

**RECEIVED**

**Apr 10 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS  
Case No. 2018-CP-42-03579

J. Mark Hayes, II, Circuit Court Judge

---

APPELLATE CASE NO.: 2025-000020

---

Chama Henson, as Trustee of the Lewis C. Mason Revocable Trust  
Dated September 6, 2001, as Amended and Restated June 19, 2008,  
d/b/a L.C. Mason Enterprises.....Appellant,

v.

Nabil E. Saleh, Amanda Shadon Miller and Sparkle City Motors.....Respondents.

---

**INITIAL BRIEF OF APPELLANT**

---

David A. Wilson  
Wilson & Englebardt, LLC  
200 Whitsett Street, Suite 100B  
Greenville, South Carolina 29601  
(864) 232-2329  
(864) 232-2350 (fax)  
[dwilson@greenvillesclaw.com](mailto:dwilson@greenvillesclaw.com)

Gary L. Compton, Esq.  
296 S. Morgan Avenue  
Spartanburg, South Carolina 29306  
(864) 583-5186  
[gary@garylcompton.com](mailto:gary@garylcompton.com)

Attorneys for Appellant

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL ..... 1

STATEMENT OF THE CASE .....2

STATEMENT OF FACTS .....6

STANDARD OF REVIEW ..... 14

ARGUMENTS ..... 15

**I. Because Appellant established that she sustained damages in the amount of \$757,701.33, the trial court erred in limiting the damages award to \$358,465.98 based upon findings not reasonably supported by the evidence.**

**I. Because Respondent Miller was either the sole owner of, or a partner in, Respondent Sparkle City Motors who signed a personal guaranty and other agreements supported by valuable consideration which obligated her to pay the debts of Sparkle City Motors, the trial court erred in not holding Miller jointly and severally liable for the debts owed to Appellant by Respondents.**

**II. Because Appellant did not engage in any unfair or deceptive acts which affected the public interest or caused Saleh actionable damages, the trial court erred in finding that Appellant “engaged in Unfair Trade Practices Act violations.”**

CONCLUSION .....33

## TABLE OF AUTHORITIES

### CASES

<u>Barnes v. Jones Chevrolet Co.</u> , 292 S.C. 607, 358 S.E.2d 156 (Ct. App. 1987) .....	28
<u>Branch Banking &amp; Trust Co. of S.C. v. Carolina Crank &amp; Core, Inc.</u> , 262 S.C. 647, 608 S.E.2d 896 (Ct. App. 2005) .....	23
<u>Carolina Chloride, Inc. v. Richland Cnty.</u> , 394 S.C. 154, 714 S.E.2d 869 (2011) ....	15, 19, 32, 33
<u>Chambers v. Pingree</u> , 351 S.C. 442, 570 S.E.2d 528 (Ct. App. 2002) .....	14
<u>Crafton v. Brown</u> , 346 S.C. 347, 550 S.E.2d 904 (Ct. App. 2001) .....	22, 26
<u>Daisy Outdoor Advertising Co. v. Abbott</u> , ___ S.C. ___, 473 S.E.2d 47 (1996) .....	32
<u>deBondt v. Carlton Motorcars, Inc.</u> , 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000) .....	28
<u>Dowd v. Imperial Chrysler-Plymouth</u> , 298 S.C. 439, 381 S.E.2d 212 (Ct. App. 1989) .....	28
<u>Eldeco, Inc. v. Charleston Cnty Sch. Dist.</u> , 372 S.C. 470, 642 S.E.2d 726 (2007) .....	14
<u>Fibkins v. Fibkins</u> , 303 S.C. 112, 399 S.E.2d 158 (Ct. App. 1990) .....	14
<u>Fuller v. E. Fire &amp; Cas. Ins. Co.</u> , 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962) .....	15
<u>Future Group, II, V. NationsBank</u> , 324 S.C. 89, 478 S.E.2d 45 (1996) .....	22
<u>Haley Nursery Co. v. Forrest</u> , 298 S.C. 520, 381 S.E.2d 906 (1989) .....	28
<u>Havird Oil Co. v. Marathon Oil Co.</u> , 149 F.3d 283, 291 (4th Cir. 1998) .....	33
<u>Hope Petty Motors of Columbia, Inc. v. Hyatt</u> , 310 S.C. 171, 425 S.E. 2d 786 (Ct. App. 1992)..	22
<u>Inman v. Ken Hyatt Chrysler Plymouth</u> , 294 S.C. 240, 363 S.E.2d 691 (1988) .....	28
<u>Jordan v. Holt</u> , 362 S.C. 201, 608 S.E.2d 129 (2005) .....	14
<u>Mansour v. Massey</u> , 286 S.C. 176, 336 S.E.2d 15 (1985) .....	27
<u>Maybank v. BB&amp;T Corp</u> , 416 S.C. 541, 787 S.E.2d 498 (2016) .....	28
<u>Minter v. GOCT, Inc.</u> , 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996) .....	16
<u>Noack Enterprises, Inc. v. County Corner Interiors, Inc.</u> , ___ S.C. ___, 351 S.E.2d 347 (1986) ....	32
<u>Potomac Leasing Co. v. Bone</u> , 294 S.C. 494, 366 S.E.2d 26 (Ct. App. 1988)..	28
<u>Singleton v. Stokes Motors, Inc.</u> , 358 S.C. 369, 595 S.E.2d 461 (2004) .....	31
<u>S. Bank &amp; Trust Co. v. Harley</u> , 295 S.C. 423, 368 S.E.2d 908 (1988) .....	14
<u>Thornton v. Johnsen</u> , C.A. No. 6:20-CV-01449 (D.S.C. 2020) .....	32
<u>Townes Associates, LTD. v. City of Greenville</u> , 266 S.C. 81, 221 S.E.2d 773 (1976) .....	14
<u>Wingard v. Exxon Co., USA</u> , 819 F. Supp.. 497, 506 (D.S.C. 1992) .....	28
<u>Wogan v. Kunze</u> , 366 S.C. 583, 623 S.E.2d 107 (Ct. App. 2005) .....	28
<u>Wright v. Craft</u> , 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006) .....	31

### STATUTES

S.C. Code Ann. §33-41-370(2) .....	27
S.C. Code Ann §39-5-20(a) .....	27
S.C. Code Ann. §39-5-40 .....	28
S.C. Code Ann §56-15-10 .....	28

**STATEMENT OF ISSUES ON APPEAL**

- I. **DID THE TRIAL COURT ERR IN AWARDING DAMAGES IN FAVOR OF APPELLANT IN THE AMOUNT OF ONLY \$358,465.98 WHEN THE EVIDENCE ESTABLISHED THAT APPELLANT SUSTAINED \$757,701.44 IN ACTUAL DAMAGES AND THE TRIAL COURT'S FINDINGS ON THE ISSUE OF DAMAGES WERE WITHOUT EVIDENCE REASONABLY SUPPORTING THE FINDINGS?**
  
- II. **DID THE TRIAL COURT ERR IN FAILING TO FIND RESPONDENT MILLER JOINTLY AND SEVERALLY LIABLE FOR ALL OF APPELLANT'S DAMAGES WHEN MILLER WAS EITHER THE SOLE OWNER OF, OR A PARTNER IN, SPARKLE CITY MOTORS WHO SIGNED AN ENFORCEABLE PERSONAL GUARANTY SUPPORTED BY VALUABLE CONSIDERATION OBLIGATING HER TO PAY THE DEBTS OF SPARKLE CITY MOTORS?**
  
- III. **DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT "ENGAGED IN UNFAIR TRADE PRACTICES VIOLATIONS" WHEN APPELLANT DID NOT ENGAGE IN ANY UNFAIR OR DECEPTIVE ACTS WHICH AFFECTED THE PUBLIC INTEREST OR CAUSED RESPONDENT SALEH ANY ACTIONABLE DAMAGES?**

## STATEMENT OF THE CASE

This case commenced upon the filing of the Complaint on October 12, 2018. (ROA p.\_\_\_\_, Complaint). In this Complaint, Charna Henson, as Trustee of the Lewis C. Mason Revocable Trust Dated September 6, 2001, as Amended and Restated June 19, 2008, d/b/a L.C. Mason Enterprises (hereinafter referred to as “Appellant”) alleged cause of actions for default on a promissory note, conversion, equitable mortgage, breach of contract, and breach of contract accompanied by fraudulent acts. (ROA p.\_\_\_\_, Complaint).

Defendants Nabil E. Saleh and Sparkle City Motors (hereinafter “Respondent Saleh” or “Saleh”) filed an Answer and Counterclaim on December 12, 2008. (ROA p.\_\_\_\_, Answer and Counterclaim). In this Counterclaim, Respondent Saleh alleged causes of action for breach of contract, conversion, tortious interference with contractual relations, unfair trade practices, conspiracy, and violation of S.C. Code Ann. § 39-3-10. (ROA p.\_\_\_\_, Saleh’s Answer and Counterclaim).

Defendant Amanda ShaDon Miller (hereinafter “Respondent Miller” or “Miller”) filed an Answer and Counterclaim on November 14, 2018. She filed an Answer and Amended Counterclaim on July 8, 2020. (ROA p.\_\_\_\_, Miller’s Amended Answer and Amended Counterclaim). In her Amended Counterclaim, Defendant Miller counterclaimed for civil conspiracy, fraud and defamation.

Appellant filed a Reply to Respondent Saleh’s Counterclaims on December 20, 2018. (ROA p.\_\_\_\_, Reply).

Appellant filed a Reply to Respondent Miller’s Amended Counterclaims on July 14, 2020 (ROA p.\_\_\_\_, Reply).

The non-jury trial was held before the Honorable J. Mark Hayes, II September 19-21, 2023.

At the conclusion of Appellant's case, Respondents moved for a directed verdict on various causes of action. The trial court granted the motions for directed verdict as to Appellant's causes of action for conversion and equitable mortgage. (ROA p.\_\_\_\_, Tr. p. 453, l. 18 – p. 456, l. 4; Form 4 Order filed October 11, 2023).

During the trial, Respondent Saleh also withdrew his counterclaim causes of action for conversion, tortious interference with contractual relations, conspiracy, and violations of S.C. Code Ann. § 39-3-10. (ROA p.\_\_\_\_; Tr. p. 458, ll. 6-13; Form 4 Order filed October 11, 2023). Similarly, Respondent Miller withdrew her counterclaim cause of action for civil conspiracy. (ROA p.\_\_\_\_; Form 4 Order filed October 11, 2023).

By Form 4 Order filed November 30, 2023, the trial court found that Appellant met her burden of proof as to her default on a promissory note and breach of contract claims against Respondent Saleh. At the same time, the trial court found that Respondent Saleh met his burden of proof on the unfair trade practices claim against Appellant. The trial court did not, however, issue a ruling on "the amounts of damages, attorney fees, etc." In this Form 4, the trial court asked the attorneys to "present financial proposals and justify the proposals based on the evidence that is contained in the present record." (ROA p.\_\_\_\_; Form 4 Order filed November 30, 2023). Similarly, by email dated November 29, 2023, the trial court requested briefs from all parties.

Appellant filed Plaintiff's Brief on May 16, 2024. (ROA p. \_\_\_\_; Plaintiff's 5/16/24 Brief). In this brief, Appellant requested attorney's fees and costs against all Respondents in the amount of \$95,244.28. (ROA p. \_\_, Ex. C to Plaintiff's 5/16/24 Brief).

Respondent Saleh filed Defendant's Brief on May 20, 2024. (ROA p. \_\_, Defendant's 5/20/24 Brief).

The trial court filed the Final Order on September 5, 2024 awarding a verdict in favor of Appellant against Respondent Saleh in the amount of \$279,435.00. (ROA p.\_\_\_\_, Final Order).

All parties filed post-trial motions. Appellant filed Plaintiff's Motion to Alter, Amend and Reconsider Pursuant to Rules 52 & 59, SCRCP on September 12, 2024. (ROA p.\_\_\_\_; Plaintiff's Motion to Reconsider). Respondent Saleh filed Defendant's Motion to Alter, Amend, and Reconsider Pursuant to Rules 52 & 59, SCRCP on September 13, 2024. (ROA p.\_\_\_\_; Respondent Saleh's Motion to Reconsider). Respondent Miller filed her Motion to Alter/Amend on September 12, 2024. (ROA p.\_\_\_\_, Respondent Miller's Motion to Reconsider).

By Form 4 Order filed December 4, 2024, the trial court granted Respondent Miller's post-trial motion requesting an Order removing the *Lis Pendens* filed by Appellant. The trial court denied all other post-trial motions. (ROA p.\_\_\_\_, 12/4/24 Form 4 Order).

In this Form 4 Order, the trial court requested counsel for Appellant to submit "a formal order awarding him the attorney's fees he had previously requested to be paid by Defendant Saleh." (ROA p.\_\_\_\_, 12/4/24 Form 4 Order).

Pursuant to the trial court's request, Appellant submitted a proposed Order Awarding Attorney's Fees and Costs to Plaintiff along with an Attorney Fee Affidavit reflecting the "time devoted to the within matter related to the claims against Nabil E. Saleh and Sparkle City Motors." (ROA p. \_\_, *proposed* Order Awarding Attorney's Fees and Costs to Plaintiff with Exhibit). Pursuant to this affidavit, Appellant indicated that attorney's fees and costs in the amount of \$79,030.98 were incurred related to the claim against Respondent Saleh and Sparkle City Motors. (ROA p. \_\_, *Id.*)

Appellant filed her Notice of Appeal on January 2, 2025.

On January 15, 2025, Respondent Miller filed a Motion to Stay with the circuit court. (ROA p. \_\_\_\_\_, Motion to Stay).

On July 2, 2025, Appellant filed with the Court of Appeals a Motion to Hold Appeal in Abeyance and Motion to Remand to Trial Court to Issue an Order Awarding Attorney's Fees and Costs to Plaintiff/Appellant.

On July 30, 2025, the Court of Appeals granted the Motion to Hold Appeal in Abeyance and Motion to Remand to Trial Court to issue Order Awarding Attorney's Fees and Costs to Plaintiff/Appellant.

After a hearing held November 14, 2025, the circuit court filed its Order Awarding Plaintiff's Attorney Fees and Costs and Denying Miller's Motion to Lift Automatic Stay. (ROA p. \_\_\_, 12/02/25 Order). In this Order, the circuit court awarded Appellant \$79,030.98 in attorney's fees and costs against Respondents Saleh and Sparkle City Motors. (ROA p. \_\_\_, 12/2/25 Order p. 2). With attorney's fees and costs, the total judgment against Saleh was \$358,465.98.

Respondent Miller filed a Motion to Alter/Amend on December 11, 2025. This motion was resolved by Consent Order.

## STATEMENT OF FACTS

Appellant provides floor plan financing for car dealerships. Floor plan financing is a type of short-term loan used by car dealers or dealerships to purchase automobiles as inventory. The lender provides the upfront money to allow the dealer to purchase automobiles, and the dealer generally repays the loan, plus interest and/or fees, when the automobiles are sold. Rather than offering loans for each individual vehicle purchased, most floor plan companies supply dealers with a revolving line of credit that the dealer uses to acquire inventory over time.

Respondent Nabil E. Saleh d/b/a Sparkle City Motors started floor planning with Appellant in or around 2003. (ROA p. \_\_\_, Tr. p. 15). Beginning in approximately 2006, Appellant granted Saleh a line of credit. (ROA p. \_\_\_, Tr. p. 19). Initially, the line of credit was \$350,000.00 but, over time, it increased to \$940,000.00 by July of 2015. (ROA p. \_\_\_, Tr. pp. 21-28; Plaintiff's Exhibits 1-14). The promissory notes confirming the lines of credit clearly noted that the security for the loan was "all floor plan vehicles." (ROA p. \_\_\_, Plaintiff's Exhibits 1-14).

Pursuant to the specific business arrangement between Appellant and Respondent Saleh d/b/a Sparkle City Motors, Saleh purchased cars at auction and Appellant would pay the auction house the purchase price of the cars. Saleh would then have certain time limits to sell the cars to other dealers. <sup>1</sup> Once Saleh sold the cars to a dealer, Saleh was supposed to then repay Appellant the original principal loan amount plus the relevant fee. (ROA p. \_\_\_, Tr. pp. 19-20).

At some point in time, Respondent Amanda Shadon Miller became "part owner of the [Sparkle City Motors] dealership. Her name was on the bond and the insurance and the dealer's license." (ROA p. \_\_\_\_, Tr. p. 32, ll. 15-21; Plaintiff's Exhibit 33). In fact, she was listed as

---

<sup>1</sup>Respondents were wholesalers, not retailers. They were only supposed to sell vehicles to other dealers. (ROA p. \_\_\_, Tr. p.18).

“Sole Proprietor” of Sparkle City Motors when she opened the business banking accounts with Capital Bank in 2016. (ROA p. \_\_, Plaintiff’s Exhibit 36). Saleh was listed as an authorized signer on this bank account as well. (ROA p. \_\_, Plaintiff’s Exhibit 36.).<sup>2</sup> Saleh admitted that there was a period of time when he wasn’t able to open a banking account in his name. (ROA p. \_\_\_\_ Tr. p. 575, l. 9- p. 576, l. 7).

In March of 2018, Miller submitted an “Application For a Dealer or Wholesaler License” to the South Carolina Department of Motor Vehicles. (Plaintiff’s Exhibit 38). In this application, Miller requested a “renewal” of Sparkle City Motors’ wholesale license. (ROA p. \_\_\_\_, Id.) Miller and Saleh were both listed as “actual owner[s] of the business.” (ROA p. \_\_\_\_, Id.) The application even indicated that the business was “financially backed by L.C. Mason Floorplan Company.” (ROA p. \_\_, Id.)

Text messages revealing Miller’s active involvement in Sparkle City Motors in 2018 were introduced into evidence without objection. (ROA p. \_\_\_\_, Plaintiff’s Exhibits 39-41). On March 28, 2018, Miller admitted by text that “I got to learn as much as I can in case I have to run this circus on my own.” (ROA p. \_\_\_\_; Plaintiff’s Exhibit 41).

On this issue, the trial court found that Saleh “brought Defendant Miller into the business” in 2016. (Final Order p. 3). More specifically, the trial court found:

- Miller was added to the business so Saleh could continue his business” (ROA p. \_\_\_\_; Final Order p. 3);
- “Miller’s name was placed on the license” (ROA p. \_\_\_\_; Final Order p. 3);

---

<sup>2</sup> By way of relevant history, Saleh and Miller met in 2013. After dating for a while, they started living together in Miller’s house in July or August of 2015. They had children together. They were still a couple living together as of 2016. (ROA p. \_\_\_\_ Tr. pp. 603-607, 513).

- “Miller’s name was used in order that Saleh could continue his wholesale business” (ROA p. \_\_\_\_; Final Order p. 7).

Respondents did not appeal from these findings and conclusions that Miller was, at the very least, a part owner of Sparkle City Motors as early as 2016. These findings and conclusions are the law of the case.

In March of 2016, Saleh signed a “Personal Guarantee” in favor of Appellant. (ROA p. \_\_\_\_, Plaintiff’s Exhibit 15). Pursuant to this “Personal Guarantee”, Saleh personally guaranteed the performance of Sparkle City Motors with regard to its contractual relationship with Appellant. Furthermore, Saleh promised to make all payments owed by Sparke City Motors to Appellant in the event Sparkle City Motors failed to do so. (ROA p. \_\_, Plaintiff’s Exhibit 15).

On the same day, Saleh, on behalf of Sparkle City Motors, signed a Security Agreement granting Appellant a security interest in “all of the Debtor’s presently owned and hereafter acquired inventory...together with all proceeds and products thereof, additions and accessions thereof or replacements thereof or substitutions therefore.” (ROA p. \_\_\_\_, Plaintiff’s Exhibit 17).

Furthermore, the Security Agreement secured:

The payment of ... and all other indebtedness, liability and obligations of Debtor to Secured Party incurred for business purposes, whether direct or indirect, absolute or contingent, *due* or to become due, secured or unsecured, *now existing* or hereafter arising, whether or not of the nature contemplated at the date hereof.” (ROA p. \_\_\_\_, Plaintiff’s Exhibit 17 at p. 1) (emphasis added).

The Security Agreement provided for Sparkle City Motors to pay reasonable attorney’s fees incurred by Appellant in connection with the protection or enforcement of the Security Agreement. (ROA p. \_\_\_\_, Plaintiff’s Exhibit 17 at p. 5).

Also on March 10, 2026, Saleh also signed a Repossession Agreement on behalf of Sparkle

City Motors on March 10, 2016. (ROA p. \_\_\_\_, Plaintiff's Exhibit 18). Pursuant to this Repossession Agreement, Sparkle City Motors granted Appellant the right to repossess all vehicles floor planned by Appellant in the event Sparkle City Motors failed to make "any payment or any part of any payment due under any Security Agreement" between the parties. (ROA p. \_\_\_\_, Plaintiff's Exhibit 18).

Saleh also signed a Power of Attorney and an Authorization to Transfer Title on behalf of Sparkle City Motors on March 10, 2016. (ROA p. \_\_\_\_, Plaintiff's Exhibits 19 and 21). These documents granted Appellant the authority to transfer titles to any repossessed vehicles. (ROA, p. \_\_\_\_, Plaintiff's Exhibits 19 and 20); Tr. pp. 37-42).

Also on March 10, 2016, **Respondent Miller** signed the following documents:

- Personal Guarantee identical to the one signed by Saleh (ROA p. \_\_\_\_, Plaintiff's Exhibit 16);
- Security Agreement identical to the one signed by Saleh. (ROA p. \_\_\_\_, Plaintiff's Exhibit 17);
- Power of Attorney identical to the one signed by Saleh. (ROA p. \_\_\_\_, Plaintiff's Exhibit 20);
- Authorization to Transfer Title identical to the one signed by Saleh. (ROA p. \_\_\_\_, Plaintiff's Exhibit 22).

Finally, also on March 10, 2016, Miller also signed a floor plan agreement with a credit limit of \$940,000.00. (ROA p. \_\_\_\_, Plaintiff's Exhibit 23).

Two (2) witnesses confirmed that Miller signed all of the above-referenced documents. (ROA p. \_\_\_\_, Tr. pp. 414-422). The trial court erroneously noted that Miller disputed that she signed these documents which is not supported by the record. (ROA p. \_\_\_\_, Final Order p. 3, n. 6). Regardless, the trial court did not make a finding that Miller did not sign the relevant documents

and Respondents did not appeal from this finding- or lack thereof.

Subsequent to March 10, 2016, Appellant continue to loan Respondents money pursuant to the floor plan arrangement. (ROA p. \_\_\_, Plaintiff's Ex. 26, Defendants' Exs. 3-234, 242-256).

In August of 2016, Saleh and Miller approached Appellant about borrowing money to construct a building on Miller's land where they could store and work on vehicles. (ROA p. \_\_\_, Tr. p. 103, l. 3 - p. 104, l. 16). Saleh and Miller initially borrowed \$55,434.50 from Appellant for this project. (ROA p. \_\_\_, Tr. p. 104, l. 23 – p. 105, l. 8; Plaintiff's Exhibit 27). On August 31, 2016, Saleh signed a promissory note in the amount of \$55,434.50 promising to make twelve (12) monthly installments in the amount of \$4,619.54, each. (ROA p. \_\_\_, Tr. p. 105, ll. 3 – 14; Plaintiff's Exhibit 27). The ledger showing payments on this loan indicate that the loan was for a "building." (ROA p. \_\_\_, Tr. p. 105, ll. 3-8; Plaintiff's Exhibit 27). Respondents made sporadic payments toward this note until June 2017. (ROA p. \_\_\_, Tr. p. 105, ll. 15-19; Plaintiff's Exhibit 27).

In June of 2017, Respondents were not finished with their ongoing construction project so they asked for another loan from Appellant. (ROA p. \_\_\_, Tr. p. 105, ll. 15-23). Appellant loaned Respondents an additional \$52,800.00 on June 14, 2017. (ROA p. \_\_\_, Tr. p. 107, l. 4 – p. 108, l. 15; Plaintiff's Exhibit 28). The ledger showing payments on this loan indicated that the loan was for "building, drive-way and curbing and the wall." (ROA p. \_\_\_, Tr. p. 107, ll. 20-24; Plaintiff's Exhibit 28). Respondents made sporadic payments towards this loan which stopped in December 2017 with a balance owing in the amount of \$26,510.00. (ROA p. \_\_\_, Tr. p. 108, ll. 12-14; Plaintiff's Exhibit 28).

A few weeks later, Appellant loaned Respondents \$49,500.00 for more improvements to

Miller's property. (ROA p. \_\_\_, Tr. p. 110, ll. 9-24; Plaintiff's Exhibit 30). Respondents made payments on this loan until December 2017 leaving a balance of \$23,031.65. (ROA p. \_\_\_; Plaintiff's Exhibit 30).

Whenever Respondents had to pay their construction contractor a draw, they would bring titles to Appellant and ask for more money. (ROA p. \_\_\_, Tr. p. 101, l. 14 – p. 102, l. 7). When they were making improvements to Miller's property, Respondents were "constantly harassing" Appellant for more money to pay the contractor. (ROA p. \_\_\_, Tr. p. 386, ll. 8-20). On January 5, 2018, Saleh approached the Appellant about borrowing an additional \$85,000.00, for construction he and Miller were doing on the real estate owned by Miller (ROA p. \_\_\_, Tr. 56, l. 22 – p. 67, l. 3). On this occasion, Respondents brought titles to four (4) vehicles to serve as collateral.<sup>3</sup>

Based upon the testimony as supported by the undisputed ledgers, Respondents owed at least \$49,541.65 on loans made in connection with the construction and improvements on Miller's property. (ROA p. \_\_\_, Plaintiff's Exs. 38 and 30).

During the time period when Respondents were borrowing money from Appellant to make improvements to Miller's property, Saleh withdrew \$262,223.00 in cash from his bank accounts. (ROA p. \_\_\_, Tr. p. 111, l. 19 – p. 113, l. 14; Plaintiff's Exhibit 31.)

Respondents also invested large sums in the stock market during this time period. During one six-week period between December 13, 2016 and January 30, 2017, Sparkle City Motors deposited \$128,300.00 into a TD Ameritrade Account. (ROA p. \_\_\_, Tr. pp. 114-115; Plaintiff's Exhibit 32). Additionally, Sparkle City Motors invested \$109,672.43 into a Robinhood account

---

<sup>3</sup> As discussed more fully *infra*, these vehicles were ultimately sold out of trust and included in the \$564,513.36, balance reflected on Plaintiff's Exhibit 24. (ROA p. \_\_\_, Plaintiff's Ex. 24).

between March 8, 2018 and April 18, 2018. (ROA p. \_\_\_\_, Tr. pp. 117-118; Plaintiff's Exhibit 34).

When all of the "Personal Guarantees", Security Agreements, Powers of Attorney, etc. were signed in March 2016, "everything was okay" between the parties. (ROA p. \_\_\_\_, Tr. p. 42, LL. 3-22). The parties were making "hundreds of thousands of dollars together." (ROA p. \_\_\_\_, Tr. p. 128, l. 20 – p. 129, l.7). Unfortunately, because of the actions of all Respondents over the succeeding year as discussed above, the symbiotic relationship started to change in "mid-2017." (ROA p. \_\_\_\_, Tr. p. 45, l. 22 – p. 46, l. 4).

It was around this time when Respondents Saleh, Miller, and Sparkle City Motors started selling vehicles "out of trust." Respondents started selling vehicles they had floor planned with Appellant without repaying Appellant the full amount that they had borrowed (plus the fees required by the arrangement). Instead, Respondents simply sold the vehicles to third parties and then they pocketed the proceeds without paying Appellant what was owed to her. (ROA p. \_\_\_\_, Tr. pp. 36-37, 46).

Respondents sold forty-four (44) vehicles out of trust over a period of approximately eighteen (18) months in 2017 and 2018. (ROA p. \_\_\_\_, Tr. pp. 47-49; Plaintiff's Exhibit 24). The total amount of money retained by Respondents related to the vehicles sold out of trust was \$564,513.36. (ROA p. \_\_\_\_, Tr. p. 48, l. 7-p. 49, l. 7; Plaintiff's Exhibit 24).

Saleh admitted there were vehicles listed on Plaintiff's Exhibit 24 that he sold to dealers where he did not pay Appellant pursuant to the floor plan agreement. (ROA p. \_\_\_\_, Tr. p. 555, l. 15 – p. 556, l. 11; p. 557, ll. 10-13). While Saleh disputed that the amount was \$564.513.36, he did not testify to an alternative amount. (ROA p. \_\_\_\_, Tr. p. 588, ll. 14-23).

After Respondents continued to ask Appellant to give them titles to floor planned vehicles for which Appellant did not get paid, Appellant decided to repossess the remaining twenty-seven (27) vehicles in Respondent's possession. (ROA p. \_\_\_\_, Tr. pp. 49-51). These twenty-seven (27) vehicles were repossessed in September or October of 2018 and ultimately sold for \$97,943.69 less than what Respondents owed Appellant. (ROA p. \_\_\_\_, Tr. p. 51, ll. 6-25; Tr. pp. 73-74; Plaintiff's Exhibit 25).

While vehicles were being sold out of trust in the weeks immediately prior to Appellant repossessing the remaining vehicles, Miller d/b/a Sparkle City Motors deposited \$135,587.00 into an E-Trade investment account. (ROA p. \_\_\_\_, Tr. pp. 115-116; Plaintiff's Exhibit 33).

Not including attorney's fees and costs, Appellant's total damages related to Respondents' breach of the floorplan financing plan arrangement were \$662,457.05 (\$564,513.36 (sold out of trust) plus \$97,943.69 (loss on repossessed vehicles)).

Appellant was also entitled to recover attorney's fees pursuant to the various promissory notes, "Personal Guarantees", and Security Agreements. Counsel for Appellant submitted an Attorney's Fees Affidavit requesting \$95,244.28 in fees and costs prosecuting the entire claim and \$79,030.98 in fees and costs related to prosecuting the claims against Respondents Saleh and Sparkle City Motors only. (ROA p. \_\_\_\_, Ex. C to Plaintiff's 5/16/24 Brief and *proposed* Order Awarding Attorney's Fees and Costs to Plaintiff with Exhibit). Accordingly, Appellant's total damages on the breach of contract claim were \$757,701.33.

Against this backdrop of evidence, the trial court granted Appellant a verdict against only Respondent Saleh in the amount of \$279,435.00 plus attorney's fees and costs of \$79,030.98 for a total of \$358,465.98. (ROA p. \_\_\_\_, Final Order p. 9; 12/2/25 Order p. 2). The trial court found

that \$279,435.00 “represents the value of the unused inventory that was voluntarily surrendered by the Defendant Saleh in 2018.” (ROA p. \_\_\_\_, Final Order p. 9). The trial court reasoned that “[i]f the Plaintiffs had complied with its internal policy of valuation, this property did, or should have been sold at the Plaintiff’s auction for a value equal to or close to floor planned amount.” (ROA p. \_\_\_\_, Final Order p. 9).

The trial court refused to award Appellant a verdict against Respondent Miller.

### **STANDARD OF REVIEW**

An action for breach of contract seeking money damages is an action at law. Eldeco, Inc. v. Charleston Cnty Sch. Dist., 372 S.C. 470, 642 S.E.2d 726 (2007). See also S. Bank & Trust Co. v. Harley, 295 S.C. 423, 368 S.E.2d 908 (1988)(action on a guaranty agreement is an action at law); Chambers v. Pingree, 351 S.C. 442, 570 S.E.2d 528 (Ct. App. 2002) (action to recover on a promissory note is an action at law). On appeal from a case tried by a judge in an action at law, “the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge’s findings.” Townes Associates, LTD. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). The appellate court also has authority to correct errors of law. Id.

An action to establish an equitable lien is an action in equity. Fibkins v. Fibkins, 303 S.C. 112, 399 S.E.2d 158 (Ct. App. 1990). In an action in equity tried by a judge, the appellate court has the authority to find facts in accordance with its own view of the preponderance of evidence. Id.

When legal and equitable causes of action are maintained in one suit, each retains its own identity as legal or equitable for standard of review purposes. Jordan v. Holt, 362 S.C. 201, 608 S.E.2d 129 (2005).

## ARGUMENTS

**III. Because Appellant established that she sustained damages in the amount of \$757,701.33 the trial court erred in limiting the damages award to \$358,465.98 based upon findings not reasonably supported by the evidence.**

The trial court found that Appellant sustained damages in the amount of only \$358,465.98, related to the breach of contract cause of action.<sup>4</sup> This finding of fact is without evidence which reasonably supports it and is controlled by error of law. Appellant's demonstrated damages were \$757,701.33.

The trial court found that Appellant "met its burden of proof" as to the breach of contract cause of action. (ROA p. \_\_\_\_, Final Order p. 5). Respondents did not appeal this finding and it is the law of the case. Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 714 S.E.2d 869 (2011)(an un-appealed order is considered the law of the case). Accordingly, the trial court was tasked with determining the damages suffered by Appellant as a result of the breach of contract.

Not counting attorney's fees and costs, the trial court found that Appellant suffered damages of only \$279,435.00, which "represent[ed] the value of the unused inventory that was voluntarily surrendered by the Defendant Saleh in 2018. If the Plaintiff's [sic] had complied with its internal policy evaluation, this property did, or should, have been sold at the Plaintiff's auction for a value equal or close to floor planned amount." (ROA p. \_\_\_\_, Final Order p. 9). The record does not reasonably support the trial court's reasoning or its ultimate damages award.

"The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." Fuller v. E. Fire

---

<sup>4</sup> As noted by the trial court in the Final Order and its Form 4 Order filed November 30, 2023, Appellant's causes of action for default on a promissory note and breach of contract are "based on similar facts" and are essentially "one in the same." (ROA p. \_\_\_\_, Final Order p. 4; 11/30/23 Form 4 Order, p. 2). For purposes of this brief, these causes of action shall be referred to collectively as the breach of contract cause of action.

& Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). “The purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been if the contract had been performed.” Minter v. GOCT, Inc., 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996). “The proper measure of compensation is the loss actually suffered by the Plaintiff as a result of the breach.” Id.

The trial court’s calculation of actual damages (not including the attorney’s fees and costs) is not supported by the record. It is entirely unclear what the trial court relied upon to arrive at the precise number of \$279,435.00. The evidence doesn’t reasonably support the trial court’s findings of fact on the issue of damages.

Appellant suffered three (3) distinct categories of damages flowing as a natural consequence and proximate result of the Respondents’ breaches of contract – (1) monetary losses when the vehicles were sold out of trust; (2) monetary losses when vehicles were repossessed and sold at amounts less than the floor planned amount; and (3) attorney’s fees and costs related to enforcement of the contracts via this action. These three categories of damages totaled \$757,701.33.

It is important to highlight that Respondents didn’t breach just one contract. Respondents signed multiple agreements to provide security for Appellant’s loans, including Promissory Notes, “Personal Guarantees”, and Security Agreements. Respondents breached all of these contracts to the detriment of the Appellant to the tune of \$757,701.33.

The largest category of damages sustained by Appellant was the \$564,513.36 loss when Respondents sold vehicles out of trust. Once again, selling a vehicle out of trust is when the Respondents borrowed money to purchase a vehicle but then sold the vehicle without repaying the

borrowed amount plus the floor plan fee (which ranged from \$150.00 - \$600.00 per vehicle). (ROA p. \_\_\_\_, Plaintiff's Exhibit 24). Saleh admitted that he sold vehicles out of trust. (ROA p. \_\_\_\_, Tr. p. 555, ll. 3-12). In fact, he testified, "of course, I owed her for the cars that – I floored it." (ROA p. \_\_\_\_, Tr. p. 538, l. 20).

Appellant presented evidence of forty-four (44) vehicles sold out of trust. She identified each vehicle by name, Vehicle Identification Number (VIN) or other identifying numbers, floor amount, relevant floor plan fee, and amount Respondents paid toward each loan, if anything. (ROA p. \_\_\_\_, Plaintiff's Exhibit 24). Respondents offered no evidence to contradict Appellant's evidence except as to four vehicles – the 2018 Dodge Charger, the 2009 Lexus GX470, the 2014 Polaris ATV and the Honda dirt bike. (ROA p. \_\_\_\_, Tr. pp. 529 532). Saleh testified that these four vehicles were floored for amounts in excess of their value but he offered no additional proof to support his contention. (ROA p. \_\_\_\_, *Id.*). More importantly, Saleh never testified that he didn't actually receive the "floor amount" as indicated by the Appellant.

Saleh's main objection to the damages reflected on Plaintiff's Exhibit 24 is his allegation that Appellant was taking money which Saleh paid toward "new debt" and applying it to "old debt." (ROA p. \_\_\_\_\_, Tr. pp. 482 -483, 523-524). There are two major flaws in Saleh's objection.

First of all, Saleh admitted that he voluntarily "went along with" the arrangement as it evolved over time so he could stay in business and support his family. (ROA p. \_\_\_\_, Tr. p. 483, LL. 12-15). Secondly, he admitted that he owed both the "new debt" and "old debt." (ROA p. \_\_\_\_, Tr. p. 545, ll. 20-23).

This admission that he owed the entire debt is consistent with the \$940,000.00 line of credit

as referenced in the promissory notes signed by Saleh (ROA p. \_\_\_\_, Plaintiff's Exhibit 14) and Miller (ROA p. \_\_\_\_, Plaintiff's Exhibit 23). Pursuant to these lines of credit, Respondents remained responsible for repaying all of the debts for "all floor plan vehicles" - regardless of the age of the debts. (ROA p. \_\_\_\_, Plaintiff's Exhibits 1-14).

If Appellant had not applied money owed on "new debt" to "old debt", the end result would have been the same. Respondents would still owe the same amount of money to Appellant. The only difference would have been that Plaintiff's Exhibit 24 would have included a different list of older vehicles because the money would have been applied to "new debt." Once again, Respondents don't seriously contend that the "old debt" wasn't owed.

Respondents' other arguments revolve around the allegation that Appellant "violated her rules on her contract" and she should not have continued to loan Respondents money when they were so far behind in repaying her. (ROA p. \_\_\_\_, Tr. p. 599, l. 24 – p. 600, l. 8). Respondent Saleh even testified it was Appellant's "fault" that Saleh's debts were so high. (ROA p. \_\_\_\_, Tr. p. 600, l. 10). Saleh believed Appellant "should have closed me down" and not continued to loan money to him. (ROA p. \_\_\_\_, Tr. p. 600, l. 7).

If Appellant violated any rules, which is not conceded, she violated her own internal policies which were not contractual obligations to Respondents. (ROA p. \_\_\_\_, Plaintiff's Exhibit 23, Defendant's Exhibit 2).

The bottom line is that Respondents borrowed hundreds of thousands of dollars from Appellant and they didn't pay Appellant back. There is no doubt that Respondents receive the money. It doesn't matter whether you call it new debt, old debt, good debt, or bad debt – it remained a debt owed to Appellant. The trial court erred in failing to find that Appellant sustained damages

in the amount of \$564,513.36 related to the vehicles sold out of trust.

The second category of damages sustained by Appellant includes the losses she suffered when she repossessed the vehicles and then sold them at a loss. When it finally became obvious to all sides that this once lucrative business arrangement was no longer working in late 2018, Respondents voluntarily relinquished the vehicles they still had in inventory. (ROA p. \_\_\_\_, Tr. pp. 50-51).<sup>5</sup>

Appellant testified that she took possession of twenty-seven (27) vehicles and sold them at auction. (ROA p. \_\_\_\_, Plaintiff's Exhibit 25). She sold these vehicles for \$97,943.69 less than what she had in them. (ROA p. \_\_\_\_, Tr. p. 51; Plaintiff's Exhibit 25). Respondents did not dispute these calculations. The trial court erred in failing to add \$97,943.69 to its award of damages.

As to the third category of damages, the trial court awarded Appellant attorney's fees and costs in the amount of only \$79,030.98. (ROA p. \_\_\_\_, Order Awarding Plaintiff Attorney's Fees and Costs and Denying Defendant Miller's Motion to Lift the Stay at pp. 2 and 4). Respondents did not dispute or appeal from this finding so Appellant is entitled to an award of *at least* \$79,030.98 in attorney's fees and costs. See Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 714 S.E.2d 869 (2011)(an un-appealed order is considered the law of the case).

However, there is no logical or legal basis for Appellant's award of fees and costs to be limited to \$79,030.98. The relevant contracts entitle Appellant to recover attorney's fees and costs in connection with the protection and enforcement of her position. (ROA p. \_\_\_\_, Plaintiff's Exs. 1-17). Both Saleh and Miller signed the relevant contracts. (e.g. ROA p. \_\_\_\_, Plaintiff's Exs. 14, 15,

---

<sup>5</sup> Although Appellant had the right to repossess these vehicles by contract, and the parties used the term "repossession" in testimony, Respondents voluntarily allowed Appellant to pick up these vehicles and they were not technically repossessed. (ROA p. \_\_\_\_, Tr. pp. 51, 151 and 523).

16, 17). Appellant had to sue both Respondents to protect and enforce her position. The evidence does not reasonably support the trial court's decision to limit the attorney's fees award to only \$79,030.98 when the uncontradicted evidence showed the fees and costs were \$95,244.28.

There is no evidence which reasonably supports the trial court's finding of fact that Appellant's damages were only \$279,435.00 (plus attorney's fees and costs). The trial court found that \$279,435.00 "represent[ed] the value of the unused inventory that was voluntarily surrendered by the Defendant Saleh in 2018. If the Plaintiff's [sic] had complied with its internal policy evaluation, this property did, or should, have been sold at the Plaintiff's auction for a value equal or close to floor planned amount." (ROA p. \_\_\_, Final Order p. 9). The record does not reasonably support the trial court's reasoning. Quite frankly, it is entirely unclear what the trial court relied upon to arrive at this amount.

The damages related to the repossessed vehicles were \$97,943.69. (ROA p. \_\_\_, Plaintiff's Exhibit 25). This amount was not seriously disputed by Respondents.

The damages related to the vehicles sold out of trust were shown to be \$564,513.36. Respondents only disputed the legitimacy of four (4) vehicles – 2009 Lexus GX470, Dodge Charger, Polaris ATV, and the Honda dirt bike. Even if the losses related to these four (4) vehicles are removed from valuation, Appellant's damages are only reduced by \$88,528.36, leaving a balance of \$475,985.00. (ROA p. \_\_\_, Plaintiff's Exhibit 24).

Accordingly, at a minimum, Appellant's damages (not including attorney's fees and costs) were \$573,928.69 ((\$97,943.69 (repossessed vehicles) plus \$475,985.00 (vehicles sold out of trust)). Even when the attorney's fees and costs are limited to only \$79,030.98, the lowest damages award reasonably supported by the record is \$652,959.67.

The trial court only awarded Appellant damages in the amount of \$358,465.98 (comprised of \$279,435.00 (“unused inventory”) and \$79,030.98 (fees and costs)). This damages award “is without evidence which reasonably supports it”. Appellant’s actual damages including attorney’s fees and costs were shown to be \$757,701.33.<sup>6</sup>

In the event this Court imposes judgment against Respondent Miller as requested in Argument II infra but declines to increase the attorney’s fees award accordingly, Appellant requests an order remanding this case to the trial court to address the issue of attorney’s fees and costs.

**IV. Because Respondent Miller was either the sole owner of, or a partner in, Respondent Sparkle City Motors who signed a personal guaranty and other agreements supported by valuable consideration which obligated her to pay the debts of Sparkle City Motors, the trial court erred in not holding Miller jointly and severally liable for the debts owed to Appellant by Respondents.**

The trial court declined to extend liability for Appellant’s damages to Respondent Miller for “numerous reasons.” (ROA p.\_\_\_\_, Final Order, p. 7). The trial court’s “reasons” are either controlled by errors of law or are without evidence which reasonably supports the judge’s findings. Miller is just as responsible for Appellant’s damages as Saleh is. The trial court erred in refusing to impose judgment against Miller in the same amount as the judgment against Saleh. <sup>7</sup>

The trial court found no liability for Miller based upon a finding that “no new consideration existed” for the 2016 floor plan debt which was identical to the 2015 floor plan debt. (ROA p.

---

<sup>6</sup> The trial court’s award of attorney’s fees and costs in the amount of \$79,030.98 inexplicably only addressed the fees and costs associated with Appellant prosecuting the claims against Respondents Saleh and Sparkle City Motors. The attorney’s fees and costs associated with prosecuting the entire claim were \$95,244.28. (ROA p. \_\_\_\_, Ex. C to Plaintiff’s 5/16/24 Brief).

<sup>7</sup> As referenced in Argument I supra, Appellant contends the actual damages award should be \$757,701.33.

\_\_\_\_, Final Order p. 7). Not only is this finding without evidentiary support, it also ignores the role of consideration in the context of a guaranty. It also ignores the fact that Miller was either the sole owner of Sparkle City Motors at the time of the breaches of contracts or, at the very least, a partner.

“A guaranty is a promise to answer for the payment of some debt or the performance of some duty in case of the failure of another person who is himself in the first instance, liable to such payment or performance.” Crafton v. Brown, 346 S.C. 347, 350-51, 550 S.E.2d 904, 905 (Ct. App. 2001). A guaranty must be supported by sufficient legal consideration, which can consist of either a benefit to the principal obligor or guarantor, or some detriment to the obligee. Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 178, 425 S.E. 2d 786, 791 (Ct. App. 1992). Consideration that is wholly past is not in valuable consideration. Future Group, II, V. NationsBank, 324 S.C. 89, 97, 478 S.E.2d 45, 49 (1996). If all debt was pre-existing, the guaranty must “be supported by some new consideration other than the original debt.” Id. Moreover, the guarantor need not derive any benefit from either the principal contract or the guaranty provided there is a benefit to the principal obligor or detriment to the creditor. Crafton, 346 S.C. 354, 550 S.E.2d at 907.

As the business relationship between Appellant and Sparkle City Motors expanded over the years, so too did the line of credit. The line of credit increased from \$350,000.00 in 2008 to \$940,000.00 in March of 2016. (ROA p. \_\_\_\_, Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 23). The line of credit represented the *maximum* amount of credit Appellant was willing to extend to Sparkle City Motors for *all* vehicles floor planned. The line of credit never represented the precise amount of the loan from Appellant or the precise amount owed by Sparkle City Motors as of the date of the line of credit as implied by the trial court.

For example, when the line of credit was \$800,000.00 in 2012, the outstanding amount

owed by Sparkle City Motors could have been \$100.00 or it could have been \$799,000.00. The dollar amount changed with every vehicle floor planned and, as the voluminous record revealed, vehicles were being floor planned frequently.

The line of credit signed by Saleh on July 7, 2015 and the line of credit signed by Miller on March 10, 2016 were both for a *maximum* of \$940,000.00. (ROA p. \_\_\_\_, Plaintiff's Exhibits 14 and 23). The relationship between Appellant and Sparkle City Motors was not stagnant during the intervening eight months between July 2015 and March 2016 or during the succeeding months before the relationship ended in late 2018. Hundreds of transactions took place involving hundreds of thousands of dollars. Vehicles were bought, floor planned, and sold on almost a weekly basis. (ROA p. \_\_\_\_, Plaintiff's Ex. 26; Defendants' Exs. 3-234, 242-256). During the month of August 2017 alone, Miller deposited over \$1,360,00.00 into the account at Capital Bank in the name of "Amanda S. Miller, d/b/a Sparkle City Motors." (ROA p. \_\_\_\_, Tr. p. 573, l. 9-575, l. 8; Plaintiff's Exhibit 37). As confirmed by Saleh, Sparkle City Motors expected to make a profit on every car sold. (ROA p. \_\_\_\_, Tr. pp. 474-475; 491-495; Defendant's Exhibits 241-256). Even under Saleh's version of how the arrangement changed over time, Sparkle City Motors was able to pay off "old debt" with every vehicle bought, floor planned, and sold. (ROA p. \_\_; *Id.*)

Saleh and Miller signed all of the identical documents on the same day- March 10, 2016. "If a note and guaranty are executed simultaneously, the consideration of the note functions as consideration for the guaranty." Branch Banking & Trust Co. of S.C. v. Carolina Crank & Core, Inc., 262 S.C. 647, 653, 608 S.E.2d 896, \_\_ (Ct. App. 2005). Consideration "existed" as a matter of law when Saleh and Miller executed all of the relevant documents on March 10, 2016.

Furthermore, contrary to the trial court's finding that "no new consideration existed", new

consideration was created almost weekly. Appellant wasn't going to continue the business relationship with Sparkle City Motors if Miller didn't sign the new line of credit, "Personal Guarantee", Security Agreement, Repossession Agreement, Power of Attorney and related documents on March 10, 2016. (ROA p. \_\_\_\_, Plaintiff's Exhibits 16, 17, 20, 22, 23). Appellant testified that she asked Miller to sign these documents because Miller "was part owner of the business. Her name was on the bond and on the insurance and on the dealer's license." (ROA p. \_\_\_\_; Tr. p. 32, ll. 15-21). The fact that Miller's name was on the surety bond indicated Saleh was "having credit problems." (ROA p. \_\_\_\_, Tr. p.32 ll. 22-p. 33 l. 11). Appellant needed all of these documents "just to offer the credit line to that dealership." (ROA p. \_\_\_\_, Tr. p. 34 ll. 20-24).

As acknowledged by the trial court, Appellant would not have continued business with Sparkle City Motors or Saleh if Miller had not become involved with Sparkle City Motors. Although it erroneously found that "Miller brought no monetary consideration or value to the business," the trial court acknowledged that "Miller's name was used in order that Saleh could continue his wholesale business." (ROA p. \_\_\_\_, Final Order p.7). This finding by the trial court actually highlights Miller's substantial and meaningful value to the business. Without Miller's involvement, the business relationship between Appellant and Sparkle City Motors would have ceased entirely. Appellant would not have continued to loan Sparkle City Motors any more money and Respondents would not have continued to earn a profit on almost every car sold and deposited and invested hundreds of thousands of dollars during the relevant time period.

As previously noted, Appellant needed Miller on the Security Agreement and "Personal Guarantee" because Saleh was "having credit problems." (ROA p. \_\_\_\_, Tr. p. 33 ll. 2-22). Not only did Miller sign a "Personal Guarantee" on March 10, 2016, she also signed a Security

Agreement. (ROA p. \_\_\_\_, Plaintiff's Exhibit 17). This Security Agreement also imposed personal liability upon Miller for the debts of Sparkle City Motors. (ROA p. \_\_\_\_, Plaintiff's Exhibit 17, p. 5).

The trial court's misapplication of the law of consideration is further highlighted by irrelevant findings which were also not supported by the record. For example, the trial court found "it also appears clear that Miller brought no monetary consideration or value to the business." (ROA p. \_\_\_\_, Final Order p. 7). There was no evidence either way as to whether Miller brought any money to the Sparkle City Motors business. Regardless, this finding is irrelevant on the issue of the existence of consideration. A party need not have to invest money into a business for that party to be entitled to a share of the business profits or to be liable for the debts of the business. Furthermore, as discussed above, Miller did bring some financial solvency to the equation. She owned real estate with substantial value against which Appellant could execute a judgment in case the guaranty was triggered due to Saleh and Sparkle City Motors failing to honor their financial commitments. This fact alone provided the necessary "value to the business" to justify Appellant continuing to do business with Saleh and Sparkle City Motors.

The trial court then found that Appellant "knew Miller brought nothing to the business." (ROA p. \_\_\_\_, Final Order p. 7). The record simply does not support this finding but, more importantly, this finding is irrelevant on the issue of the existence of consideration. Miller did not have to know anything about the business to benefit from the business' success as she did for years or to become liable for its debts after she signed a personal guaranty.

The trial court erred as a matter of law in concluding that "no new consideration existed" to support the personal guaranty signed by Miller. Appellant continued to do business with all

three Respondents because of Miller's personal guaranty and continued to advance funds to floorplan hundreds of thousands of dollars in vehicles subsequent to the execution of Miller's personal guaranty. This arrangement provided a benefit to the principal obligor Sparkle City Motors had a detriment to the creditor Appellant. Crafton v. Brown, 346 S.C. 347, 354, 550 S.E.2d 904, 907 (Ct. App. 2001).

Even without the enforceable personal guaranty, Miller is liable the debts of Sparkle City Motors as either the sole owner or one of its partners. At some point in time, Miller became "part owner of the [Sparkle City Motors] dealership. Her name was on the bond and the insurance and the dealer's license." (ROA p. \_\_\_\_\_, Tr. p. 32, ll. 15-21; Plaintiff's Exhibit 33). In fact, she was listed as "Sole Proprietor" of Sparkle City Motors when she opened the business banking accounts with Capital Bank in 2016. (ROA p. \_\_\_, Plaintiff's Exhibit 36). Saleh was listed as an authorized signer on this bank account as well. (ROA p. \_\_\_, Plaintiff's Exhibit 36.). Saleh admitted that there was a period of time when he wasn't able to open a banking account in his name. (ROA p. \_\_\_\_\_ Tr. p. 575, l. 9- p. 576, l. 7). In March of 2018, Miller submitted an "Application For a Dealer or Wholesaler License" to the South Carolina Department of Motor Vehicles. (Plaintiff's Exhibit 38). In this application, Miller requested a "renewal" of Sparkle City Motors' wholesale license. (ROA p. \_\_\_\_\_, Id.) Miller and Saleh were both listed as "actual owner[s] of the business." (ROA p. \_\_\_, Id.).

At the very least, Miller was a partner with Saleh in Sparkle City Motors. The trial court acknowledged this fact in finding that "Miller's name was added to the business." (ROA p. \_\_\_, Final Order p. 3). Nevertheless, the trial court treated Miller as if she was a disinterested party with no involvement in the business. This treatment of Miller was without evidence which reasonably

supported it. As a partner, Miller was jointly liable for the debts of Sparkle City Motors. See Mansour v. Massey, 286 S.C. 176, 336 S.E.2d 15 (1985). See also S.C. Code Ann. §33-41-370(2).

The personal guaranty signed by Miller was supported by sufficient legal consideration. As a partner in Sparkle City Motors who signed an enforceable personal guaranty, Miller is liable to answer for the failure of Sparkle City Motors and Saleh to pay and perform pursuant to the underlying debt. The record doesn't reasonably support the trial court's findings to the contrary. Accordingly, the trial erred as a matter of law in not ordering Miller jointly and severally liable with Saleh for the entire amount of Appellant's damages in the amount of \$757,701.33.

**V. Because Appellant did not engage in any unfair or deceptive acts which affected the public interest or caused Saleh actionable damages, the trial court erred in finding that Appellant “engaged in Unfair Trade Practices Act violations.”**

The trial court found that “Saleh has met his burden of establishing [Appellant] engaged in Unfair Trade Practices Act violations.” (ROA p. \_\_\_, Final Order p. 8). The trial court's findings of fact regarding the alleged UTPA violations are without evidence which reasonably support the findings. The conclusion of law that Appellant's practices constituted actionable unfair trade practices is also controlled by a clear error of law. Appellant did not engage in any unfair or deceptive acts which affected the public interest or caused Saleh actionable damages. The finding and conclusion that Appellant “engaged in Unfair Trade Practices Act violations” must be reversed. (ROA p. \_\_\_, Final Order p. 8).

The South Carolina Unfair Trade Practices Act (“UTPA”) declares “unfair or deceptive acts or practices in the conduct of any trade or commerce...unlawful.” S.C. Code Ann §39-5-20(a). “To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in conduct of trader commerce; (2) the unfair or deceptive

act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." Maybank v. BB&T Corp, 416 S.C. 541, 569, 787 S.E.2d 498 (2016). The record does not support a finding that any of these three requisite prongs were satisfied. <sup>8</sup>

"An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." Wogan v. Kunze, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct. App. 2005) (quoting deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000)). Oppressive practices include those that are unreasonably burdensome, severe, or tyrannical. Wingard v. Exxon Co., USA, 819 F. Supp.. 497, 506 (D.S.C. 1992). Examples of deceptive or unfair practices include mislabeling a product's package, misrepresenting a machine's operating requirements, misrepresenting a used car's history or condition, and padding repair bills. See generally Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989); Potomac Leasing Co. v. Bone, 294 S.C. 494, 366 S.E.2d 26 (Ct. App. 1988); Dowd v. Imperial Chrysler-Plymouth, 298 S.C. 439, 381 S.E.2d 212 (Ct. App. 1989); Inman v. Ken Hyatt Chrysler Plymouth, 294 S.C. 240, 363 S.E.2d 691 (1988); Barnes v. Jones Chevrolet Co., 292 S.C. 607, 358 S.E.2d 156 (Ct. App. 1987).

The trial court listed three acts or practices of Appellant which it found to be unfair or deceptive:

- "Continuing to floor plan Saleh's business" when doing so violated Appellant's own "standards"; (ROA p. \_\_\_\_, Final Order p. 9);

---

<sup>8</sup> As an initial matter, the UTPA does not even apply in this situation. The UTPA provides an industry exemption for certain practices and transaction if the activity or transactions in question is subject to other regulations. See S.C. Code Ann. §39-5-40. In this particular case, Appellant's practices and transactions are arguably governed by Chapter 15, Title 56 of the S.C. Code of Laws which regulates manufacturers, distributors, and dealers of motor vehicles. S.C. Code Ann §56-15-10, et. seq. Saleh did not allege or prove any violation of §56-15-10, et. seq.

- “The use of undervalued collateral and collateral that is obviously not automobiles,” (Id.);
- “Continuing to engage in the wholesale floor planning business with Saleh when it was known that the regulatory agency charged with the responsibility of protecting the general public was investigating his license and, with such knowledge continuing to do business with Saleh under a name placed on the license with no equitable stake in the company or special expertise.” (Id.).

It is entirely unclear how any of the above acts or practices, even if established, constituted unfair or deceptive acts. Appellant’s acts and practices were not offensive to public policy, immoral, unethical, oppressive, severe, or tyrannical. Although Appellant acknowledges that the decision to continue business with Respondents may not have ultimately been a sound business decision, that decision did not hurt anybody but Appellant herself.

Presumably, the trial court relied upon two documents to support its conclusion that Appellant “violated its own internal regulations in its business dealings with Saleh.” (ROA p. \_\_\_\_, Final Order, p. 8).

First, Plaintiff’s Exhibit 23 is the document signed by Miller on March 10, 2016 which sets forth certain guidelines Sparkle City Motors was to follow if it wanted to continue to floor plan with Appellant. These guidelines included the following:

- Any units placed on the dealer floorplan after March 10, 2016 have a sixty (60) day limit before they must be paid in full. Any units not paid off within sixty (60) days will result in suspension of the floorplan “until other arrangements have been made.”
- All vehicles on the floorplan that are over one year old as of March 10, 2016 must be paid off immediately. If they are not paid off immediately, the floor plan will be suspended which may lead to termination of the line of credit.
- If an audit reveals that floor planned vehicles are missing, loans on those vehicles must be paid off immediately.

- If Sparkle City Motors doesn't comply with the terms of the floor plan arrangement, Appellant has the right to repossess the vehicles.
- Only vehicles purchased from Upstate Auto Auction will be floored unless there is a separate agreement made. (ROA p. \_\_\_, Tr. p. 428; Plaintiff's Exhibit 23).

This document simply informed Sparkle City Motors that it must abide by the floor plan arrangement or the arrangement may be terminated. This document does not impose any contractual obligations on Appellant.

Interestingly, Saleh's argument is that because Sparkle City Motors so blatantly violated the floorplan agreement, Appellant engaged in an unfair and deceptive act by not suspending the floorplan or terminating the line of credit sooner than she did. (ROA p. \_\_\_, Tr. P. 428). This argument is all the more incredulous by a simple reading of Plaintiff's Exhibit 23 which grants Appellant the discretion to make "other arrangements" or a "separate agreement" if she elected to take less draconian actions than suspension of the floorplan or termination of the line of credit. (ROA p. \_\_\_, Plaintiff's Exhibit 23).

The other document presumably relied upon by the trial court in arriving at its finding of a UTPA violation was Defendant's Exhibit 2. (ROA p. \_\_\_, Tr. p.428-429). Defendant's Exhibit 2 is a document from 2008 which provides:

All vehicles floor planned will only be funded the monetary amount of average black book value minus mileage. There will be no exceptions to this rule. (ROA p. \_\_\_, Defendant's Exhibit 2).

The argument is that Appellant loaned too much money on a few vehicles when her own document prohibited it from making exceptions. By extension, the argument is that Appellant's decision to make a few exceptions to this rule for the benefit of Sparkle City Motors was somehow

an unfair or deceptive act. This argument lacks merit for several reasons.

First, the purpose of the document was to protect *Appellant* from constant requests from Sparkle City Motors for advances on vehicles whose worth didn't justify the advance. Essentially, this provision was to ensure the loans were supported by sufficient collateral.

If an exception was made resulting in the loan being under-collateralized, the injured party would be Appellant- not the Respondents. Once again, this bad business decision by Appellant was not an unfair or deceptive act against Sparkle City Motors or, more importantly, the public.

Appellant's acts were not unfair or deceptive. She was merely trying to get repaid for hundreds of thousands of dollars she loaned to Respondents. Saleh admitted that he owed both the "old debt" and the "new debt." (ROA p. \_\_\_\_, Tr. p. 545, ll. 20-23). The record does not reasonably support a finding that Appellant engaged in unfair or deceptive acts by simply trying to recoup money she had loaned to Respondents.

Even assuming Appellant engaged in an unfair or deceptive act in the conduct of trade commerce, which is not conceded, the act(s) did not affect the public interest.

To be actionable under the UTPA, " an unfair or deceptive act or practice must have an impact upon the public interest." Wright v. Craft, 372 S.C. 1, 29, 640 S.E.2d 486, 501 (Ct. App. 2006). "An impact on the public interest may be shown if the acts or practices have the potential for repetition." Singleton v. Stokes Motors, Inc., 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004). Generally speaking, the "potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair or deceptive acts. Id.

In the present case, the trial court did not find that Appellant’s allegedly improper acts or practices affected the public interest. The record contains no evidence that the course of dealing between Appellant and Respondents was anything like the course of dealing between the Appellant and any other dealers. As fully developed over days of trial, the relationship between Appellant and Respondents was a very unique one which evolved over a significant period of time. The only parties affected by the unique course of dealing between Appellant and Respondents were Appellant and Respondents themselves. The very purpose and effect of the public interest requirement is to *exclude* “unfair or deceptive act[s] or practice[s] that affect *only* the parties to a trade or a commercial transaction.” Noack Enterprises, Inc. v. County Corner Interiors, Inc., \_\_\_\_\_ S.C. \_\_\_\_\_, 351 S.E.2d 347, 349 (1986)(emphasis added).

The showing of an impact on the public interest “requires something more than a general allegation that the conduct “could be repeated.” Thornton v. Johnsen, C.A. No. 6:20-CV-01449 (D.S.C. 2020)(citing Daisy Outdoor Advertising Co. v. Abbott, \_\_\_\_\_ S.C. \_\_\_\_\_, 473 S.E.2d 47, 51-52 (1996).

Saleh failed to establish any impact on the public interest and the trial court did not find any impact on the public interest. Saleh did not appeal from these findings, or the lack thereof, and they are the law of the case. Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 714 S.E.2d 869 (2011)(an unappealed order is considered the law of the case). Without a finding of an impact on the public interest, the trial court erred as a matter of law in finding violation of the UTPA.

Finally, Saleh also failed to demonstrate that he “suffered actual, ascertainable damages as a result of [Appellant’s] use of the unlawful trade practice.” Havird Oil Co. v. Marathon Oil Co.,

149 F.3d 283, 291 (4th Cir. 1998). The trial court expressly found that the record did “not support a monetary award to Saleh.” (ROA p. \_\_\_, Final Order p. 9). Saleh did not appeal from this finding and it is the law of the case. Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 714 S.E.2d 869 (2011)(an unappealed order is considered the law of the case). Without damages, Saleh cannot recover under UTPA claim. More importantly for this appeal, the trial court erred as a matter of law in finding a UTPA violation without the requisite finding of damages.

Appellant did not engage in any unfair or deceptive acts which affected the public interest and caused Saleh actionable damages. The finding and conclusion that Appellant “engaged in Unfair Trade Practices Act violations” must be reversed. (ROA p. \_\_\_, Final Order p. 8).

### **CONCLUSION**

Based upon the foregoing, this Court should reverse the judgment of the circuit court and award damages in favor of Appellant Charna Henson, as Trustee of the Lewis C. Mason Revocable Trust Dated September 6, 2001, as Amended and Restated June 19, 2008, d/b/a L.C. Mason Enterprises against all Respondents, jointly and severally, in the amount of \$757,701.33. In the alternative, once judgment is imposed against Respondent Miller, this Court should remand this case to the circuit court to determine the proper amount of attorney’s fees and costs. Additionally, this Court should reverse the circuit court’s finding that Appellant “engaged in Unfair Trade Practices Act violations.”

[Signature Page to Follow]



David A. Wilson  
Wilson & Englehardt, LLC  
200 Whitsett Street, Suite 100B  
Greenville, South Carolina 29601  
(864) 232-2329  
[dwilson@greenvillesclaw.com](mailto:dwilson@greenvillesclaw.com)

Gary L. Compton, Esq.  
296 S. Morgan Avenue  
Spartanburg, South Carolina 29306  
(864) 583-5186  
[gary@garylcompton.com](mailto:gary@garylcompton.com)

Attorneys for Appellant

April 10, 2026