follows.

ARGUMENT

Respondent is owed the return of its deposit. Appellants do not dispute that the refund is owed—only that they should be the ones to pay it. The law does not give credence to the reasons Appellants put forward to support the contention that they do not owe a refund for a deposit paid to the company they purchased. Appellants explicitly bought the deposit when they bought the company—that fact is in black and white in the asset purchase agreement. [APA, pp. 1–2.] If Appellants believe that the funds (or the benefit of the funds) were not transferred to them by the

sellers of the business, that matter must be resolved between those parties. As the Trial Court found, there is no valid excuse for Appellants not to refund the deposit that Limitless made.

I. The Trial Court correctly granted summary judgment to Respondent.

As a matter of law, Appellants purchased the deposits paid to RECO by Limitless. The APA is clear on this point. When a contract is unambiguous, the issue can be properly decided on summary judgment. *See Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison S.p.A.*, 465 S.E.2d 765, 771, 320 S.C. 470, 477 (Ct. App. 1995) (citing *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct. App. 1987)) ("The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment."). Rather, than abide by the self-evident language of the APA as a matter of law, Appellants seek to create issues of fact where none lie.

a. Where there are no genuine issues of material fact, summary judgment must be granted.

Notably, Appellants have not argued that the money is not due and owing to Respondents—instead they argue it is owed by someone else. The law in South Carolina has long held that unless there is an explicit forfeiture, liquidated damages, or non-refundable provision included in a contract, a deposit must be refunded. *See Graham v. Nesmith*, 24 S. C. 285, 286 (1886) (forfeiture clause allowed keeping deposit); *see generally Tate v. Le Master*, 231 S.C. 429, 99 S.E.2d 39 (1957) (affirming refund to plaintiff for down payment paid under oral contract). Even if there is such a clause, a refund may still be dictated if the clause amounts to an unenforceable penalty out of proportion with the probable damage. *See Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002). The fact that the money should be returned cannot be disputed.

b. Appellants clearly purchased the deposit Respondent paid.

The only question put to the Trial Court was whether the refund is owed by Appellants. The APA entered into by Appellants when they took over RECO clearly and specifically answers that question.

> **1.1 Purchase and Sale of Purchased Assets.** Subject to the terms and conditions of this Agreement . . . the Purchaser shall purchase . . . and the Seller shall sell . . . all of the Seller's assets and properties of every kind, other than the Excluded Assets . . . , including without limitation the following:
>
> ***
>
> (i) all sale orders, customer orders, open bids, warranties, prepaid expenses, deposits, retentions and refunds . . . .

[APA, pp. 1–2 (bold in original; underline added).]

This language could not be any clearer: Appellants purchased "prepaid expenses, deposits, retentions and refunds." Respondent paid a deposit. Appellants bought that deposit and owe a refund. Appellants complain that it is myopic to focus on this contract language, but the fact is, it is the applicable language, specifically addressing the issue at hand. To decline to apply it would violate the rules of contract law. A contract can only be considered ambiguous when it may fairly and reasonably be understood in more ways than one. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975)). "Where the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." *Id.* (citing *Blakeley v. Rabon*, 266 S.C. 68, 221 S.E.2d 767 (1976)).

Appellants argue in their brief that the APA was by its terms "a limited transaction involving the purchase of only limited assets . . . ." [App. In. Br., p. 9.] However, this is belied by the plain language of the agreement, which is structured to include everything but a list of excluded items. ([APA, p. 1 ("the Purchaser shall purchase from the Seller . . . all of the Seller's

assets and properties of every kind, other than the Excluded Assets").] Indeed, this is reiterated a second time in the agreement, which has a catchall for purchase of "all assets used in the Business that are not Excluded Assets." [APA, p. 2.] This is not a limited agreement, but rather a broad agreement structured on a model of specific exclusion and general inclusion. However, the APA nonetheless also explicitly includes the deposits, like that at issue in this case. Moreover, nowhere in the excluded assets list does it include customer orders, refunds, or deposits, like those listed in the purchased assets. [*See* APA, pp. 2–3.]

Indeed, even should the contract be considered ambiguous, there are still a number of reasons that the more specific provision would prevail over the general provisions argued by Appellants. For instance, Appellants attempt to argue that the deposit at issue is actually "indebtedness" excluded by the APA, but this argument ignores that the definition of indebtedness does not address deposits. The plain language definition of indebtedness clearly refers to debt based upon borrowing or using credit and does not address customer orders or deposits.

> Indebtedness is defined in the contract as "(i) all principal, interest, fees, expenses, premiums, payments and other obligations in respect of borrowed money, notes, bonds, debentures and other debt securities, guarantees, interest rate, currency or other hedging arrangements, capital leases, letters of credit, deferred purchase price for services or assets (other than trade payables incurred in the ordinary course of business and part of the Assumed Liabilities), shareholder loans, and/or installment purchases incurred by the Seller prior to the Closing, or required to be paid in order to discharge fully all such amounts as of the Closing and (ii) all accounts payable outstanding in excess of sixty (60) days, all deferred revenue and all credit card payables, in each case as of immediately prior to the closing.

[APA, pp. 5–6.]

Further, it is inaccurate for Appellants to suggest that the deposit should be considered as a liability under Section 1.3 and 1.4 of the contract. The APA does not refer to customer orders as "contracts;" but rather actually uses the terms "sale orders, customer orders, [or] open bids." [*Compare* APA ¶ 1.1(f) (addressing rights under contracts) *with* ¶ 1.1(i) (addressing customer

orders).] If the contract intended to exclude any liability for refunding customer deposits, it would say so, just like it includes deposits as an asset. Appellants attempt to fill that clear omission in the contract, by using "indebtedness" but that term, as defined, also does not include order deposits. Resorting to inapplicable, general terms does not change the plain language of the contract as it concerns deposits.

c. The Lower Court reached the correct result.

In arguing this case, Appellants assert that the deposit alchemized from a deposit to a liability.[4] However, Appellants fail to acknowledge that the deposit just as likely turned into the assets they purchased, including "all tangible assets" such as equipment or computers, all inventories, including "work in process" and "raw materials," and "all other assets used in the Business." At the motion hearing on this matter, Appellants' counsel told the Court that Appellants did not purchase the deposit as an asset in the APA. When asked, "How do you know?," Appellants' then-counsel answered, "Based on the conversations with my client[.]". [Transcript, p. 9, l. 25–p. 10, l. 2.] The statements of an attorney during oral argument are not admissible evidence. *Ex Parte Morris*, 624 S.E.2d 649, 653, 367 S.C. 56, 64 (2006) (citing *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) and *S.C. Dept. of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003)). Appellants may not survive a motion for summary judgment if they do not put forth evidence of a genuine issue. *See* Rule 56(e), SCRCP (when a summary judgment motion is made an adverse party may not simply assert denials but must show a genuine issue for trial). "I would like to try to be able to figure out" where the checks went is not sufficient evidence to survive summary judgment, particularly when Appellants

[4] This argument is based on upon a request for the funds to be returned prior to Appellants' purchase of the company. The fact that the sellers did not pay back the deposit at the time is just further evidence that the deposit was one of the assets to be transferred to Appellant via the APA.

purchased "all Seller data and information," including all "books and records, technical data, financial, accounting and operating data, . . . sales and promotional data, advertising materials, credit information, [and] cost and pricing information, customer, supplier and service provider lists," among other things. [Transcript at p. 12, l. 5; APA at ¶ 1.1(j).] Justice is meant to be efficient, but in this case Appellants had to be compelled to provide discovery and yet still could not provide any evidence refuting the evidence laid out before the Trial Court. [*See* 05/06/2025 Order (order requiring Defendants to produce the bank records relevant to the check deposits or affidavit showing lack of access).].

Appellants' contention in their brief that the order denying the motion to dismiss recognized a "disagreement among the parties regarding the contours of Appellants' Asset Purchase Agreement" is simply wrong. [Initial Brief, p. 4 (italics omitted)]. What the Lower Court found when denying the motion to dismiss was that "plaintiff has requested the purchase agreement, which the defendants have failed to provide." [Dismissal Order, p. 4 (emphasis added).] After Respondents finally received a copy of the asset purchase agreement, they presented it to the Trial Court in arguing Respondent's motion for summary judgment, at which time it was first reviewed by the Trial Court. The Trial Court evidently found no ambiguity. Specifically, Judge McGee stated at the hearing "[the APA] says that it purchased the deposits. This is a deposit." [Transcript, p. 23, ll. 16–17.]

The entry of summary judgment is only premature if a party can demonstrate that the time had for discovery was insufficient and that additional discovery would turn up a genuine issue for trial and not merely be a fishing expedition. *See Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433,439 (2003). In this case, Appellants delayed discovery by forcing a motion to compel. [10/31/2024 Motion to Compel.] Further, Appellants should not even need discovery to locate

and examine the data they explicitly purchased in APA. [APA at ¶ 1.1(j).]. The order granting summary judgment was filed on July 24, 2025, nearly a full year after the complaint was filed in the case. [07/24/2025 Order.]. There is no reason Appellants could not have conducted any desired discovery during this time. Indeed, this order was entered two and a half months after Appellants had been court-ordered to search for related banking records. [Order on Mot. to Compel (order compelling discovery dated May 6, 2025).] The Lower Court even allowed additional briefing after the motion hearing to ensure that all parties had a full and fair airing of their evidence and arguments. [06/25/2025 Order.] The fact is that any further paper trail would not change the outcome of the motion: Appellants purchased the deposit and the deposit is due and owing to Respondent. Any dispute between the purchaser and seller of the deposit is a matter for them to resolve between themselves. The rules of contract construction are not needed when a contract is unambiguous, as is the case here—a deposit is a deposit.

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CONCLUSION

There is no prematurity and no ambiguity in this. Appellants had every opportunity to defend their position in this matter but instead held up discovery. The contract which was eventually produced shows by its plain language that Appellants purchased the deposit paid by Respondent. The Lower Court correctly found that the Appellants should refund the remaining balance of that deposit. For these reasons, Respondent asks that this Honorable Court affirm the order of the Lower Court granting summary judgment.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned attorney certifies that the foregoing **Initial Brief of Respondent** was served upon the following counsel by email to currently registered AIS email address, pursuant Rule 262, SCACR, and order of the Supreme Court dated April 24, 2024.

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