

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Appellate Case No. 2014-000605

Senneka Trading Incorporated,

Respondent,

v.

George O. Nwachukwu, Eleke Ijioma
Celtex Export Corporation, Celtex,
Inc., and Josling Inc.

Defendants,

v.

Of Whom George O. Nwachukwu and Josling Inc. are the Appellants.

INITIAL BRIEF OF APPELLANTS

RECEIVED

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3C Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. The lower court erred in granting the Respondent possession of goods that the Respondent could not identify as goods that the Respondent had purchased.
2. The lower court erred in granting the Respondent possession of goods that were purchased by the Appellants from a third-party.

STATEMENT OF THE CASE

The Appellant, George Nwachukwu, was born in Nigeria. (Dec. 17 Transcript, page 70, lines 24-25). His father died when he was six years old. (Dec. 17 Transcript, page 71, line 3). His mother sold him into slavery because she could not feed both George and his sisters. (Dec. 17 Transcript, page 71, lines 4-10). His masters fed him, but provided no formal education. (Id.) After a war in Nigeria, George was taken to Togo, West Africa by his uncles. While in Togo and selling t-shirts to survive, George met a Danish man. The Danish man enlisted George to sell textiles. George gained some literacy and eventually moved to the United States. (Dec. 17 Transcript, p. 71, lines 21-25 through p. 72, lines 1-16). George was able to read the words written in the Spartanburg County courthouse and believed, “God will give us authority to honor justice to any individual” regardless of that person’s beginnings. (Dec. 17 Transcript, p. 70, lines 14-18). George argues that the lower court decision is an injustice and, contrary to the Respondent’s statement, the facts and the truth are the same.¹

1. The evidence presented at trial.

On or about October 2012, Cottonall, Inc. (the “Seller”) started selling textiles from six (6) or more buildings in Walkertown, North Carolina (often referred to hereinafter as “Walkertown goods”). (Oct. 1 Transcript p. 22, lines 24-25; Id. at lines 9-10; Dec. 17 Transcript p. 161, lines 23-24). The Seller contacted the Appellants (often referred to hereinafter as the “First Buyers”) and other buyers to purchase Walkertown goods. (Dec. 17 Transcript p. 166, lines 19-22). The First Buyers began purchasing goods on November 30, 2012. (Dec. 17 Transcript p. 75, lines 9-14)

The Seller was under a deadline to dispose of all the goods and asked the First Buyers about buying goods from Walkertown more quickly. (Dec 17 Transcript p. 77, lines 19-22). The First Buyers told the Seller that they were unable to process many more goods on their own, but would contact the Respondent (often referred to hereinafter as the “Second Buyer”) about purchasing Walkertown goods. (Dec. 17 Transcript p. 78, lines 2-7). The Second Buyer was

¹ The Respondent testified that “Facts are different from the truth.” (Oct. 2 Transcript, p. 83, line 25).

one of the First Buyers' customers for whom the First Buyers sorted and baled² goods to be shipped to Africa. (Oct 1 Transcript p. 17, lines 3-7).

The First Buyers called and told the Second Buyer that there was an opportunity to purchase 500,000 pounds of goods from Walkertown. (Oct. 1 Transcript p. 21, lines 3-7). In January of 2013, the First Buyers took the Second Buyer to meet the Seller's representatives and viewed goods from five buildings. (Oct. 1 Transcript p. 22, lines 9-12). The Second Buyer negotiated with the Seller to purchase goods from the five buildings at a graduated price, renegotiating for lower quality goods once the higher priced goods were depleted. (Oct. 1 Transcript p. 24, lines 16-23).

The Second Buyer agreed to pay First Buyers a 3 cent commission for every pound of Walkertown goods purchased by the Second Buyer and 3 cents for every pound of goods the First Buyers baled for the Second Buyer. (Oct. 1 Transcript p. 25, lines 3-6). The Second Buyer began buying goods on or about January 23, 2013. (Oct. 1 Transcript p. 21, line 25, p. 22, lines 1-13). The First Buyers would unload, sort, and bale goods that the Second Buyer had purchased from Walkertown and shipped to Spartanburg. (Oct 1 Transcript p. 37, lines 4-12). The First Buyers would transport the baled goods to the Second Buyer's warehouse and load them onto the Second Buyer's shipping containers. The shipping containers were then driven to seaports and shipped overseas. (Id.; Dec. 17 Transcript p. 6, lines 22-25, p. 7, lines 1-25; Dec. 16 Transcript p. 4, lines 4-8).

The Seller and the Second Buyer had a dispute in early April 2013. (Dec. 17 Transcript p. 173, lines 23-25 through p. 174, lines 1-25, through p. 175, lines 1-16). The Seller claimed that the Second Buyer owed the Seller money, but the Second Buyer claimed to have overpaid the Seller by \$40,000. (Id.). The disagreement was resolved on or about April 15, 2013 when the Second Buyer agreed to pay the Seller \$15,346.34. The Seller refused to sell any more goods to the Second Buyer or do anymore business with the Second Buyer. (Dec. 17 Transcript 174, lines 23-25, p. 175, lines 1-6, lines 15-16).

The Seller continued selling goods to the First Buyers. (Dec. 17 Transcript p. 175, lines 10-14). The Seller told the First Buyers of goods in another building on the estate property that

² Baling is the process of tightly packing textiles with wiring and chords, and sometimes wrapping. The textile goods are shipped for a flat fee on shipping containers. Baling maximizes profit by maximizing the amount of goods that can fit into a shipping container.

was not among the five (5) buildings from which the Second Buyer had seen or purchased goods (the “sixth building”). (Dec. 17 p. 161, lines 16-24). The goods were indistinguishable from other goods at the Walkertown site. (Dec 17 Transcript p. 171, lines 16-25, p. 172 lines 1-25, p. 173, line 1). Steve Brown, a representative from the Seller, testified that the Seller sold the First Buyers at least four (4) trailers of goods after the April 15, 2013 settlement with the Second Buyer from the sixth building.³ (Dec. 17 p. 161, lines 16-25, through p. 162, lines 1-12). Contrary to testimony from the Seller’s representative, the Second Buyer testified that the goods on three of the four trailers came from the original five (5) buildings. (Dec. 16 Transcript p. 51, lines 9-20).

On May 8, 2013, the Second Buyer had a phone conversation with one of the First Buyers’ workers. (Oct. 1 Transcript p. 49, lines 8-10; p. Dec. 16 Transcript p. 113, lines 13-16). During the conversation, the Second Buyer inquired about whether his goods were being loaded onto his shipping container. The worker “just told [the Second Buyer] something wasn’t right.” (Dec. 16 Transcript p. 101, lines 20-21). The worker thought that all goods coming from Walkertown belonged to the Second Buyer. (Dec. 16 Transcript p. 115, lines 4-10). The workers did not know that the First Buyers had a separate contract with the Seller to purchase Walkertown goods. (Id.). The worker testified at trial that he saw roughly a dozen bales being set aside in the First Buyers’ warehouse rather than taken to the Second Buyer’s warehouse. (Dec. 16 Transcript p. 100, lines 21-25).

The Second Buyer convinced police to lock its warehouse after its conversation with the First Buyers’ worker and accused the First Buyers of stealing 150,000 pounds of the Second Buyer’s goods. (Dec. 16 Transcript p. 12, lines 17-20, p. 13 lines 18-25; Defendants’ Exhibit 8, Incident Report p. 2). Investigator Stokes of the Spartanburg City Police Department was assigned the case on May 14, 2013. (Defendants’ Exhibit 8, Incident Report p. 1). The Second Buyer hired an attorney who contacted US Customs and placed a hold on three shipping containers belonging to the First Buyers at the Port of Savannah that were scheduled to ship to Nigeria.⁴ (Defendants’ Exhibit 8, Incident Report p. 6 paragraph 8). Those three shipping containers represented the vast majority of the First Buyers’ business. (June 7 Transcript p. 19,

³ Trailer number 53105 was purchased on April 16, 2013. Trailer number 175 was purchased on April 23, 2013. Trailer number 5383 was purchased on April 28, 2013. Trailer number 5350 was purchased on April 30, 2013. (Defendants’ Exhibit 14).

⁴ The three shipping containers were identified as PONU 749556-6, PONU 764375-0, and MRKU 2080225.

lines 12-14). The Second Buyer alleged that the 150,000 pounds of the Respondent's allegedly missing Walkertown goods were on the three containers. (Defendants' Exhibit 8, Incident Report p. 5, paragraph 8).

When the Investigator visited the First Buyers' warehouse, the First Buyers showed and/or indicated to the Investigator that many of the Second Buyer's Walkertown goods were still in the First Buyers' and Second Buyer's warehouses.⁵ The investigation was closed on June 3, 2013, when the Investigator determined that the documentation provided by the Second Buyer was insufficient to prove that any of the Second Buyer's goods were missing and that the Second Buyer had provided some duplicates of documents to support its numbers. (Defendants' Exhibit 8, Incident Report p. 6 paragraph 5).

On May 31, 2013 the Second Buyer obtained a Temporary Restraining Order that caused the First Buyers' three shipping containers to be brought back to Spartanburg from Port of Savannah and stored in the Second Buyer's and First Buyers' warehouses. (Dec. 17 Transcript, p. 186, lines 16-18; Temporary Restraining Order).

2. Procedural History

On May 31, 2013, the Second Buyer filed a Verified Complaint with the Spartanburg County Clerk of Court. The Second Buyer claimed that the First Buyers took some of the Second Buyer's goods and put them on the three shipping containers. On the same day, the Second Buyer received a Temporary Restraining Order from the Honorable J. Derham Cole that stopped the First Buyers' three shipping containers from leaving the Port of Savannah for Nigeria and directed them to be taken back to Spartanburg. The contents from roughly one and a half of the containers were placed in the Second Buyer's warehouse and the remaining contents were placed in the First Buyers' warehouse. The Temporary Restraining Order remained in effect until an Order on Plaintiff's Motion for Temporary Injunction was filed on June 27, 2013 by the Honorable J. Derham Cole, granting the Second Buyer a Temporary Injunction and

⁵ 48,020 pounds of the Walkertown goods the Respondent claimed to have paid for were still in the Appellants' warehouse. (Dec. 17 Transcript p. 105, lines 18-24) Three air conditioners from Walkertown were in the Respondent's warehouse. (Dec. 17 Transcript p. 174, lines 24-25, Defendant's Exhibit 8, Incident Report p. 5, paragraph 9). Between 10 to at least 15 racks of the Respondent's Walkertown goods that could have weighed between 2,000 and 3,000 pounds each were in the Respondent's warehouse. (Dec. 17 Transcript p. 44, lines 10-21; p. 110, lines 2-16) There were 10 to at least 15 bales of Respondent's goods left in the Respondent's warehouse that could have weighed between 1,000 and 1,400 pounds. (Id.) There were two (2) unloaded trailers of goods parked between the parties' warehouses. (Defendant's Exhibit 8, Incident Report, p. 5, paragraph 9). The trailers shipped in April 2013 weighed roughly 31,000 to 40,000 pounds. (Plaintiff's Exhibit 4).

issuing a \$40,000 bond. The Temporary Injunction was amended on July 9, 2013. The First Buyers filed their Answer and Counterclaims on July 16, 2013. The nature of the First Buyers' defense was that it owned the goods on the three containers and the First Buyers had a claim related to the Second Buyer's assault of the Appellant George. An Order of Reference, referring the case to Gordon G. Cooper, the Master-In-Equity for Spartanburg County, was issued by the Honorable J. Derham Cole on July 19, 2013. The Second Buyer served their Reply to First Buyers on July 26, 2013. A Consent Scheduling Order was filed on July 30, 2013 regarding discovery issues and a trial date. The First Buyers filed a Motion to Compel Discovery on September 6, 2013. On September 12, 2013, a Consent Order for Plaintiff's Substitution of Counsel was signed by all counsel and entered by the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, changing the Second Buyer's counsel from Eric A. Nodine to Matthew A. Henderson. A hearing for the First Buyers Motion to Compel was held on September 24, 2013 and an Order granting the motion was entered on September 30, 2013. The trial for this case was scheduled to be heard before the Master on October 1 and 2, 2013, but the Second Buyer's testimony alone took both of those days, and the trial was continued to December 16 and 17, 2013, with Second Buyer's initial testimony ending near the end of the third day of trial, December 16, and continuing after close of the First Buyers' case on the last day of trial, December 17. The First Buyers moved for a directed verdict at the close of the Second Buyer's case, on December 17, after the testimony of Billy Johnson, the Second Buyer's employee. The Master filed and served a 5 page order two days later on December 19, 2013, which Order the First Buyers are now appealing. The Master's order granted the Second Buyer ownership and possession of the goods from the three containers and gave the First Buyers possession of 48,000 pounds of goods from Walkertown that were not from the three containers, but were sitting in the First Buyers' warehouse. The First Buyers filed a Motion to Reconsider, Alter or Amend Judgment on December 23, 2013. Judge Cooper entered a Corrective Order that changed Watertown, the name of the town consistently mentioned throughout the December 19th Order, to Walkertown, the correct name of the town in North Carolina from where the goods were purchased. A hearing on the Motion to Reconsider, Alter or Amend Judgment was held on February 4, 2014. The lower court filed an Order denying the Motion on February 20, 2014, which Order the First Buyers are also now appealing. The amount involved on appeal is approximately three hundred thousand dollars (\$300,000), which is the Second Buyer's

estimated retail value of the goods on the three shipping containers. (Second Buyer's Complaint). The First Buyers served the Notice of Appeal on March 17, 2014 and received the final transcripts on May 7, 2014. The issues on appeal have been preserved.⁶

3. Standard of Review

The lower court's order from the final hearing did not specify the cause of action for which the Second Buyer received relief. However, the order held that the Second Buyer owned the contents of the three shipping containers, ordered the First Buyers to deliver the contents to the Second Buyer's warehouse, and required the Second Buyer to pay the First Buyers for baling of the goods and commissions. Therefore, the lower court specifically enforced what it viewed as the contract between the parties.

"An action for specific performance is one in equity. Lewis v. Premium Inv. Corp., 351 S.C. 167, 170 n. 2, 568 S.E.2d 361, 362 n. 2 (2002); Wright v. Trask, 329 S.C. 170, 176, 263, 495 S.E.2d 222, 225 (Ct.App.1997)... 'It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence.'" Crowder v. Crowder, 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965)."

⁶ February 4 Transcript, p. 2, lines 18-19; February 4 Transcript, p. 4, lines 16-18;

ARGUMENTS

1. BECAUSE THE RESPONDENT COULD NOT SHOW THAT IT HAD PURCHASED THE GOODS FROM THE THREE CONTAINERS, THE TRIAL COURT COULD NOT PROPERLY GRANT THE RESPONDENT POSSESSION OF THE GOODS FROM THE THREE CONTAINERS.

The lower court made errors of fact and law when it determined that the Second Buyer owned the goods from three trailers purchased after April 16, 2013 and assumed from that determination that the Second Buyer owned the goods on the three shipping containers.⁷ The trailers and the shipping containers are different things. Trailers were used to transport goods from Walkertown to Spartanburg. Shipping containers weighed nearly twice as much and were driven to seaports from Spartanburg for overseas shipment.

The lower court's orders which compelled the First Buyers to deliver the goods on the three shipping containers to the Second Buyer, could only have been proper if the goods came from Walkertown and were actually owned by the Second Buyer. The Second Buyer needed to prove by a preponderance of the evidence that it had offered to purchase the goods from the Seller, paid adequate consideration to the Seller, and the Seller accepted the Second Buyer's offer for the goods.⁸

Throughout trial, the contents of the three shipping containers were not identified. The Second Buyer plainly stated that it did not know whether the contents of the shipping containers came from the last trailers shipped from Walkertown and went so far as to tell First Buyers' counsel to "ask [Appellant] George if this came from those five locations. If they did not come, I will walk away from the case." (Dec. 16 p. 50, lines 11-17; Dec. 16 Transcript p. 51, lines 9-20). Steve Brown, a representative from the Seller, said that the goods from the three containers were similar to all other Walkertown goods. (Dec. 17 Transcript p. 175, lines 17-24).

During the hearing for a Temporary Injunction, Second Buyer's counsel aptly likened deciding the case without the contents of the three shipping containers to getting a murder conviction without a body. (June 7 Transcript, p. 6 lines 11-12). Counsel for Second Buyer

⁷ The total weight of goods on the shipping containers was possibly 160,000-170,000 pounds and nearly 107,502 pounds of goods were on the three trailers. At least 53,000 to 63,000 pounds of goods on the three containers could not have come from the three trailers. (Oct. 1 Transcript p. 7, lines 6-12; Dec. 17 Transcript p. 190, lines 10-12).

⁸ The necessary elements of a contract are an offer, acceptance, and valuable consideration. Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 437 S.E.2d 122 (Ct.App.1993).

stated that, “[F]rankly, [it] is the only way the plaintiff could ever prove its case, is to know what exactly is in those containers.” (June 7 Transcript, p. 9 lines 5-7).

The witnesses who would have known what was on the shipping containers and were there while the containers were being loaded were never asked what goods were on the shipping containers.

The weight of goods the Second Buyer claimed to be missing varied.⁹ Nonetheless, 48,020 pounds of Walkertown goods for which the Second Buyer claimed to have paid for were still in the First Buyers’ warehouse. (Dec. 17 Transcript p. 105, lines 18-24) Three air conditioners the Second Buyer had stolen from Walkertown were in the Second Buyer’s warehouse. (Dec. 17 Transcript p. 174, lines 24-25, Defendant’s Exhibit 8, Incident Report p. 5, paragraph 9). Between 10 to “at least 15 racks” of the Second Buyer’s Walkertown goods that could have weighed between 2,000 and 3,000 pounds each were in the Second Buyer’s warehouse. (Dec. 17 Transcript p. 44, lines 10-21; p. 110, lines 2-16) There were 10 to at least 15 bales of Second Buyer’s goods left in the Second Buyer’s warehouse that could have weighed between 1,000 and 1,400 pounds. (Id.) There were two (2) unloaded trailers of goods parked between the parties’ warehouses. (Defendant’s Exhibit 8, Incident Report, p. 5, paragraph 9; Dec. 17 Transcript p. 61, lines 22-25, p. 62, lines 1-5). The trailers shipped in April 2013 were roughly between 31,000 and 40,000 pounds. (Plaintiff’s Exhibit 4). If, in fact, the Second Buyer was missing any goods, the total weight is probably laying in the parties’ warehouses. There is no reason to take the First Buyers’ goods from the three shipping containers.

⁹ The Respondent told police that 1.1 million pounds of Walkertown goods were shipped to Spartanburg and that 150,000 pounds of goods were missing. The Respondent’s Complaint said that 1,215,759 pounds were shipped to Spartanburg and 210,000 pounds of goods were missing. At trial, the Respondent requested possession of the goods on the three containers, the total weight of which the Respondent estimated to be 160,000 to 170,000 pounds. (Oct. 1 Transcript p. 7, lines 6-12). The Respondent also testified that its documents showed 109,439 pounds of goods missing and at least one document was a duplication. (Dec. 16 Transcript p. 58, lines 23-25; Dec. 16 Transcript p. 60, lines 4-7).

2. BECAUSE THE APPELLANTS PURCHASED THE GOODS FROM THE THREE TRAILERS, THE TRIAL COURT COULD NOT PROPERLY GRANT THE RESPONDENT POSSESSION OF THE GOODS FROM THE THREE CONTAINERS.

The Seller could not identify the goods on the shipping containers, but assumed, as the court essentially did in its order, that the goods came from three trailers purchased after April 16, 2013. (Dec. 17 Transcript p. 179, lines 3-6). This argument assumes that ownership of the goods on the three trailers would determine ownership of the goods from the three shipping containers though the weight of goods from the three trailers and three containers was different.

The first of the last three trailers purchased from Walkertown was numbered 175 and purchased on April 23, 2013. The second trailer was numbered 5383 and purchased on April 28, 2013. The third trailer was numbered 5350 and purchased on April 30, 2013. (Defendants' Exhibit 14).

For the orders to have been proper, the Second Buyer needed to prove by a preponderance of the evidence that it had offered to purchase the goods on the last three trailers, paid adequate consideration for the goods, and the Seller accepted the Second Buyer's offer for the goods.¹⁰

The Second Buyer never made an offer for the goods. The Seller's representative testified that the last four trailers came from the sixth building. (Dec. 17 Transcript p. 161, lines 21-24). The Second Buyer admitted that he only purchased from five buildings and that the offer he made the day after the settlement was for goods remaining in the five buildings. (Oct. 1 Transcript p. 22, lines 9-12; Oct. 1 Transcript p. 103, lines 8-13).

The Second Buyer did not pay adequate consideration for the goods. The First Buyers and the Seller testified that the First Buyers paid \$39,000 for the goods in the last four trailers, which weighed nearly 152,000 pounds. (Dec. 17 Transcript p. 155, lines 10-14; Dec. 17 Transcript p. 177, lines 14-17; Defendant's Exhibit 14) However, the Second Buyer claimed that the Seller accepted his offer of 12.5 cents per pound for the goods remaining in the five buildings and gave the First Buyers \$20,000 to buy the goods. Assuming the last four trailers were on the three containers, the goods would have only cost the Second Buyer approximately \$13,000,

¹⁰ The necessary elements of a contract are an offer, acceptance, and valuable consideration. Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 437 S.E.2d 122 (Ct.App.1993).

nearly one third of what the goods on the containers actually cost.¹¹ Ironically, the Second Buyer claimed that it paid 12.5 cents per pound for the goods on the trailers, but the Second Buyer also claimed that the goods from the three containers were the most valuable goods from Walkertown.

In reality, the Second Buyer did not pay any consideration for the goods. The Second Buyer testified that the same \$20,000 paid to the First Buyers for baling services and commissions was also used to buy the goods on the three containers.¹² (Dec. 16 Transcript, p. 31, lines 18-25, p. 32 lines 1-25; Plaintiff's Exhibit 1, p. 2). In other words, the Second Buyer claimed that the \$20,000 was used to pay for the First Buyers' services and to pay for goods, which is akin to someone having their cake and eating it too. The Second Buyer claimed to do with \$20,000 what could only have been done with \$40,000 and the lower court believed it, despite the fact that the goods would have only cost \$13,437.75 according to the Second Buyer's testimony. (Dec. 19 Order p. 4, paragraph 2). The most probable explanation of the \$20,000 is that the Second Buyer was satisfying the First Buyers' April 16, 2013 invoice for labor and commissions. (Plaintiff's Exhibit 1, p. A2 16-Apr Invoices).

Assuming *arguendo* that the goods came from the five buildings, the Seller never accepted the Second Buyer's offer. The Seller refused to do business with the Second Buyer after the settlement on April 15, 2013 and never called the Second Buyer, but maintained its relationship with the First Buyers. The trailers in question were purchased by the First Buyers after the settlement.

The Second Buyer admitted that the First Buyers owned the three trailers after speaking with the First Buyers on May 8, 2013. (Dec. 17 Transcript p. 102, lines 22-25, p. 103, lines 1-6). The Second Buyer sent a text message to the First Buyers on May 8, 2013 that says, "Per our agreement, these 4 trucks are yours, 5350, 175, 53105, 5383." (Defendants' Exhibit 4). The Second Buyer testified that the First Buyers owned trailer 53105 outright and that trailer is

¹¹ The Respondent only claimed to have paid for three out of the last four trailers shipped from Walkertown. The total weight of the trailers was approximately 107,502 pounds out of possibly 170,000 pounds on the three containers (107,000 x \$.125 = \$13,437.75). (Dec. 16 Transcript p. 56, lines 14-16; Dec. 16 Transcript p. 58, lines 12-20).

¹² In its response to the Appellants' Request to Admit, the Respondent claimed that it did not owe more than \$11,000 to the Appellants. (Defendant's Exhibit 2, para. 1). Yet the lower court held that \$28,787.39 was due and owing, which should be considered a violation of South Carolina Rules of Civil Procedure, Rule 36. The Respondent claimed to have paid \$75,524.81 for the Appellants' baling services and commissions in the Complaint and attached affidavit. (Complaint para. 14; attached affidavit of Robert Udeagha, para. 9).

mentioned along with the other three trailers. (Dec. 16 Transcript p. 55, lines 3-4). The text indicates that the three trailers belonged to the First Buyers just as much as the fourth trailer did.

The Second Buyer confirmed the First Buyers' ownership of the three trailers in an email sent to the Seller on May 10, 2013. (Dec. 17 Transcript p. 165, lines 18-22). In the email the Second Buyer says, "Please can you confirm that George is the one responsible for the following trailers which was billed to me (Senneka Trading) by Wicker, George told me that you guys charged him and Wicker should not charge me. Truck # 53105, 5383, 5350, and 175 **loaded and delivered after my settlement of accounts with you guys** dated April 15th, 2013." (Defendants' Exhibit 5, **emphasis added**). The Second Buyer was mistakenly billed for shipment by Wicker, the carrier, for the last trailers, but the Seller initially paid for the shipment of the trailers and the First Buyers reimbursed the Seller thereafter. (Dec. 17 Transcript p. 166, lines 1-14). Again in the email, as in the text message, the Second Buyer mentions the fourth trailer numbered 53105 that undisputedly belonged to the First Buyers with the three trailers numbered 5383, 5350, and 175, which the Second Buyer claimed to have purchased.

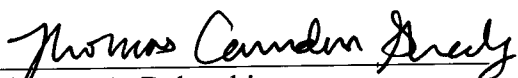
The text which was sent on the same day the Second Buyer believed the First Buyers were stealing goods. The email was sent two days later. The most reasonable explanation of those messages is that the First Buyers owned the goods in the last three trailers and, according to the lower court's assumption, the goods on the three containers.

CONCLUSION

For the reasons stated above, the lower court judgment should be reversed with respect to ownership of the goods on the three (3) shipping containers identified as PONU 749556-6, PONU 764375-0, and MRKU 2080225. This court should find that the Appellants' rightfully purchased the goods on the three containers and grant the Appellants' possession of the goods from those three containers. If any goods from the three shipping containers are missing, the court should allow the Appellants to receive a money judgment from the Respondent to be prorated at \$300,000, which was the Respondent's estimated value of the goods on the three shipping containers. Furthermore, the Appellants should receive the temporary injunction bond or value thereof for the improper holding of the goods in the Respondent's and the Appellants' warehouses throughout the duration of trial.

Respectfully submitted,

June 6, 2014


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CERTIFICATE OF SERVICE

I, the undersigned attorney for the Appellants, George O. Nwachukwu and Josling, Inc., do hereby certify that I have served the Clerk of Court for the South Carolina Court of Appeals and all counsel in this action with a copy of the Appellants' Initial Brief, Designation of Matter, and a Certificate of Service by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

- a. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
- b. Matthew A. Henderson
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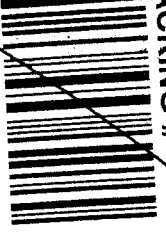
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