THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Robert E. Watson and The Honorable Dale E. Van Slambrook
Masters-In-Equity

Case No. 2009-CP-08-2037
Appellate Case No. 2015-002287

Eck Supply Co., Respondent,

v.

Superior Electric Company
and Dean M. Hensley Appellants.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

COURT RULES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. THE MASTER'S FINDINGS OF FACT SHOULD NOT BE DISTURBED ON APPEAL BECAUSE THERE WAS REASONABLE EVIDENTIARY SUPPORT THAT DEAN HENSLEY EXECUTED THE PERSONAL GUARANTEE.

2. THE MASTER'S FINDINGS OF FACT SHOULD NOT BE DISTURBED ON APPEAL BECAUSE THERE WAS REASONABLE EVIDENTIARY SUPPORT THAT DEAN HENSLEY EXECUTED THE CREDIT APPLICATION.

3. THE MASTER'S RULING TO ADMIT THE CREDIT APPLICATION INTO EVIDENCE PURSUANT TO RULE 901 OF THE SOUTH CAROLINA RULES OF EVIDENCE DID NOT CONSTITUTE A CLEAR ABUSE OF DISCRETION.

4. THE MASTER'S RULING TO ADMIT A DUPLICATE OF THE CREDIT APPLICATION PURSUANT TO RULE 1003 OF THE SOUTH CAROLINA RULES OF EVIDENCE DID NOT CONSTITUTE A CLEAR ABUSE OF DISCRETION.

STATEMENT OF THE CASE

This case arises out of a credit agreement ("Credit Application") between the Respondent, Eck Supply Co. ("Eck") and Appellant Superior Electric Company ("Superior"), in addition to a personal guarantee ("Guarantee") executed by Appellant Dean M. Hensley ("Hensley"). Hereinafter, Superior and Hensley will be referred to collectively as "Appellants."

On or around September 25, 2000, Superior executed and faxed to Eck the Credit Application. (Credit Appl.). The Credit Application was a single page document that included the Guarantee, executed by Hensley. *Id.* Displayed at the top of the Credit Application and Guarantee is a stamped facsimile header indicating that the document was in fact faxed from Superior to Eck. *Id.* Between 2006 and 2008, pursuant to the Credit Application and Guarantee, Eck supplied Superior certain electrical components for a job in Berkeley County, South Carolina, resulting in an outstanding principal debt of $13,900.93 ("Principal Debt"). (Compl. pp. 1-2, Am. Compl. pp. 1-2).

On or about June 12, 2009, Eck filed suit, alleging that Superior and Hensley, personally, owned the Principal Debt, interest at the annual rate of 18%, and attorney's fees (capped at 25% of Principal Debt, or $3,475.24) and costs, all pursuant to the Credit Application and Gurantee. *Id.* On or about September 23, 2009, the Appellants answered the Complaint, denying liability and asserting a breach of contract counterclaim. (Answer and Countercl.) Through the course of discovery, a dispute arose relating to the warranty of the goods provided to Superior, prompting Eck to amend its Complaint on or about May 2, 2012, to assert claims against the manufacturer. (*see* Am. Compl.). On or about May 21, 2012, the Appellants again answered and asserted a breach of contract counterclaim. (see. Am. Answer and Coutercl.). In both their Answer and Amended Answer, the Appellants admit and acknowledge the existence of a

contract or open account between Superior and Eck. (Answer and Countercl. p. 4, ¶ 16; Am. Answer and Countercl. p. 7, ¶ 31).

The warranty claims against the manufacturer were dismissed on or about August 21, 2012. (Stipulation of Dismissal). Following further discover and depositions, the case ultimately proceeded to a bench trial before the Honorable Robert E. Watson ("Judge" or "Master" or "Lower Court") on June 16, 2014, at which Eck proved its case against the Appellants for collection of the Principal Debt, interest, attorney's fees and costs, pursuant to the Credit Application and Guarantee. (Tr. pp. 6-10; Tr.). At trial, the Credit Application and Guarantee were admitted into evidence over the Appellants' objection. (Tr. pp. 20-21). Counsel for the Appellants also mentioned in his opening statement his impending objection to the documents being admitted into evidence. (Tr. pp. 11-12).

At the close of trial, the Judge requested that both parties submit draft orders. (Tr. pp. 230-231). On or about October 8, 2014, the Appellants submitted a memorandum in opposition to the awarding of attorney's fees, to which the Respondent replied with its own memorandum. (*see* Superior Memo, Hensley Memo, Eck Memo). The Lower Court filed an order ("Order") on October 27, 2014, in which it found that Hensley had executed the Credit Application and Guarantee, and it entered judgment in the amount of $33,100.24, comprised of $13,900.93 for the Principal Debt, $15,294.07 in interest, $3,475.24 in attorney's fees and $430.00 in costs. (Order p. 5).

The Appellants filed a Motion to Reconsider on or about November 10, 2014, and the Respondent filed its memo in opposition to that motion on or about November 21, 2014. (see Appellants' Mot. to Recons., Eck's Memo in Opp'n).

Due to the retirement of Judge Watson, the Honorable Dale E. Van Slambrook was charged with ruling on the Appellants' Motion to Reconsider, which he ultimately denied on or about September 30, 2015.

The Appellants' filed a Notice of Appeals with the South Carolina Court of Appeals on or about November 4, 2015. Eck is informed and believes that the Appellants' did not file the Notice with the Lower Court, though the mistake is not a point of emphasis in this brief.

STANDARD OF REVIEW

As to Issues I and II raised on appeal:

"In an action at law tried without a jury, the judge's findings of fact will not be disturbed on appeal unless there is no evidentiary support for the judge's findings." *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct.App.2008); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) (stating, "In an action at law, on appeal of a case tried without a jury, 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. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action.").

As to Issues III and IV raised on appeal:

The admission of evidence is within the trial court's discretion. *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994); *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (Ct.App.2000). Specifically, the question of whether to admit evidence under the "best evidence rule" is also addressed to the discretion of the trial court. *Wayne Smith Constr. Co., Inc. v. Wolman, Duberstein, & Thompson*, 294 S.C. 140, 146, 363 S.E.2d 115, 118 (Ct.App.1987). The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of

discretion amounting to an error of law. *see Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54 n. 2, 504 S.E.2d 117 n. 2 (1998). *See also Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 407 S.E.2d 630 (1991) (stating that absent showing of clear abuse of discretion, trial court's admission or rejection of evidence is not subject to reversal on appeal). In addition, evidentiary rulings will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Regional Medical Center Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (*citing Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); *Timmons v. S.C. Tricentennial Commn.*, 254 S.C. 378, 405, 175 S.E.2d 805, 819 (1970); *Powers v. Temple*, 250 S.C. 149, 160, 156 S.E.2d 759, 764 (1967)).

ARGUMENTS

Eck brought, tried and won this case based on the theory that a debt was owed under the Credit Application and Guarantee. (see Compl., Am. Compl., Tr.). The Lower Court found that the Appellants were jointly and severally liable for the Principal Debt, attorney's fees, interest and costs, all under the Credit Application and Guarantee. (Order p. 2-5). Appellants specifically state in their brief that they "do not appeal the Master's award of $13,900.93 in principal debt claimed by Eck against Superior." (Appellants' Br. p. 3). These statements amount to binding admissions. Rule 208(b)(C), SCACR. (stating, "[a]ny matter stated or alleged in appellant's statement shall be binding on appellant."). The Lower Court found that the Principal Debt was due under the Credit Application and Guarantee, and Superior has not

appealed that debt as owed by Superior. Appellants have appealed "the award of personal liability against Hensley as the purported Guarantor, as well as the award of the attorneys' fees and interest based on the Credit Application." (Appellants' Br. p. 3). [1]

It is completely contradictory for Superior to accept the Lower Court's ruling that the Principal Debt is owed under a Credit Application, while now, on appeal, attempting to cast aside certain language in that same document. The Appellants recognize this problem later in their brief when they argue, "[t]he practical effect of finding that the credit application is invalid does not necessarily void the Master's judgment that Superior owes the purported principal obligation ($13,900.93). Instead, it would result in no valid attorneys' fee provision or compounding 18% interest beyond the lawful pre-judgment interest rate." (Appellants' Br. p. 13). In fact, this is precisely the effect of such a finding. Eck tried and won this case on the theory that the Principal Debt was owed by Superior under the Credit Application. Invalidating the Credit Application absolutely wipes out the Principal Debt – a debt that Superior is not appealing.

Appellants go on to state, "Even if the purchase of supplies on credit supports the judgment on the principal balance, Superior is not obligated to pay attorneys' fees and interest if Eck cannot prove Superior assented to the same." (Appellants' Br. p. 13). Here, Superior is attempting to acknowledge the Principal Debt under some form of credit arrangement outside the Credit Application, thus allowing Superior to not appeal the Principal Debt while still being able to appeal the attorney's fees and interest. Again, this argument fails for the same reasons stated above. The Lower Court found the Principal Debt is owed by Superior under the Credit

[1] Eck acknowledges that this admission binds only Superior. Any liability of Hensley, as Guarantor, is established separately from that of Superior. The arguments in this introductory section relate to Superior and the failure of Superior's attempt to accept the award of the Principal Debt under the Credit Application, while severing interest and attorney's fees clauses in the same Credit Application.

Application, not some other form of arrangement. Superior has not appealed this ruling; therefore, it has accepted liability under the Credit Application and must also accept the attorney's fees and interest contained therein.

In its Motion to Reconsider, Superior could have specifically asked the Lower Court whether the Principal Debt was awarded by virtue of the Credit Application or some other form implied credit arrangement. It did not. (Appellants' Mot. to Recons.) (Appellants actually dedicate most of their Motion to Reconsider to their assertion that the Principal Debt was not owed, instead of requesting the Lower Court consider the arguments they now raise on appeal). Superior cannot now raise a new theory which was not argued nor ruled on by the Lower Court. *see Holy Loch Distribs., Inc. v. Hitchcock*, 340 S.C. 20, 531 S.E.2d 282 (2000); *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000). (standing for the well settled rule of law that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved).

The Appellants cite to *Seabrook Island Property Owners' Ass'n v. Berger*, 365 S.C. 234, 616 S.E.2d 431 (Ct. App. 2005) to somehow support these new arguments. However, the *Seabrook* court cites the long established rule that attorneys' fees are not recoverable unless authorized by a contract or statute, before discussing the reasonableness of attorneys' fees in that case. *Id.* at 238-239, 434-435. Eck could not and does not dispute this long standing precedent. In this case, the Lower court found a binding contract (i.e., the Credit Application), which allowed for attorney's fees. In this case, the Lower Court found Superior to be liability for the Principal Debt under that contract, and Superior has not appealed that ruling.

Because the Principal Debt was found by the Lower Court to be owed by Superior via the Credit Application, and because Superior has not appealed this ruling, Superior should not now

be allowed to challenge the validity of the Credit Application. All arguments made by the Appellants related to the Credit Application, its admission into evidence, its execution by Hensley, its authorization of interest and attorney's fees should not be considered by this Court.

I. THE MASTER'S FINDINGS OF FACT SHOULD NOT BE DISTURBED ON APPEAL BECAUSE THERE WAS REASONABLE EVIDENTIARY SUPPORT THAT DEAN HENSLEY EXECUTED THE PERSONAL GUARANTEE.

II. THE MASTER'S FINDINGS OF FACT SHOULD NOT BE DISTURBED ON APPEAL BECAUSE THERE WAS REASONABLE EVIDENTIARY SUPPORT THAT DEAN HENSLEY EXECUTED THE CREDIT APPLICATION.

For the sake of brevity and considering the overlap of Eck's arguments under Issues I and II, these two sections will be combined. There was reasonable evidence that Hensley executed the Credit Application and Guarantee, and the Master's findings should be not disturbed on appeal.

"In an action at law tried without a jury, the judge's findings of fact will not be disturbed on appeal unless there is no evidentiary support for the judge's findings." *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct.App.2008); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) (stating, "In an action at law, on appeal of a case tried without a jury, 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. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action.").

Substantial weight is given to the findings of fact of a judge or jury, only being disturbed when there is "no evidentiary support." *Id.* This is due partially to the fact that the "appellate court lacks the opportunity for direct observation of the witnesses..." *Menne v. Keowee Key Property Owners' Ass'n, Inc.*, 368 S.C. 557, 567, 629 S.E. 2d 690, 697 (Ct. App. 2006) (*quoting*

South Carolina Dep't of Soc. Servs. v. Forrester, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct.App.1984)). It should therefore "accord great deference to trial court findings where matters of credibility are involved." *Id.* The judge or jury is in the best position to hear the witnesses, observe their demeanors and make decisions relative to the veracity of their statements and credibility of their characters. *see Thomas v. Mitchell*, 287 S.C. 35, 38, 336 S.E.2d 154, 155 (Ct.App.1985).

During its case-in-chief, Eck entered into evidence the Credit Application and the Guarantee, took testimony from Eck's branch manager, and entered into evidence the complete depositions of Hensley and his wife, Cember Hensley. (Tr. pp. 16-67). The Credit Application contained all Superior's correct information. (Hensley Dep. Tr. p. 32). Hensley also admitted that he had in fact filled out a credit application for Eck in the past. *Id.* The Guarantee contained a social security number, which Hensley admitted was his. *Id.* at 33. Hensley further testified that the only other person at Superior who knew his social security number was his wife. *Id.* Both the Credit Application and Guarantee, which contained accurate information for Superior and Hensley, were faxed directly from Superior to Eck, as evidenced by the facsimile stamp at the top of the document. (Credit Appl.). Eck's branch manager, who was qualified as an expert in the field of electrical sales, testified at trial that document was maintained in Eck's file for Superior in accordance with industry standards. (Tr. pp. 19-20).

Based on Eck's case-in-chief, there is more than enough evidence from which the Master could have found Hensley executed both the Credit Application and the Guarantee. The documents were sent directly from Superior, with correct information for Superior and Hensley, some of which only Hensley and his wife knew. Furthermore, Hensley admitted that he did in fact fill out a credit application at some point in time. At minimum, the above evidence rises

well beyond the threshold of "no evidentiary support for the judge's findings," thus preventing this Court from disturbing the Master's findings on appeal. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct.App.2008).

During cross-examination of Hensley and his wife, these witnesses could offer nothing beyond a very convenient and self-serving denial of Hensley singing the Credit Application or Guarantee. (Tr. p. 108). Appellants rely heavily on this denial to argue that the Master's findings of fact are not supported by the evidence presented in this case. However, inconsistent with these denials was Hensley's testimony that he was the person who was responsible for completing these documents, a fact corroborated by his wife on cross-examination. (Tr. p. 109, p. 202). If no one else was allowed to send credit applications and guarantees, yet Eck received both documents, then there is only one plausible conclusion: Hensley executed and sent the Credit Application and Guarantee. Also inconsistent was the fact that Hensley attempted to dispel the Credit Application and Guarantee by testifying that he had in fact filled out an application in 1998, thus eliminating the need for the Credit Application and Guarantee, executed in 2000. (Tr. pp. 109-111). Conveniently, this 1998 credit application was not produced in this case. (Tr. pp. 109-110). Hensley's wife testified that the facsimile information stamped at the top of the Credit Application was Superior's, indicating that the Credit Application and Guarantee were sent from Superior to Eck. (Tr. p. 203).

"Simplistically put, disparateness in testimony goes to the weight of the testimony of the witness. The fact finder is imbued with broad discretion in determining credibility or believability of witnesses. Quintessentially, an operative factor in evaluating credibility of a witness is inconsistency." *Small v. Pioneer Machinery, Inc.* 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct.App.1997). Hensley and his wife offered testimony in their depositions and at trial

which contradicted completely their testimony that Hensley did not sign the documents. The Master was imparted with the responsibility of seeing through these inconsistencies, and this Court is required to give his findings substantial deference.

Furthermore, Hensley's personal self-interest in this case is obvious and ripe for consideration by the Master. *see* McCormick on Evidence, s 40, p. 78 (1972). (stating, "The law recognizes the slanting effect upon human testimony of the emotions or feelings of the witness toward the parties or the self-interest of the witness in the outcome of the case. Partiality, or any acts, relationships or motives reasonably likely to produce it, may be proved to impeach credibility.")

The Master assessed the credibility and testimony of both Hensley and his wife, including their self-interest in this case, and found the weight of the evidence to be in favor of Eck. And because there is evidence that reasonably suggests Hensley's execution of both the Credit Application and Guarantee, the Master's findings should not be disturbed by this Court.

The Appellants also rely heavily on *Pee Dee Production Credit Ass'n v. Joye*, 284 S.C. 371, 326 S.E.2d 650 (1984) to argue that Eck's case should have failed because Eck did not use a handwriting expert or offer verified samples of Hensley's signature for comparison. However, there is nothing in *Pee Dee* that requires handwriting experts or exemplars be used, it only describes how they may be used. *see Id.* In actuality, the case stands for the rule that "no requirement exists that a signature be witnessed in order to authenticate a document." *Id.* at 375, 653. Furthermore, the *Pee Dee* Court made the following ruling, which directly relates to the issues raised by the Appellants:

> Were this Court to adopt appellant's view that signatures must be personally witnessed to be proven, financial institutions would have great difficulty protecting their interests. In any dispute concerning a transaction, a person who witnessed the signature would have to be produced, even years after the disputed event. In today's

> transient society, this would be an impossible burden. Furthermore, such a rule would cause customer inconvenience because one could never deal with a financial institution by mail or through an intermediary. Each customer would have to transact all business personally.

Id. This holding carries weight in the instant action, as Superior faxed to Eck a completed Credit Application and Guarantee. Eck had every right to rely on what the Guarantee purported to be: Fully executed contracts sent directly from the party to be bound by their terms. Otherwise, as noted by the Supreme Court, Eck would be forced to overcome the impossible burden of dealing personally with anyone to whom it desired to extend credit. *Id.*

For all of the above stated reasons, there is evidence to support the Master's findings of fact, which should not be disturbed on appeal.

III. THE MASTER'S RULING TO ADMIT THE CREDIT APPLICATION INTO EVIDENCE PURSUANT TO RULE 901 OF THE SOUTH CAROLINA RULES OF EVIDENCE DID NOT CONSTITUTE A CLEAR ABUSE OF DISCRETION.

As argued above, Superior has not appealed the Lower Court's ruling that the Principal Debt is owed by Superior. This Lower Court found this debt to be owed under the Credit Application. Again, given that Superior is not appealing the validity of the Credit Application with respect to the Principle Debt, it should be prevented from appealing the admission of the Credit Application with respect to the attorney's fees and interest. Despite this problem, which should be dispositive of all Superior's arguments against the validity or proper admission of the Credit Application, Eck maintains that admission of the Credit Application at trial did not constitute a clear abuse of discretion.

Rule 901(a) states, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. "[T]he burden to authenticate ... is not high" and requires only that the proponent "offer[ ] a satisfactory foundation from which

the jury could reasonably find that the evidence is authentic." *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir.2014)).

The admission of evidence is within the trial court's discretion. *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994); *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (Ct.App.2000). The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law. See *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54 n. 2, 504 S.E.2d 117 n. 2 (1998). *See also Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 407 S.E.2d 630 (1991) (stating that absent showing of clear abuse of discretion, trial court's admission or rejection of evidence is not subject to reversal on appeal). In addition, evidentiary rulings will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

There are at least two ways that Eck authenticated the Credit Application and the Guarantee, Rule 901(b)(1) and Rule 901(b)(4).

Rule 901(b)(1) states that authentication through "testimony that a matter is what it is claimed to be." Rule 901(b)(1), SCRE. Contrary to Appellants' assertion, *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 412 S.C. 58, 773, S.E.2d 607 (Ct. App. 2015) is directly on point. In *Deep Keel*, the Respondent was assigned a loan from a bank which was not a party to the lawsuit. The Respondent then offered testimony of its sole member to admit into evidence the loan documents. The Appellants argued that the member was "not a witness with knowledge under Rule 901(b)(1) because he did not know 'when, how, or by whom the documents were prepared, how they came in possession of [the assignor bank], or how they were

maintained by that bank.'" *Id.* at 65, 611. The *Deep Keel* court ruled that "the authentication requirement does not demand this degree of proof. [The member's] testimony demonstrated he had personal knowledge that the loan documents admitted into evidence were the same ones [assignor bank] provided to him..." *Id.*

In this case, Appellants have made the same argument as the Appellants in *Deep Keel*: That Eck's branch manager came on after the Credit Application and Guarantee were executed, so he can't speak to their authenticity. (Appellants' Br. p14-16). However, similar to the member in *Deep Keep*, Eck's branch manager testified that he maintained Superior's file and the Credit Application and Guarantee were in that file. (Tr. pp. 19-20). The Appellants are attempting to require a similar degree of proof that the *Deep Keep* court expressly rejected. Furthermore, the Appellants' are effectively attempting to require a bank or lender to produce the person whom drafted a document in order to authenticate it. This is a nearly impossible burden, based on the passage of time and the transient nature of employees of these institutions. Based on the testimony of Eck's branch manager, there was a reasonable foundation on which the Court found the Credit Application and Guarantee to be authentic. *Deep Keel* at 64, 610.

Rule 901(b)(4) allows for evidence to be authenticated based on "appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstance." Rule 901(b)(4), SCRE. In *Deep Keep*, the loan documents were properly authenticated under this rule because they had the names of the borrower and the lender, the amount, date of execution and the loan number. *Deep Keep* at 66, 611.

The Credit Application and Guarantee contain similar distinctive characteristics as the loan documents in *Deep Keel*. They bear Eck's logo, they were filled out with correct information for both Appellants, including Hensley's social security number, and they were

faxed directly from Superior to Eck. "Taken in conjunction with circumstance," the Credit Application and Guarantee were properly admitted based on their appearance, contents, substance...or other distinctive characteristics..." Rule 901(b)(4), SCRE.

In *Kershaw County Board of Education v. United States Gypsum Company*, 302 S.C. 390, 396 S.E.2d 369 (1990), the South Carolina Supreme Court explained this rule, stating, "authenticity of a document: may be established by circumstantial evidence if its tenor, subject matter, and the parties between whom it purports to have passed make it fairly fit into an approved course of conduct, and manifests the probability that the subject-matters of its contents was known only to the apparent writer and the person to whom it was written." *Id.* at 398, 373-374. (*citing State v. Hightower*, 221 S.C. 91, 105, 69 S.E.2d 363, 370 (1952)).

The circumstantial evidence surrounding the Credit Application and Guarantee also establish their authenticity. Eck's branch manager testified that the documents were maintained in the file for the Appellants, Hensley and his wife testified that only Hensley or his wife were authorized to complete such documents, and the documents were actually faxed directly from, fitting "into an approved course of conduct." *Id.*

Lastly, Appellants arguments should also fail because the Appellants have misstated the standard of review. The Appellants have not mentioned nor proven "the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Regional Medical Center Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (*citing Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); *Timmons v. S.C. Tricentennial Commn.*, 254 S.C. 378, 405, 175 S.E.2d 805, 819 (1970); *Powers v. Temple*, 250 S.C. 149, 160, 156 S.E.2d 759, 764 (1967)).

When evidence is erroneously excluded by the trial court, the appellate court usually engages in the following analysis to determine whether prejudice has occurred. First, the court considers, inter alia, whether the error may be deemed harmless because equivalent or cumulative evidence or testimony was offered; the aggrieved party still managed to accomplish his primary objective, such as eliciting testimony about an issue or effectively cross-examining a witness; the jury's verdict or a proper court ruling rendered the wrongly excluded evidence moot because it was relevant to an issue that did not have to be reached; the aggrieved party failed to establish a claim or defense even when both the admitted and excluded evidence are considered; or the wrongly excluded evidence involved a generally known fact. *Fields v. Regional Medical Center Orangeburg*, 363 S.C. 19, 31, 32, 609 S.E.2d 506, 512, 513 (2005) (footnotes and citations omitted).

In its case-in-chief, Eck entered into evidence the entire deposition of Hensley, which included as an exhibit the Credit Application and Guarantee. In other words, if there was an error, it was harmless because "equivalent or cumulative evidence or testimony was offered." *Id.*

The Lower Court's admission of the Credit Application and Guarantee was proper under Rule 901(b)(1) and (4). Therefore, its evidentiary rulings did not constitute a clear abuse of discretion amounting to an error of law. Moreover, the Appellants have not demonstrated the prejudice suffered as a result of these rulings. For all the above reasons, and taking into account the substantial deference afforded to the Lower Court to make evidentiary rulings, this Court should uphold the Lower Court's rulings.

IV. THE MASTER'S RULING TO ADMIT A DUPLICATE OF THE CREDIT APPLICATION PURSUANT TO RULE 1003 OF THE SOUTH CAROLINA RULES OF EVIDENCE DID NOT CONSTITUTE A CLEAR ABUSE OF DISCRETION.

Rule 1003, SCRE states, [a] duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate."

In addition to the above cited standard for admission of evidence and review by this Court, the question of whether to admit evidence under the "best evidence rule" is also addressed to the discretion of the trial court. *Wayne Smith Constr. Co., Inc. v. Wolman, Duberstein, & Thompson*, 294 S.C. 140, 146, 363 S.E.2d 115, 118 (Ct.App.1987).

At trial, the Appellants' attorney objected to the admission of the non-original Credit Application and Guarantee. Then and now on appeal, the Appellants rely on the deposition testimony of Eck's branch manager, which suggest that the "original" was being held in Richmond. It must be noted, however, that Superior, not Eck, should have been in possession of the original Credit Application and Guarantee. Superior completed the documents and faxed them to Eck. The copy received on Eck's end was a faxed copy. There is nothing in the record indicating that Superior mailed the original to Eck. Eck's branch manager could have easily been referring to the original faxed copy, sent to Richmond, when he discussed the original. This is supported by the argument made at trial by Eck's attorney, who stated, "I have contacted Richmond. The only thing we have, I think, was a faxed copy, which is this copy. I got several copies from everybody, and it's the same copy." (Tr. p. 21).

The Appellants primary issue "about the original's authenticity" is focused on the genuineness of Hensley's signature. (Appellants' Br. pp. 18-19). However, "no requirement exists that a signature be witnessed in order to authenticate a document." *Pee Dee Production*

Credit Ass'n v. Joye, 284 S.C. 371, 375, 326 S.E.2d 650, 653 (1984). As argued above, the Lower Court reasonably determined that Hensley signed the Credit Application and Guarantee and the documents were properly authenticated and admitted by the Lower Court; therefore, the Lower Court ruling to admit the duplicate did not constitute an abuse of discretion amount to an error of law.

Appellants also take issue with certain information that was to be attached to the Credit Application. All of this information was to be provided by Superior, not Eck. Moreover, this information is related to Superior's officers, it banking institutions and its trade references. (see Credit Appl.). This information has no bearing on the claims asserted by either party or the primary issue raised on appeal (i.e., whether Hensley signed the Credit Application and Guarantee).

Lastly, Appellants argue that the duplicate is hard to read. (Appellants Br. p. 19, Tr. 11-12). However, undisputed is the actual language of the Credit Application and Guarantee, which contain a provision for attorney's fees and 18% interest.

Appellants issues with the duplicate are no more than their issues with the findings of fact made by the Lower Court, specifically that Hensley signed the Credit Application and Guarantee. The Lower Court decision to admit a duplicate of the Credit Application and Guarantee did not constitute a clear abuse of discretion. It acted within Rule 1003, SCRE, and its evidentiary ruling should not be disturbed on appeal.

CONCLUSION

For all of the above stated reasons, this Court should affirm the Lower Court's findings of fact and rulings.

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April 11, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Robert E. Watson and The Honorable Dale E. Van Slambrook
Masters-In-Equity

Case No. 2009-CP-08-2037
Appellate Case No. 2015-002287

Eck Supply Co., Respondent,

v.

Superior Electric Company
and Dean M. Hensley Appellants.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Designation of Matter on the Appellants by mailing, postage prepaid, a copy of them to the Appellants' attorney of record, Robert B. Varnado, at his office, located at P.O. Box 1127, Mount Pleasant, SC, 29465, on April 11, 2016

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April 11, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Eck Supply C. v. Superior Electric Company and Dean M. Hensley
Case No. 2009-CP-08-2037
Appellate Case No. 2015-002287
S|C File No. 09-334

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Brief of Respondent, the Respondent's Designation of Matter, and the Proof of Service.

Please file the original and return a stamped copy to our office in the enclosed prepaid, self-addressed envelope.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Samuel M. Wheeler

cc: Robert B. Varnado, Esq.

.A.
y Rd, Ste 1

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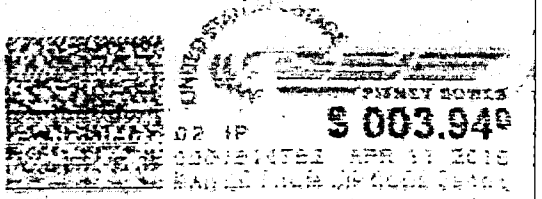

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