THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-002251

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

v.

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

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

INITIAL REPLY BRIEF OF APPELLANT TNT AND MORE, INC.

Michael S. Harrison
HARRISON | PILLINGER, LLC
1297 Professional Drive, Suite 202
Myrtle Beach, South Carolina 29577
(843) 839-5909

Howell V. Bellamy, III
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina 29577
(843) 448-2400

R. Walker Humphrey, II
James T. Johnson
WILLOUGHBY HUMPHREY & D'ANTONI, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Attorneys for Appellant TNT and More, Inc.

Table of Contents

Table of Authorities

Page(s)

Cases

Statutes

Other Authorities

Summary of Reply

Respondents' brief asks this Court to do what they asked the jury to do: "buckle up" and overlook the missing proof. Trial Tr. at 1338. This Court should decline.

This reply will not catalog every cherry-picked or wrong fact in Respondents' brief. The record speaks for itself. The appeal asks a narrower question: whether the verdict can survive the legal arguments in TNT's opening brief. It cannot. And rather than prove otherwise, Respondents duck most of those arguments. So this brief brings the Court back to what matters, not the issues Respondents would rather litigate. *See Gonzalez-Servin v. Ford Motor Co.*, 662 F.3d 931, 934 (7th Cir. 2011) ("The ostrich is a noble animal, but not a proper model for an appellate advocate.").

First, Respondents still cannot define the alleged joint venture. Nor do they address TNT's argument that there is no evidence of shared profits, losses, or equal control. Respondents instead focus on evidence of shared *resources*. But that is not enough. Their argument ultimately underscores the problem: there was no separate common enterprise between TNT and TnW. A JNOV on their breach of joint venture agreement claim is therefore needed.

Second, even assuming some joint venture agreement existed, the Statute of Frauds still bars Respondents' claim. Respondents argue there is evidence showing part performance to excuse the Statute of Frauds, but they forget that they never asked the jury to find part performance. As the record stands, the parties needed to sign the alleged joint venture agreement but never did. The Statute of Frauds therefore bars it.

Third, even if there is a joint venture agreement which survives the Statute of Frauds, the proper party to enforce it is not a plaintiff. Only the joint venture itself or a party proceeding on its behalf can bring that claim. Because neither is before this Court, Respondents' claim fails.

Fourth, Respondents still cannot justify the economic interference damages the jury awarded against TNT. Respondents brought a narrow claim: losing one $10,000 month-to-month lease. And after that contract terminated, Respondents quickly secured a replacement lease. Because those facts do not support a $600,000 verdict, Respondents now discard any limitations on their claim and morph it into one for years of general economic interference. But as Respondents previously admitted, that claim does not exist.

This Court therefore should reverse the circuit court and remand for entry of JNOV.

Argument

I. Respondents still cannot identify, much less prove, any joint venture with TNT.

Start with the basics: what is the joint venture? Five years in, Respondents still cannot say. All they offer is the assertion that "[a]ll of this evidence satisfies the elements required to show a joint venture." Resp'ts' Br. 21–24. "Unfortunately … saying so doesn't make it so." *United States v. 5443 Suffield Terrace, Skokie, Ill.*, 607 F.3d 504, 510 (7th Cir. 2010).

A joint venture requires (1) a common purpose distinct from that of its members, (2) an equal right of control, and (3) sharing profits and losses. *See* Resp'ts' Br. at 21–22; *Spradley v. Houser*, 247 S.C. 208, 212, 146 S.E.2d 621, 623 (1966); *Golson v. Thorne*, 288 S.C. 463, 465, 343 S.E.2d 451, 453 (Ct. App. 1986); *U.S. for Use of Altman v. Young Lumber Co.*, 376 F. Supp. 1290, 1296 (D.S.C. 1974). Respondents cannot identify evidence supporting those elements or even identify what the alleged common enterprise was. The circuit court therefore erred in denying TNT's motion for JNOV.

No evidence of a separate common purpose

After all this time, it still is not clear what the joint venture's separate purpose was. Respondents' factual statement treats TnW as the venture. They say Wade Long and Tim Kettner

formed TnW as the "new venture" that would operate a marina, harbor master's office, ice cream shop, and eventually a new restaurant, and that they "decided to use the name Little River Watersports as a d/b/a for the new venture." Resp'ts' Br. at 5–7. The parties borrowed money for "the purchase of property and improvements for the operation of a jet ski rental operation, an ice cream shop, dockage at the marina, and charter boat referrals at the marina," and the credit memorandum showed projected revenues only for "the new business to be conducted by TnW doing business as Little River Watersports"—none of which "involve revenue streams from Crabcatchers." *Id.* So all business to be conducted by the "joint venture" was just TnW's business, not the business of a separate entity. *See also* Trial Tr. at 432–33, 556 (Long testifying at trial that TnW was the joint venture).

But in their argument section, Respondents claim that "[t]he argument that TnW is the joint venture so it can't be a joint venture is simply false." *Id.* at 24. Now, the "fundamental agreement that led to the joint venture" was TnW's need for access to the parking lot to operate the marina. *Id.* at 5–6. But is the joint venture access to the parking lot and marina, or is property access just a separate agreement that "led to the joint venture"? Respondents don't say. What separate business did the parking lot and marina conduct? Respondents again don't say. Confusing matters further, Respondents allege "[t]he joint venture was established in 2018"—over four years after Long and Kettner developed the parking lot, two years after Long and Kiser organized TnW, and a year after the parties finalized the loan documents.[1] *Id.* at 7. Unable to define the joint venture, Respondents cannot coherently argue that evidence in the record supports it.

[1] Respondents' use of 2018 here was not a mere typo. Their brief expressly says the alleged joint venture operated "without much issue for over two years" from 2018 until the 2020 fallout. Resp'ts' Br. at 7.

Either way, neither option works. Take the first. If the alleged venture is just TnW, it fails as a matter of law. A joint venture is a "special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation." *Gordon v. Rothberg*, 213 S.C. 492, 503, 50 S.E.2d 202, 207 (1948) (emphasis added). TnW is an LLC. So it cannot be the joint venture. A joint venture must also have a purpose separate from its members' businesses. *See* 46 Am. Jur. 2d *Joint Ventures* §§ 15–16. The alleged joint venture between TNT and TnW must therefore have a purpose separate from TnW's business. By showing that TnW is the venture, Respondents' brief is self-defeating.

Now take the second. The marina was TnW's core business. Yet Respondents argue that the alleged joint venture "was never to combine the businesses, control the businesses jointly, or allow either business to assert control over the core functions of the other's business." Resp'ts' Br. at 23. A joint venture cannot exist without a separate common enterprise. *See Spradley*, 247 S.C. at 212, 146 S.E.2d at 623; *Golson*, 288 S.C. at 465, 343 S.E.2d at 453. Respondents also do not identify any joint profits that parking and marina access generated. At trial, they even denied any existed. Trial Tr. at 937–38 (counsel arguing that the arrangement was being able to use the property "for the benefit of each company, not necessarily to operate a single business on that property that they both shared profits from"). Their theory, at most, describes two neighboring businesses using each other's resources so each can profit separately. But "[t]he mere sharing of an economic interest is not sufficient to form a joint venture." 46 Am. Jur. 2d *Joint Ventures* § 15.

No evidence of shared profits and losses

Respondents next sidestep another key joint venture element by claiming TNT has argued "ad nauseum [*sic*], that TNW never made a profit" and now seeks dismissal for failure to share

those "non-existent profits." Resp'ts' Br. 24. TNT has never argued a joint venture must be profitable to exist. TNT's argument is much more fundamental: the law requires sharing the joint venture's profits *and losses*, not merely hoping that two businesses will each benefit from cooperating with the other. *See Young Lumber Co.*, 376 F. Supp. at 1296; 46 Am. Jur. 2d *Joint Ventures* §§ 15–16. And Respondents still identify no agreement by TNT and TnW to share joint profits or losses distinct from their separate businesses. Here too, Respondents at trial denied any sharing of profits or losses. Trial Tr. at 443–44, 497–98, 543–44, 560–61, 1012, 1150. Without that proof, there is no joint venture.

No evidence of shared control

Equal control over the common purpose is essential to a joint venture. *Spradley*, 247 S.C. at 212, 146 S.E.2d at 623; *Golson*, 288 S.C. at 465, 343 S.E.2d at 453. If the joint venture was TnW, Respondents concede there was no shared control. *See* Resp'ts' Br. at 23 (arguing that the alleged venture "was never to combine the businesses, control the businesses jointly, or allow either business to assert control over the core functions of the others' business"). And if the joint venture was sharing the marina and parking lot, there still is no shared control. TNT explained in its opening brief, and Respondents do not dispute, that TnW was *required* to control the marina. TNT's Br. at 23–24. That TNT staff helped at times, such as manning the fuel dock or running credit cards after hours, is not evidence of any control over marina operations, much less *equal* control. And the only evidence TnW cites for control of the parking lot shows no control at all. It is a sign simply allowing TnW customers to park in TNT's parking lot—the same kind of sign businesses across the state use every day. Resp'ts' Br. at 23 (citing Respondents' Ex. 34). Nothing

about it says or implies control over the property itself. If it constituted control, countless businesses would find themselves in joint ventures they never intended or foresaw.

* * *

Respondents end where they started: shifting between versions of the alleged venture as convenience requires while proving none of them. South Carolina law requires proof, not pageantry. Because Respondents cannot identify, much less prove, any joint venture the law recognizes, the verdict cannot stand.

II. Respondents do not dispute that the jury never found part performance excuses them from the Statute of Frauds.

Only part performance can save Respondents' claim from the Statute of Frauds. So they now argue the record supports a part-performance finding. Resp'ts' Br. at 25–27. But here is the problem: that finding had to come from the jury, at trial. And Respondents never asked for it.

The jury found the alleged agreement both "involve[d] a transfer of an interest in real property" and "could not have been completed within one year of the date the promise was made." Verdict Form at 2. Those findings brought the alleged agreement within the Statute of Frauds. *See* S.C. Code Ann. § 32-3-10; *Springob v. Univ. of S.C.*, 407 S.C. 490, 757 S.E.2d 384 (2014). The plaintiff, as the party seeking to enforce the contract, bears the burden to show that the Statute of Frauds has been satisfied. *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007). Because there is no signed writing satisfying the statute, Respondents could save their claim only by having the jury find a recognized exception like part performance. *See Benya v. Gamble*, 282 S.C. 624, 628–29, 321 S.E.2d 57, 60 (Ct. App. 1984).

But here, Respondents did not ask the jury to find part performance. So the jury found the Statute of Frauds applies, there is no signed joint venture agreement, and there is no finding of part

performance. On this record, as TNT argued in its opening brief, the Statute of Frauds bars Respondents' breach of joint venture agreement claim. *See* TNT's Br. at 28–30. Respondents never address this argument, so the Court can find Respondents forfeited any claim that the part performance exception applies. *See W. Va. Coal Workers' Pneumoconiosis Fund v. Bell*, 781 F. App'x 214, 226 (4th Cir. 2019) (Richardson, J.) ("[A]n appellee's wholesale failure to respond to a conspicuous, nonfrivolous argument in the appellants' brief ordinarily constitutes a forfeiture."). This Court should not backfill a verdict which Respondents chose not to build.

Even setting that failure aside, every argument Respondents raise to salvage the verdict fails:

- Respondents' new one-sentence argument that the loan documents are the written joint venture agreement ignores the record and the law. *See* Resp'ts' Br. at 26. To withstand the Statute of Frauds, a written contract must contain all the agreement's essential terms. *Robert Harmon & Bore, Inc. v. Jenkins*, 282 S.C. 189, 193–94, 318 S.E.2d 371, 373–74 (Ct. App. 1984). The loan documents here identify no common separate purpose (Respondents admit the documents only identify TnW's business as the purpose of the loan[2]), do not provide for sharing profits and losses, and do not provide for sharing equal control. *See generally* Resp'ts' Ex. 14; Resp'ts' Ex. 15, Kettner Ex. 2. They cannot be a joint venture agreement.
- Respondents' claim that TNT failed to preserve its argument that part performance does not save an agreement which cannot be performed within one year also ignores

[2] *See* Resp'ts' Br. at 6 ("Every single projection was for the new business to be conducted by TnW doing business as Little River Watersports.").

the record. *See* Resp'ts' Br. at 26. TNT preserved this issue at every stage below and cited *South States Life Insurance Co. v. Foster*, 229 F.2d 77 (4th Cir. 1956), in the circuit court. *See* Trial Tr. at 1351–57 (Statute of Frauds and partial performance); JNOV Hearing Tr. at 8–9 (part performance does not save a contract that cannot be performed within one year); TNT's Mot. for JNOV at 12–14 (same); TNT's Mot. for Reconsid. at 20 (citing *Foster* for the rule that "part performance will not save such a contract from the statute of frauds; only *full performance by one party* will").

- The jury did not find TNT is estopped from denying Respondents access to the parking lot or from denying the joint venture. *See* Resp'ts' Br. at 27. The jury found that there was an unambiguous promise made through the "cooperation between TNT and TnW." Verdict Form at 1. But the jury did *not* find any other element of promissory estoppel. *Id.* at 1–2; *see also* Trial Tr. at 1382 (charging the jury on all promissory estoppel elements). So just like part performance, Respondents failed to secure a verdict on promissory estoppel.
- Setting all else aside, there still is no evidence the parties partly performed an agreement to transfer real estate. "Performance may be proved by evidence of the following: (1) improvements to the real estate; (2) possession of the real estate; (3) payment of the purchase price." *Bradshaw v. Ewing*, 297 S.C. 242, 245, 376 S.E.2d 264, 266 (1989). Respondents never paid for an interest in TNT's real estate. Paying expenses related to the property, like architect fees and plat drafting, is not paying to buy it. *See* Resp'ts' Br. at 25. Also, "[f]or improvements to establish part performance, the improvements must be permanent or of such a character as to

enhance substantially the value of the property." *Id.* at 246, 376 S.E.2d at 267. The "temporary hut and fuel tank" which Respondents installed did not enhance the property's value. *See* Resp'ts' Br. at 25–26. They were illegal and unpermitted. *See* Trial Tr. at 281–82, 465–66, 531, 1066–67, 1145. And Long graded and cleared the parking lot in 2014, years before the alleged joint venture existed. *Id.* at 1046–47; Resp'ts' Br. at 7 ("The joint venture was established in 2018."). Finally, acts constituting possession must "clearly and unequivocally" demonstrate an intent to transfer property "exclusive of any other relation between the parties." *Aust v. Beard*, 230 S.C. 515, 523, 96 S.E.2d 558, 562–63 (1957). Every act Respondents identify reflects TNT and TnW sharing property so both businesses will separately profit, not to transfer an interest in TNT's property. *See* Resp'ts' Br. at 25–26. Respondents' part performance defense therefore fails on the merits even if it applies here.

So under any scenario, the Statute of Frauds bars Respondents' claim as a matter of law. The circuit court erred in concluding otherwise.

III. Even assuming a joint venture existed which the Statute of Frauds does not bar, Respondents' claim fails because they did not sue on the joint venture's behalf.

Even if Respondents had proven a joint venture agreement exists which the Statute of Frauds does not bar, their claim for breach of that agreement still fails because they did not bring the action on the joint venture's behalf under Rule 23(b), SCRCP.

Start with the rule. Respondents insist that Rule 23(b) "does not apply and it never applied," that there is "no derivative action between partners in a general partnership," and that they properly sued "the other partner in the joint venture" directly rather than any "fictional

entity." Resp'ts' Br. at 24–25. Not so. Rule 23(b)(1), SCRCP, expressly authorizes an action "to enforce a right of a corporation or of an unincorporated association." A joint venture is an unincorporated association. *See Gordon v. Rothberg*, 213 S.C. 492, 503, 50 S.E.2d 202, 207 (1948) (describing a joint venture as a "special combination of two or more persons" without any "corporate designation"). If Respondents' theory is correct—and a joint venture truly existed between TNT and TnW—then the contractual right at issue belonged to that joint venture. Only the joint venture, or a party proceeding on its behalf under Rule 23(b), could sue to enforce that right. Respondents did neither.

Rather than grapple with Rule 23(b)'s text, Respondents point elsewhere. They say South Carolina statutes expressly authorize derivative suits for corporations, LLCs, nonprofit corporations, and limited partnerships, but not for general partnerships or joint ventures. Resp'ts' Br. at 24–25. But TNT's argument is not that the Uniform Partnership Act contains a freestanding derivative action provision. Rule 23(b) itself supplies the procedural mechanism because it reaches "unincorporated association[s]" such as a joint venture. Respondents never explain why a joint venture should not qualify under the rule. Their reliance on the *absence* of a separate statute simply ignores the rule's plain language and the copious law which TNT cited showing joint ventures are subject to Rule 23(b). *See* TNT's Br. at 25–26 (citing numerous cases from other jurisdictions which have applied the derivative framework to joint ventures and general partnerships).

Respondents further restate the circuit court's meritless conclusion that derivative suits exist only to "protect minority shareholders from the tyranny of the majority." Resp'ts' Br. at 25. That unsubstantiated argument confuses one policy behind *some* derivative suits with the actual text and purpose of Rule 23(b). Rule 23(b)(1) is "designed for those situations where the

management … declines to take the proper and necessary steps to assert the rights which the corporation has." *Johnson v. Baldwin*, 221 S.C. 141, 149, 69 S.E.2d 585, 588 (1952). It does not limit that procedure to minority-interest holders. Importing that requirement improperly reads new language into the rule.

Respondents then claim that, assuming Rule 23(b) applies, they cured this defect by moving to amend the complaint at trial. Resp'ts' Br. at 24–25. But they didn't. The only relevant motion to amend they made was to include allegations that "consultation was a fruitless endeavor and was not required." Resp'ts' Br. at 25. That motion only addressed Respondents' failure to plead demand futility under Rule 23(b), which is not at issue here. Trial Tr. at 929. The current problem is much more fundamental. Respondents did not add the joint venture as a party, restyle the action as one brought on the joint venture's behalf, or otherwise cure the fact that they sued only in their own names and for TnW. At most, Respondents can claim they cured one pleading defect but not the one that matters.

Behind Respondents' misdirection is a simple question: who suffered the alleged harm? *Patterson v. Witter*, 425 S.C. 213, 232, 821 S.E.2d 677, 687 (2018); *Wilson v. Gandis*, 430 S.C. 282, 311, 844 S.E.2d 631, 647 (2020); *Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). If the entity was harmed, the claim is derivative. A claim is derivative even if the plaintiff maintains that the misconduct harmed the value of his interest in the entity. *See Rivers v. Wachovia Corp.*, 819 F. Supp. 2d 484, 487 (D.S.C. 2010); *Stewart v. Ficken*, 151 S.C. 424, 149 S.E. 164, 165 (1929). According to Respondents, "[t]he breach of the joint venture agreement is kicking [them] off the land" so that they "don't have a permit to operate the marina." Trial Tr. at 1337–38. Because using the land and marina was the purpose of the joint venture, Resp'ts' Br. at 6, it was the joint

venture which was harmed. Any loss to TnW flows only from its status as a member in that alleged venture; indeed, the cause of action at issue is breach of a joint venture agreement. If Respondents instead contend the injury belonged only to Long, Kiser, or TnW individually, then they cannot recover those losses under a breach of joint venture agreement claim. Either way, the circuit court erred in denying JNOV.

Respondents lastly say they "never sued a fictional entity that was the joint venture" and instead sued "the other partner in the joint venture to satisfy its obligations according to the joint venture agreement." Resp'ts' Br. at 25. That misses the point. Whether or not the alleged joint venture is a fictional entity of Respondents' imagination, TNT does not argue Respondents sued the wrong party. TNT argues Respondents are the wrong plaintiffs.

Respondents cannot have it both ways. If the joint venture exists, the claim belongs to it and must proceed under Rule 23(b). If it does not, or if the harm is personal to Respondents, there is nothing to recover on a breach-of-joint-venture claim. JNOV is needed either way.

IV. Respondents expand their tortious interference claim from interference with a single month-to-month lease to a claim which does not exist: general economic interference.

Respondents had it right at trial: general "economic interference" is not a recognized claim. Trial Tr. at 1214. A plaintiff instead must tie interference to specific, identifiable contracts. *United Educ. Distribs., LLC v. Educ. Testing Serv.*, 350 S.C. 7, 17, 564 S.E.2d 324, 330 (Ct. App. 2002); *Dutch Fork Dev. Grp. II, LLC v. SEL Props. LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012). On appeal, Respondents say the opposite: every customer, every potential harm, every relationship is now in play. This Court should reject their attempt to dismantle settled law.[3]

[3] Respondents falsely suggest that TNT also argues there is no evidence of interference. Resp'ts' Br. at 27. TNT recognized that Respondents presented enough evidence to create a jury

At trial, Respondents properly limited their tortious interference claim. They told the jury that their claim was "real simple" because "[t]he only thing" at issue was the dock lease contract with Eric Rolf. Trial Tr. at 1338; *see also id.* at 1253 ("[O]ur claim is solely based on Eric Rolf."). But the evidence cannot support a $600,000 verdict for interference with that contract. Rolf's lease was $10,000 per month, and it was a month-to-month lease at the time he terminated it in the second half of 2022 due to TNT's alleged interference. *Id.* at 304–05, 753–54, 756–57, 760; Respondents' Ex. 37 at 1–2. Respondents promptly signed a new lease which has continued since without issue. *See* Trial Tr. at 1175. On this record, a $600,000 award representing five years of lost lease revenue is speculation in its purest form.

Unable to defend the award as framed at trial, Respondents now grossly expand their claim to meet the verdict. They first argue that the Rolf lease is merely the "most immediate proof" of interference and that the jury could also rely on customer harassment, lost goodwill, reputational harm, destroyed equipment, and other alleged interference with "prospective contractual relations." Resp'ts' Br. at 19–20, 27–28. In their view, "[e]very single business transaction is a contract of some form." *Id.* at 20. That is not the law. The tort requires a specific, identifiable contract or expectation — something "less than a contractual right" but "more than a mere hope," with the agreement "a close certainty." *United Educ.*, 350 S.C. at 16–17, 564 S.E.2d at 329–30. A customer walking through the door does not qualify. *Id.* at 18, 564 S.E.2d at 330.

The same is true of Respondents' reliance on general testimony about out-of-pocket costs, reputational harm, customer harassment, equipment damage, and lost goodwill as supporting the

---

issue on interference, even though TNT denies it. TNT's Br. at 11 n.3. But TNT correctly noted that no appellate question involves the disputed facts of interference. *Id.*

award. Resp'ts' Br. at 19–20, 27–28. Respondents never explain how interference with the Rolf lease, or with any other identifiable contract, caused those alleged harms. South Carolina law requires not just evidence of injury in the abstract, but evidence permitting the factfinder to determine damages with reasonable certainty. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010); *Collins Music Co. v. Ingram*, 292 S.C. 537, 541, 357 S.E.2d 484, 486 (Ct. App. 1987). And where "the jury would have been left to speculate as to what damages [the plaintiff] suffered," JNOV is required. *Rd., LLC v. Beaufort Cnty.*, 433 S.C. 164, 177, 857 S.E.2d 371, 377 (Ct. App. 2021), *aff'd on other grounds*, 443 S.C. 11, 902 S.E.2d 366 (2024).

Here, all the jury could do is speculate. Respondents never tied the damages they identified to alleged interference. They simply say general damages are "not typically susceptible" to mathematical calculation, point to tax returns and loan projections, and note that, on cross-examination, Long read a prior $10 million valuation into the record. Resp'ts' Br. at 19–20. But the more Respondents try to justify the outsized award, the worse it becomes.

For example, the loan projections are not proof that profits "would have been realized but for the tort," nor do they establish those profits "with reasonable certainty." *Collins Music*, 292 S.C. at 541, 357 S.E.2d at 486. The record bears this out. TnW notes that projections showed the business would have "made" $649,000 in the first year from marina operations but ultimately "barely broken even." Resp'ts' Br. at 19; *see also* Resp'ts' Ex. 15 at 1, 3. The implication is that TnW lost hundreds of thousands of dollars annually due to interference. But TnW did not earn a profit for its first five years, including three years when there was no alleged interference. Trial Tr. at 426–27, 960–61. However well-intentioned the projections may have been, they simply overstated TnW's ability to earn money. They cannot support damages which only started years later. Long's

off-the-cuff $10 million valuation fares no better. There is no foundation for it, and the business's total value bears no relation to losses from specific contracts. Undeterred, Respondents then argue their tortious interference claim includes "damage to the business of TNW through eliminating access to the parking lot." Resp'ts' Br. at 21. But that is the basis of their joint venture award, so those losses cannot be included here.

Respondents' penultimate paragraph loses the thread altogether. In it, they argue that the absence of testimony from Don Kettner and Robert Benoit "did more to prove Respondents' claims than anything else" and means "Appellants essentially conceded all of the allegations made by Respondents." Resp'ts' Br. at 27. Just not true. Respondents bore the burden to prove all elements of their claims, including damages. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 240, 246 S.E.2d 880, 881 (1978). TNT did not have to disprove anything. In any event, TNT vigorously defended the case through other witnesses, extensive cross-examination of Respondents' witnesses, and documentary evidence. And Respondents voluntarily dismissed these individuals as defendants. Trial Tr. at 268–69. While a civil plaintiff can comment on a defendant's failure to testify, *Powell v. Drake*, 199 S.C. 212, 18 S.E.2d 745, 747 (1942), Respondents' comments here defy the record.

Because Respondents offered no evidence from which the jury could determine interference damages with reasonable certainty, the circuit court erred in denying TNT's motion for JNOV. At a minimum, the record shows the award was excessive, and the circuit court should have remitted it.

Conclusion

Respondents had more than five years to build a case against TNT. But even now, they still cannot identify what the joint venture is, how the joint venture was harmed, what role they are

proceeding in, or how the breach of one lease with Eric Rolf damaged their business more generally. They simply point to generalized claims of interference and hope it carries the day. It does not. TNT identified several legal errors in the circuit court's denial of JNOV, none of which depend on the narrative which Respondents weave into their brief. And despite years to answer these questions, Respondents cannot defend the circuit court's rulings on their terms.

This Court should reverse and remand for entry of judgment in TNT's favor. The circuit court's order rewrites settled law on joint ventures, economic interference, and damages. This Court should restore it.

Respectfully submitted,

s/ *R. Walker Humphrey, II*
R. Walker Humphrey, II
James T. Johnson
Willoughby Humphrey & D'Antoni, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Michael S. Harrison
Harrison | Pillinger, LLC
1297 Professional Drive, Suite 202
Myrtle Beach, South Carolina 29577
(843) 839-5909

Howell V. Bellamy, III
Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina 29577
(843) 448-2400

Attorneys for Appellant TNT and More, Inc.

May 12, 2026
Charleston, South Carolina