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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court for the Thirteenth Judicial Circuit

Courtney Clyburn Pope, Circuit Court Judge

App. Case No. 2026-000941

Brow Art Management, LLC,Appellant,

vs.

Angel Eyez & Brows, LLC, Manpreet Kaur, and Binal Gandhi,Respondents.

APPELLANT’S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	
ARGUMENT.....	
I. THE CIRCUIT COURT ERRED IN DISMISSING THE CONTRACTUAL CLAIMS WITHOUT PROPERLY ADDRESSING THE EARLIER NONCOMPETITION AGREEMENTS AND THE APPLICABLE STANDARD OF REVIEW.....	
II. THE CIRCUIT COURT’S DISMISSAL OF ANGEL EYEZ & BROWS, LLC SHOULD BE REVIEWED UNDER THE CORRECT LEGAL STANDARD AND IN LIGHT OF THE RECORD.....	
III. THE CIVIL CONSPIRACY CLAIM SHOULD BE EVALUATED UNDER <i>PARADIS</i> AND THE ACTUAL ALLEGATIONS OF THE COMPLAINT.....	
CONCLUSION.....	

TABLE OF AUTHORITIES

Cases

<i>Allegro, Inc. v. Scully</i> , 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016).....	3
<i>Fuller v. Eastern Fire & Casualty Insurance Co.</i> , 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)	3
<i>Kitchen Planners, LLC v. Friedman</i> , 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023)	7
<i>Paradis v. Charleston Cty. Sch. Dist.</i> , 433 S.C. 562, 574-75, 861 S.E.2d 774, 780 (2021).....	10, 11, 12
<i>Poole v. Incentives Unlimited, Inc.</i> , 345 S.C. 378, 382, 548 S.E.2d 207, 209 (2001).....	5, 7
<i>Raines v. Walker</i> , 262 S.C. 330, 204 S.E.2d 802 (1974),	
<i>Rydde v. Morris</i> , 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).....	9
<i>Stevens & Wilkinson of S.C., Inc. v. City of Columbia</i> , 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014).....	8
<i>Thomas Trancik, M.D., P.A. v. USAA Insurance Co.</i> , 354 S.C. 549, 554, 581 S.E.2d 858, 861 (Ct. App. 2003)	7

Rules

Rule 56, SCRCP.....	3
Rule 12(b)(6), SCRCP.....	6
Rule 220(c), SCRCP.....	9, 10

Respondents' Initial Brief asks this Court to affirm the dismissal of all claims asserted by Brow Art Management, LLC ("Brow Art") based on three principal arguments: (I) That the noncompetition agreements are unenforceable for lack of consideration; (II) that Angel Eyez & Brows, LLC is not a party to the agreements; and (III) That Brow Art failed to allege sufficient facts to support its civil conspiracy claim.

Respondents' arguments do not eliminate the need to apply the appropriate standard of review to the circuit court's March 18, 2026 Order. Although Respondents characterize the ruling as one properly reviewed under Rule 56, SCRPC, because affidavits were submitted, the Court must still determine whether the record establishes that Respondents were entitled to judgment as a matter of law.

Brow Art's Initial Brief identified three errors warranting reversal. First, the court disposed of the contractual claims without permitting discovery into the earlier noncompetition agreements that Brow Art represented had been executed by the individual Respondents. Second, the court determined that Angel Eyez & Brows, LLC was not a party to the contractual relationship, relying in part on an authority that could not be located. Third, the court concluded that Brow Art failed to state a claim for civil conspiracy without allowing the case to proceed beyond the pleadings and preliminary affidavits.

Brow Art recognizes that South Carolina law requires consideration to support a restrictive covenant and that an allegation of conspiracy, standing alone, is insufficient. The issue is whether the circuit court properly applied those principles to the claims and record before it.

For the reasons set forth below, Brow Art respectfully requests that this Court reverse the circuit court's Order and remand the matter for further proceedings.

I. THE CIRCUIT COURT ERRED IN DISMISSING THE CONTRACTUAL CLAIMS WITHOUT PROPERLY ADDRESSING THE EARLIER NONCOMPETITION AGREEMENTS AND THE APPLICABLE STANDARD OF REVIEW.

Respondents rely principally on *Poole v. Incentives Unlimited, Inc.*, 345 S.C. 378, 382, 548 S.E.2d 207, 209 (2001), arguing that the 2023 noncompetition agreements are unenforceable because the individual Respondents received no additional consideration when they signed them. Brow Art does not dispute the general rule established in *Poole*: when a covenant not to compete is entered into after employment has commenced, separate consideration, in addition to continued at-will employment, is necessary to support enforcement. The question, however, is whether the circuit court properly disposed of Brow Art's contractual claims without fully addressing the earlier agreements identified in the record and the procedural posture in which the issue arose.

A. The Earlier Agreements Identified by Brow Art Are Relevant to the Contractual Claims.

As set forth in Brow Art's Initial Brief, Manpreet Kaur began working for Brow Art on August 9, 2017, and Binal Gandhi began working for Brow Art on October 25, 2022. Both individuals signed updated noncompetition agreements in July 2023 following the appointment of Vinesh Darji as Brow Art's Chief Executive Officer. (Darji Aff. dated Aug. 4, 2025; R. p. ____).

Brow Art's Initial Brief further explained that both individual Respondents had previously signed noncompetition agreements with Brow Art's former owner and that the earlier agreements could be obtained through discovery. Respondents' brief acknowledges the employment dates, the execution dates of the updated agreements, and the evidence submitted by Darji.

Respondents contend that these facts establish that no consideration was provided for the updated agreements. They further argue that discovery cannot manufacture consideration that was never given.

That argument does not fully address Brow Art's contention concerning the earlier agreements. Brow Art does not maintain that the mere existence of an earlier agreement automatically establishes consideration for a subsequent agreement. Rather, the earlier agreements are relevant to determining the contractual obligations between the parties, the effect of the updated agreements, and the basis for Brow Art's claims.

The existence and terms of those earlier agreements should therefore be examined before the Court concludes that the entire contractual dispute was properly resolved as a matter of law. The question is not simply whether the 2023 agreements were signed after employment began; it is also whether the record sufficiently establishes the legal effect of the earlier agreements upon which Brow Art has relied.

Respondents' argument assumes that the updated agreements alone conclusively resolve the contractual issues presented. Brow Art respectfully submits that the Court should consider the full contractual history identified in the record when evaluating whether the circuit court properly dismissed the claims.

B. The Applicable Standard of Review Requires Examination of the Actual Basis for the Circuit Court's Ruling.

Brow Art's Initial Brief argued that the circuit court's ruling was improper under Rule 12(b)(6), SCRCF, because the court resolved issues beyond the legal sufficiency of the Complaint. Under *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009), a motion to dismiss is reviewed de novo, with the allegations and reasonable inferences construed in the light most favorable to the nonmoving party.

Respondents counter that the circuit court considered affidavits submitted by both parties and that the ruling should therefore be reviewed under Rule 56, SCRCF. Rule 12(b), SCRCF,

provides that when matters outside the pleadings are presented and not excluded, a motion to dismiss must be treated as one for summary judgment and disposed of under Rule 56.

Even if this Court determines that summary judgment is the appropriate standard, Respondents must still establish that the record entitles them to judgment as a matter of law. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023). The evidence and reasonable inferences must be viewed in the light most favorable to Brow Art. *Id.* at 462.

Brow Art acknowledges that the absence of discovery, standing alone, does not preclude summary judgment. Nevertheless, the fact that affidavits were submitted does not eliminate the Court's obligation to examine the contractual issues actually presented and determine whether the record supports the disposition of each claim.

Brow Art identified earlier noncompetition agreements and explained that discovery was necessary to obtain them. The legal significance of those agreements must be considered in determining whether the circuit court properly resolved the contractual claims. Respondents' reliance on *Poole v. Incentives Unlimited, Inc.*, does not eliminate that inquiry.

Accordingly, Brow Art respectfully requests that this Court reverse the dismissal of the contractual claims to the extent the record demonstrates that the circuit court resolved them without properly addressing the earlier agreements and the applicable standard of review.

II. THE CIRCUIT COURT'S DISMISSAL OF ANGEL EYEZ & BROWS, LLC SHOULD BE REVIEWED UNDER THE CORRECT LEGAL STANDARD AND IN LIGHT OF THE RECORD.

Respondents contend that Angel Eyez & Brows, LLC cannot be liable for breach of contract because it did not sign either of the noncompetition agreements attached to the Complaint. They rely on *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962), and *Thomas Trancik, M.D., P.A. v. USAA Insurance Co.*, 354 S.C. 549, 554, 581

S.E.2d 858, 861 (Ct. App. 2003), for the proposition that a person or entity ordinarily cannot be held liable for breaching a contract to which it is not a party.

Brow Art does not dispute that general principle. The issue is whether the circuit court properly resolved the claim against Angel Eyez & Brows, LLC without applying the governing law to the actual allegations and record.

A. The Identity of the Parties Bound by a Contract Must be Evaluated Under the Governing Law.

In its Initial Brief, Brow Art relied on *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014), which recognizes that the existence of a contract ordinarily presents a question of fact but becomes a question of law when the undisputed facts do not establish a contract.

Respondents rely on the same authority to argue that the undisputed terms of the agreements resolve the issue because Angel Eyez & Brows, LLC is not identified as a party or signatory.

The Court should consider that argument in the context of the precise basis for the claim against the LLC and the allegations and evidence actually before the circuit court. Brow Art's Initial Brief identified the formation and operation of Angel Eyez & Brows, LLC, the employment of the individual Respondents, and the relationship between those individuals and the competing business. (Darji Aff. dated Aug. 4, 2025; R. p. ____).

Those circumstances do not, by themselves, establish that the LLC became a party to the individual Respondents' agreements. Brow Art recognizes that ownership, employment, or competition alone does not create contractual liability. However, the relevant inquiry is whether the pleadings and record establish a legally recognized basis for the claim asserted against the LLC.

If the claim rests solely on the proposition that Angel Eyez & Brows, LLC is bound by agreements it did not sign, without additional facts supporting a recognized legal theory, Respondents' argument presents a substantial obstacle to reversal. If, however, the allegations and record support a legally recognized basis for liability, the claim should be evaluated under that theory and the governing law.

Brow Art therefore requests that this Court examine the actual basis for the circuit court's ruling rather than treating the absence of the LLC's signature as dispositive without considering the claim as pleaded and the record as a whole.

B. The Erroneous Citation in the Circuit Court's Order Reinforces the Need to Examine the Actual Legal Basis for the Ruling.

Brow Art's Initial Brief challenged the circuit court's reliance on *Raines v. Walker*, 262 S.C. 330, 204 S.E.2d 802 (1974), an authority Brow Art was unable to locate despite searching South Carolina reporters, regional reporters, electronic databases, and consulting a reference librarian at the University of South Carolina School of Law.

Respondents now acknowledge that the citation was erroneous. Respondents explain that their counsel accepted responsibility for the error and reported it to the Office of Disciplinary Counsel. They nevertheless contend that the ruling should be affirmed because Rule 220(c), SCACR, permits an appellate court to affirm a judgment on any ground appearing in the Record on Appeal.

Brow Art does not contend that an erroneous citation automatically requires reversal. Rather, the issue is whether the circuit court's actual ruling is supported by the governing law and the record.

Rule 220(c), SCACR, permits affirmance on an alternative ground supported by the record. It does not eliminate the requirement that the judgment be legally correct. The Court must therefore

determine whether the applicable law supports the circuit court's conclusion concerning Angel Eyez & Brows, LLC.

Brow Art respectfully requests that this Court independently review the issue under the correct legal principles and determine whether the record supports dismissal as a matter of law.

III. THE CIVIL CONSPIRACY CLAIM SHOULD BE EVALUATED UNDER *PARADIS* AND THE ACTUAL ALLEGATIONS OF THE COMPLAINT.

Respondents contend that Brow Art's civil conspiracy claim alleges nothing more than lawful competition by former employees who left Brow Art and participated in a competing eyebrow-threading business. They argue that, absent an enforceable noncompetition agreement, the alleged conduct cannot constitute an actionable conspiracy.

Brow Art recognizes that South Carolina law requires more than ordinary competition to establish civil conspiracy. The question is whether the Complaint, considered as a whole and under the applicable standard of review, alleges facts sufficient to support the elements of the cause of action.

A. The Governing Standard Requires Examination of the Alleged Agreement, Unlawful Objective or Means, Overt Acts, and Resulting Damages.

In *Paradis v. Charleston County School District*, the Supreme Court of South Carolina identified the elements of civil conspiracy as:

(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.

433 S.C. 562, 574–75, 861 S.E.2d 774, 780 (2021).

As Respondents acknowledge, *Paradis* eliminated the former special-damages requirement. It did not eliminate the requirement that a plaintiff plead facts supporting the elements of civil conspiracy.

Brow Art's Initial Brief relied on *Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016), for the proposition that a conspiracy may be inferred from the nature of the acts performed, the relationship of the parties, their interests, and other surrounding circumstances. Such an inference must rest on facts supporting the alleged agreement and unlawful objective or means; it cannot rest solely on the assertion that two parties acted together.

Brow Art's Initial Brief identified the circumstances surrounding the individual Respondents' employment, the formation and operation of Angel Eyez & Brows, LLC, and the alleged harm to Brow Art's business. (Darji Aff. dated Aug. 4, 2025; R. p. ____). Those circumstances must be evaluated in light of the specific allegations of the Complaint and the elements established in *Paradis*.

B. The Lawfulness of Competition Does Not Resolve Whether the Complaint Alleges Unlawful Conduct Accompanying That Competition.

Respondents argue that the individual Respondents were free to compete after leaving Brow Art and that an agreement to compete cannot support a civil conspiracy claim.

Brow Art does not contend that the formation of a competing business, without more, establishes an unlawful conspiracy. Nor does Brow Art contend that the mere existence of a noncompetition agreement automatically establishes the unlawful objective required by *Paradis*.

Rather, the Court must examine whether the Complaint alleges conduct beyond lawful competition and whether the alleged facts, taken together, support a reasonable inference of an agreement to accomplish an unlawful objective or to employ unlawful means.

The distinction is significant because the existence of a competing business does not, by itself, resolve the legality of every act that may accompany its establishment or operation. At the

same time, the fact that two individuals may have acted in concert or that Brow Art suffered damages does not establish civil conspiracy without the required unlawful objective or means.

Accordingly, Brow Art respectfully requests that this Court review the Complaint's specific allegations concerning the alleged agreement, the acts undertaken in furtherance of it, and the resulting damages. If those allegations satisfy the requirements of *Paradis*, dismissal was improper. If the Complaint alleges only lawful competition and conclusory assertions of conspiracy, the claim cannot survive solely because discovery might uncover additional facts.

Brow Art maintains that the circuit court's disposition should be reviewed under the governing legal standard and the allegations actually presented, rather than solely through Respondents' characterization of the conduct as competition.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Appellant's Initial Brief, Brow Art Management, LLC respectfully requests that this Court reverse the March 18, 2026 Order granting Respondents' Motion to Dismiss or, in the alternative, Motion for Summary Judgment, and remand this matter for further proceedings consistent with South Carolina law.

Respectfully submitted,

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