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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Thomas W. McGee III, Circuit Court Judge

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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.

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# INITIAL REPLY BRIEF OF APPELLANTS

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## INTRODUCTION

In its Brief, Respondent Limitless International Corp. ("Limitless") relies on an overly simplistic equities syllogism – Limitless paid a deposit, its order was not fulfilled, thus, Limitless is owed a refund by Appellant RECO Commercial Systems, LLC. But that argument ignores key facts and factual disputes, and it places inappropriate, misleading, and unbearable weight on the word "deposits" in the Asset Purchase Agreement between American Investors d/b/a RECO USA[1] as "Seller" and Appellants as "Purchasers" dated December 29, 2021 ("the APA").

The myopic view Limitless asks this Court to adopt by upholding the lower court's grant of summary judgment ignores critical and disputed facts, including the omission of any cash representing a deposit being transferred to Appellants from Seller. Limitless takes "deposits" made to RECO Commercial Systems, LLC[2] (which should have read Seller) out of context and disregards the attendant exclusions for liabilities of the Seller under the APA's assumed-liability and excluded-liability structure. Limitless incorrectly infers, based on disputed facts, that Appellants are deemed not only to have purchased all of Seller's assets but also to have assumed the "liabilities" of Seller. Limitless fundamentally misunderstands or ignores the difference

[1] Although the APA defines Seller only as American Investors, LLC, the recitals acknowledge that Seller is commonly marketed and referred to as RECO USA (APA Recitals, p. 1). The inconvenient facts for Limitless are that its purchase order was placed with the Seller and that Appellants are not a mere continuation of Seller. Rather, Appellants' rights and obligations are strictly governed by the terms of the assumed-liability and excluded liability structure of the APA.

[2] In its Brief, Limitless erroneously refers to RECO Commercial Systems as the entity to whom the deposit of $100,000.00 was made (rather than the Seller). Further, it misconstrues from the outset the relationship of Seller to Purchasers, incorrectly characterizing the purchase under the APA as a "sale of the company." Moreover, in its Complaint, Limitless mischaracterizes RECO Commercial Systems, LLC as f/k/a RECO USA. Pursuant to the APA, RECO USA is only a trademark assigned to RECO Commercial Systems, LLC, 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, LLC of all liabilities and assets of the Seller via a purchase of Seller's membership interests.

between assets and liabilities. The dispute surrounding these pivotal terms is critical to the analysis of this case, particularly through the lens of the trial court's summary judgment ruling. Refunds may constitute an asset if owed to a party or they may constitute a liability if owed by a party. Limitless offers no citation to the APA or other evidence in support of its position that Appellants were sold "refunds" (obligations to pay money owed to Seller) as part of the sale of sales orders and deposits, while also assuming that the refund deposit at issue is a liability that the owner of the asset, the Appellants (as transferees from the Seller), owed. Contrary to the narrow reading of one sentence of the APA upon which Limitless bases its entire argument, Appellants did not purchase the liability to refund any cash deposit. Limitless' intentionally narrow view of the purchase transaction as one governed only by one sentence demonstrates its fundamental misunderstanding of the APA and is wholly inconsistent with South Carolina law that requires contracts to be read and enforced as a whole. The trial court erred in permitting Limitless to cherry pick only those portions of the APA that are most favorable to its position, clearly ignoring contrary disputed facts and precedential State law.

Limitless continues to ignore salient questions of fact that should have precluded summary judgment in this case. Irrespective of Limitless' mischaracterization of its own cancellation of its purchase order with Seller in December of 2020 as a "semantic discussion," the facts surrounding the cancellation are unquestionably in dispute. (Resp't's Br., p. 4) Those disputed facts are material because they bear directly on whether any "sale order" existed to be transferred at the December 29, 2021 closing and, if not, whether any refund obligation arose pre-closing as a Seller liability. To this point, the record contains clearly disputed facts surrounding the Limitless order cancellation to wit; i) a contemporaneous email correspondence to Seller evidencing the cancellation of the Limitless order and demanding the refund of the deposit made to Seller nearly a year before the Appellants were formed, and before the APA was negotiated, signed and closed

versus ii) an after-the-fact affidavit by Limitless stating that the Limitless order was never cancelled. Both cannot be true, and that factual dispute should not have been resolved by the trial court at the summary judgment stage.

Limitless also ignores the fact that the standard terms and conditions governing its order, which likely addressed cancellation, force majeure, deposit retention and refund, and offsets, are not in the record. Indeed, the only record evidence Limitless offers to support its contention that it is entitled to a full refund of its deposit is the fact that its checks were debited from its account. It ignores the fact that because of the dates of the deposit of its checks, the checks in question clearly were deposited to the bank account of the Seller, as Appellants did not have bank accounts on the dates of those deposits because they were not yet formed. Nevertheless, Limitless argues that "a deposit of nearly $100,000.00 that was made with a company called RECO Commercial Systems in Cayce, South Carolina." (Resp't's Br., p. 4) Clearly, Limitless has conflated facts to suit its own purposes as this statement is inconsistent with the record on appeal. Limitless also fails to assert any evidence of, or even a theory regarding, the logistics by which Appellants obtained possession of the deposit of Limitless because, per the APA, no cash representing the deposit or otherwise was transferred by Seller to Appellants. The APA, on its face, says no cash $0.00 (APA, p. 1, § 1.1-1.1(a); *see also* APA Schedule 3.26) was purchased, and, thus, it necessarily follows that the closing statement would not show cash in any amount that was transferred from the Seller to the Appellants. For these reasons, the trial court clearly erred in granting summary judgment to Limitless while abundant factual disputes existed, and it should be reversed.

## ARGUMENT

From the jump, the lack of attention to detail in the Brief of Respondent belies the fatal flaws in Limitless' arguments. As stated above, the assertion that Limitless paid a deposit to a company called "RECO Commercial Systems" is patently false. In point of fact, Limitless paid its

deposit in two payments to RECO USA, the d/b/a of the Seller on or about May 13, 2019, and June 19, 2019. (June 23, 2025 Aff. of W. Newbauer, Ex. B. to Aff.) At the time of these deposits, RECO Commercial Systems, LLC, the operating arm of Appellants, did not exist and was not organized as a South Carolina limited liability company until November 1, 2021. It did not have a checking account until at least December 6, 2021. Nothing in the APA recognizes any payments of cash by Seller to Appellants. Thus, both the creation of the operating entity, RECO Commercial Systems, LLC and the opening of its bank account occurred well *after* Mr. Alkarmi delivered his email correspondence to Seller on December 8, 2020, cancelling the Limitless order placed with Seller and demanding a refund of the deposit money paid.

Limitless relies on a press release in its misguided effort to argue Appellants are liable for refunding deposited funds they never received. The argument goes that the press release defined the relationship of RECO Commercial Systems and the Seller, which was doing business as RECO USA, as a wholesale purchase and continuation of business as usual of the Seller by Appellants. But this argument ignores the terms of the definitive agreement governing the sale, the APA, which clearly articulates the differences in transferred and excluded assets and liabilities. Relying on a press release to define a legal relationship governed by contract is not only misdirected and misleading, but it also illuminates of the weaknesses of Limitless' case. The order granting summary judgment should be reversed, because Limitless' argument related to Appellants' alleged obligation to return deposit money it did not receive and for which it assumed no liability is not supported by law or fact.

## I. SUMMARY JUDGMENT WAS IMPROPER WHERE FACTUAL ISSUES EXIST REGARDING CANCELLATION OF THE LIMIITLESS ORDER.

In a one-paragraph section of its argument, Limitless incorrectly asserts there are no genuine issues of fact and that summary judgment was properly awarded. To the contrary, Appellants have pointed out numerous inconvenient questions of fact that Limitless simply chose not to address, and the law Limitless cites is inapposite. (Resp't's Br., p. 6 (collecting cases)) This is not a forfeiture case, and the outcome does not hinge on the existence of an oral contract. Rather, and as addressed in the next section, the rights and obligations of the parties are defined in the APA, both of which Limitless and the trial court failed to read and apply as a whole.

To the above point, while Limitless dismissively characterizes the issue of its cancellation of its purchase order in December of 2020 as a "semantic discussion," the disputed cancellation of the purchase order remains one of the clearest and most prominent examples of a genuine issue of material fact that predominates in this dispute. The record closest in time to the events in question is Mr. Alkarmi's emailed cancellation notice in December 2020 (together with a demand for the return of its deposit) (June 23, 2025 Aff. of W. Newbauer, Ex. C. to Aff.), which stands in direct contrast to Mr. Alkarmi's later self-serving affidavit indicating the order was never cancelled. (Pl.'s Memo. in Support of Mot. for Summ. J., p. 5; Ex. A to Memo. (Alkarmi Aff.), § 6) Moreover, the less than fully developed record contains a dearth of evidence regarding the terms and conditions that governed the transaction between Limitless and Seller that likely explain: (1) whether Limitless was entitled to a refund when it initiated cancellation; (2) whether Seller was entitled to any liquidated damages or cost-plus offset; and (3) whether Mr. Alkarmi's force majeure language excused performance or allowed restitution. Indeed, at oral argument of the summary judgment motion, counsel for Limitless conceded that some of the disputed deposit money likely "was spent [by Seller] on engineering costs and payroll." (Hr.'g Trans., p. 6, lines 12-21)

The salient facts as they exist in the record are disputed. While they may (or may not) support the conclusion that Limitless is entitled to at least a partial refund, that refund is not due and owing from Appellants. To conclude otherwise relies on an intentionally narrow but incorrect reading of the APA. Simply put, it was improper for the trial court to make credibility determinations at the summary judgment stage, particularly where the record was not fully developed and where the facts and arguments asserted in support of summary judgment contradict the record as it existed at the hearing by the trial court. The order below should thus be reversed because it is not supported by the record or the standards in applicable law by which summary judgment is appropriate.

## II. SUMMARY JUDGMENT WAS IMPROPERLY GRANTED WHERE THE TRIAL COURT FAILED TO CONSTRUE THE APA AS A WHOLE.

Limitless seeks to elevate one section of the APA – Section 1.1, Purchase and Sale of Purchased Assets – at the expense of all others. The trial court erred in allowing it to do so. That misplaced elevation of one section of the APA over the others misconstrues the intent of the fully negotiated APA, which includes many other terms that supplement and/or alter the intent of the language in Section 1.1. Specifically, the preamble to that Section 1.1 makes the entire section "**subject to the terms and conditions of the [APA]**" and indicates that any sale, conveyance or transfer is to be "free and clear of all liens, security interests, mortgage, encumbrances, **adverse claims** and restrictions of any kind." (Emphasis added)

Black letter South Carolina law dictates that courts are "bound to interpret the agreement by looking at the entire agreement from beginning to end: precedent explains that when construing a contract, 'all of its provisions should be considered, and one may not, by pointing out a single sentence or clause, create an ambiguity.'" *Herrington v. SSC Seneca Operating Company, LLC*, 435 S.C. 243, 248, 866 S.E.2d 579, 581 (Ct. App. 2021) (quoting *Yarborough v. Phoenix Mut. Life*

*Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)). To that end, courts "assume the parties intended a meaningful agreement, not a nonsensical or absurd one, so we read agreements in a way that 'will give effect to the whole instrument and to each of its various parts and provisions, if it is reasonable to do so.'" *Id.* (internal citation omitted). The reading of the APA suggested by Limitless does real violence to this precedential mandate.

The law simply does not allow a party to a contract to cherry pick the terms it likes and ignore the terms it does not like in support of a motion for summary judgment, as Limitless attempts to do here. Limitless' tortured reading of the APA, identifying only one section at the peril of all others, is inconsistent with the law in this State and cannot stand because it is a thinly veiled but improper shifting of the burden of proof. According to Limitless, Appellants are responsible for a return of its deposit regardless of whether Appellants can locate the funds of the Seller it never received or had access to, nor can Appellants protect against liabilities that predated their purchase of certain of Seller's assets based on other negotiated terms in the APA. Limitless asserts Appellants nevertheless must be required to pay Seller's obligations to refund a deposit just because the word "deposit" appears in Section 1 of the APA. This is a leap that is unsupported by the facts or the law. To reach that result, Limitless and the trial court erroneously failed to consider the APA as a whole, including its provisions governing "Excluded Assets," "Assumed Liabilities," "Excluded Liabilities," and schedule-based limitations all found in Appellants' Brief. *See* Appellants' Br., pp. 10-14.

Going further, Limitless improperly ignores that a "deposit" associated with a purchase order in Section 1.1 of the APA is not shown in this record to have been transferred to Appellants at closing, and the APA reflects that "Acquired Cash" was $0.00. Limitless assumes that because the APA references purchase orders and deposits, it necessarily follows that Appellants both actually received the deposit in the form of cash and assumed the liability to refund it. Those

assumptions are clearly disputed by the facts and the APA in evidence.

Limitless has not (and cannot, based upon the language of the APA) offered any support for these assumptions. Factual questions abound regarding where, precisely, in the APA Appellants expressly assumed a pre-closing refund liability arising when there is no evidence that any cash, representing the Limitless deposit or otherwise, was transferred at closing. As the Affidavit of William E. Newbauer III makes clear, despite the demand by Limitless to refund its deposit made to Seller in December of 2020, Seller never paid that deposit to Limitless at closing, and therefore, all that remained at closing was the Seller's liability[3] to refund the Limitless deposit, a liability Appellants have disputed from their initial pleadings, through summary judgment, and beyond, including in their supplemental materials submitted thereafter. (June 23, 2025 Aff. of W. Newbaur, ¶¶ 10-17) Limitless simply cannot explain why the right to request a refund or its deposit paid to Seller by Limitless would not be a liability instead of an asset. That likely is because that liability and all others, other than Assumed Liabilities, were expressly excluded in the APA. (APA, pp. 3-4, § 1.4) There are also questions of fact alluded to in the record (that would need to be developed prior to and at trial) that the Seller may have spent the deposit on payroll and contract preparation. (Hr.'g Trans., p. 6, lines 12-21) Not only was the cash deposit not transferred to Appellants at closing, but the deposit refund liability was excluded and expressly not assumed. (APA, pp. 3-4, § 1.4)

[3] There are only two ways to characterize the deposit Limitless paid to Seller that are consistent with the APA, either an asset or a liability. Either way, and as explained at length in their briefing on these issues, Appellants are not responsible for refunding any portion of the deposit to Limitless.

The record in this case simply does not support the narrow reading of the APA endorsed by Limitless and employed by the trial court to reach its ruling. The APA and its related schedules, taken as a whole, make clear that Appellants did not assume the duty to refund a deposit paid long before Appellants purchased the limited assets and liabilities described in the APA from the Seller, which included no cash or liabilities related to the Limitless contract and deposit with Seller. In point of fact, the real party in interest owing the refund of the Limitless deposit has been released from this action after paying a portion of the deposit at settlement. (November 9, 2024 Stipulation of Dismissal With Prejudice) Yet, Limitless continues to seek recovery for the balance of the deposit from a party with solid arguments and disputed facts regarding its nexus to that liability. Limitless' efforts to hold Appellants liable for the remaining balance of the deposit must fail or succeed on the facts and the law at trial after remand. As for this Appeal, however, the summary judgment order of the trial court should be reversed as the law requires.

## CONCLUSION

The Order granting summary judgment in favor of Limitless should be reversed, and this matter should be remanded for further proceedings.

Respectfully submitted,

March 19, 2026 By: s/ Carmelo B. Sammataro

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