STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2014-CP-08-01142

Blue Chip Medical Products, Inc.,

Plaintiff,

v.

Robert L. Bonifay, Jr., Airus Medical Services, LLC, and Airus Medical LLC,

Defendants.

ORDER

This Matter came before the Court for a bench trial on April 11, 2016. Yancey A. McLeod III of Leath Bouch & Seekings, LLP represented the Plaintiff. Karen DeJong of the DeJong Law Firm, LLC represented the Defendants.

BACKGROUND

Plaintiff Blue Chip Medical Products, Inc. (hereinafter "Plaintiff" or "Blue Chip") filed the instant action on May 15, 2014 against Defendants Robert L. Bonifay, Jr., Airus Medical Services, LLC, and Airus Medical LLC. The Complaint alleged the following causes of action against each Defendant: (1) Money Due on the Loan; (2) Breach of Contract; (3) Breach of Covenant of Good Faith and Fair Dealings; and (4) *Quantum Meruit*. The Defendants filed an Answer on June 17, 2014. The Answer raised no defenses to the Plaintiff's causes of action, but did allege a counterclaim for Breach of Contract. After the Court denied the Plaintiff's Motion to Dismiss the Defendants' counterclaim, the Plaintiff answered the Defendants' counterclaim and raised numerous defenses.

Following Defendant Bonifay's Deposition, on December 9, 2014 the Plaintiff moved for

partial summary judgment to recover $17,058.79 the Plaintiff specifically paid to the Defendants for parts the Defendants required to be fully prepaid, but were never actually provided. In an order dated February 2, 2015, the circuit court granted Plaintiff's Motion for partial summary judgment. That order permitted the Defendants the opportunity to Amend their pleadings to add an Offset claim for the $17,058.79. The case was then referred to this court on an Order for Supplemental Proceedings for the collection of the $17,058.79 judgment. After the supplemental hearing was held on July 15, 2015, the Defendants paid the Plaintiff the amount of the judgment plus interest, and a satisfaction of judgment was entered.

Thereafter, the Plaintiff again moved for partial summary Judgment on the remaining amount due on the loan. This court denied the Plaintiff's Motion and its subsequent Motion for Reconsideration. The matter was then set for trial before this court on April 11, 2016. On March 30, 2016, the Defendants amended their Answer and added a Counterclaim for Offset. The Defendants' Amended Answer raised no defenses to the Plaintiff's causes of action. The Plaintiff filed and served its Amended Answer to the Counterclaim, raising numerous defenses, on April 11, 2016. On April 11, 2016, the case was tried before this court. After the close of the evidence, the Plaintiff moved to amend its pleadings to conform to the evidence at trial to add an additional $40,523.00 to the total amount due on the loan. After reviewing the Pleadings, considering the demeanor and credibility of the witnesses testimony, and examining the documents admitted into evidence, this court finds as follows:

I. FINDINGS OF FACT

Blue Chip is in the business of manufacturing and distributing therapeutic related products and accessories. Ron Resnick, its president, founded Blue Chip in 1995. The Defendant, Robert L. Bonifay, invented and was developing an air fluidized therapy bed system for the treatment of

pressure sores. This bed system is known as the Airus Air Fluidized Therapy bed (hereinafter "AFT bed"). The Defendants, Airus Medical Services, LLC and Airus Medical LLC, are the companies Defendant Bonifay created for the purpose of manufacturing, selling and renting his AFT beds.

In early 2010, Defendant Bonifay entered into negotiations with Blue Chip for the purpose of arranging funding for the development and manufacturing of the AFT beds. As a result of these negotiations, the Defendants and Blue Chip entered into a Contract dated November 9, 2010 (hereinafter "Contract") for the manufacture, sale, and distribution of the AFT beds.

The Contract set forth certain responsibilities, obligations, and rights of the parties with regard to the manufacture, sale, and distribution of said products, including the following:

- Plaintiff would provide $60,000 to Defendants to be used for further product development. This amount was non-refundable.
- Plaintiff would provide certain loans to complete product development and for start-up costs, with interest to accrue at the lowest applicable Federal rate per IRS regulations.[1]
- Plaintiff would have exclusive worldwide distribution rights for a period of at least four years. The exclusivity for the first four years was unconditional, in exchange for Blue Chip's non-refundable $60,000 and Blue Chip's loans to complete the product development. The exclusivity period's continuation beyond four years was conditioned on the Plaintiff achieving sales targets of six (6) beds per month on average.
- Plaintiff's exclusivity would not apply to North Carolina, South Carolina, Georgia, and Florida, where the Defendant would operate a rental business.
- Defendants would (1) manufacture and provide the product; (2) provide a manufacturer's warranty; and (3) manufacture and provide parts for in-warranty and out-of warranty service.
- Defendants would issue and be responsible for the product warranties.
- Defendants would be responsible for warranty claims, including labor and parts.
- Defendants would provide parts as required for routine service calls. Parts for in-warranty repairs-replacement would be at no charge. Parts for out-of-warranty

[1] Although the Contract provided that Blue Chip would provide financing up to $150,000.00, it also provided for the possibility that additional loans would be required. (*See* Contract at ¶ 6).

repairs/replacement would be at cost.

Pursuant to the terms of the Contract, Blue Chip's financing would be in the form of a loan, which provided for a firm outside due date of four (4) years for the repayment. *See* Contract at ¶ 6(e). Thereafter, Blue Chip issued the Defendants the $60,000.00 non-refundable payment for product further development of the AFT beds. *See* Contract ¶4. In addition, Blue Chip loaned the Defendants a total of $327,773.00 for the complete development of the AFT bed and for Airus Medical startup.

In late 2011, the AFT bed was introduced to the market. As part of the introduction of the new AFT bed product, Blue Chip spent its own funds to market the product, including attending trade shows, generating marketing bulletins, and paying for advertisements in reputable catalogs. These materials all marketed the Airus bed under the Blue Chip name, and Blue Chip sold the majority of the AFT beds to existing Blue Chip customers.

Soon after the AFT beds were introduced to the market, however, the product experienced a variety of reliability issues and many warranty claims were made. Blue Chip attempted to service the product and keep its customers satisfied, but was unable to obtain the necessary parts from the Defendants to do so.

II. CONCLUSIONS OF LAW

A. Plaintiff's First Cause of Action: Money Due on the Loan.

Plaintiff Blue Chip's first cause of action alleges that, pursuant to the Contract, it loaned money to the Defendants and those loans are now due. This Court agrees. The elements of breach of contract are (1) the existence of the contract; (2) its breach; and (3) the damages caused by such breach. *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009).

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

"The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties and, in determining that intention, the court looks to the language of the contract. If the language is clear and unambiguous, the language alone determines the contract's force and effect." *Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n of S. Carolina*, 317 S.C. 452, 457, 454 S.E.2d 901, 905 (Ct. App. 1995); "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense." *C.A.V. Enters., Inc. v. South Carolina Health & Human Servs. Finance Comm'n*, 296 S.C. 373, 373 S.E.2d 584 (1988).

Here, the existence of a Contract is undisputed. Both the Defendants' pro se Answer and the Amended Answer admit the existence of the Contract. The Contract was admitted into evidence, without objection, at trial. This Court finds that, pursuant to the clear terms of the Contract, Blue Chip was to provide loans to the Defendants "to complete development of AFT bed and for Airus startup." Contract at ¶ 6. The Contract further states that "[f]inancing will be in the form of a loan," and provided an interests rate at "the lowest applicable Federal rate per IRS regulations." *Id.* at ¶ 6 (b). Although the Contract provided that "Blue Chip will also provide financing of up to $150,000," it further contemplated increasing that amount in the event there were "unexpected costs." *Id.* at ¶ 6.

As to the amount of the Loans, this court finds that Blue Chip loaned the Defendants a total of $327,773.00 between January 28, 2011 and August 9, 2011. At trial, Blue Chip presented indisputable evidence of the total loan amount, including its Check Register and the canceled checks. *See* **Plaintiff's Exhibits 2 and 2A**. Those documents were admitted into evidence and

establish that Blue Chip issued a total of four (4) loans to the Defendant Airus Medical LLC. On January 28, 2011, Blue Chip issued a check to Airus Medical LLC for $72,500. On March 18, 2011, Blue Chip issued a check to Airus Medical LLC for $129,450. On May 26, 2011, Blue Chip issued a check to Airus Medical LLC for $85,300. And finally, on August 9, 2011, Blue Chip issued a check to Airus Medical LLC for $40,523. Each of these checks were deposited into the Airus Medical LLC account. The Blue Chip Check Register, **Plaintiff's Exhibit 2**, lists these four (4) checks as "Airus Loan." Most importantly, the Defendants' own Financial Statement, admitted into evidence as **Plaintiff's Exhibit 36**, lists these amounts as "Third Party Loans." This court finds that the indisputable evidence establishes that Blue Chip loaned the Defendants $327,773.00, pursuant to the Contract.[2]

The only question then is whether the loaned money is currently due and owed. This court finds that it is. The Contract is clear. Paragraph 6(e) of the Contract provides:

> Details of repayment terms TBD, but the general intent is that repayment will be due when Airus Medical manufacturing operation is operating positive cash flow inclusive of reasonable salary for Robby. A portion of the profit on Airus Medicals sales to Blue Chip will be applied toward loan reduction. **However, there will be a firm outside due date of 4 years.**

Id. at ¶ 6(e) (emphasis added). The Contract is dated November 9, 2010, and pursuant to the firm four-year due date, there is no question that the $327,773.00 is now due. The Defendants have

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[2] The Complaint alleges that the total amount of loans is only $287,250.00. At the close of the evidence, the Plaintiff moved pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure, to amend its Complaint to conform to the evidence at trial to include the additional August 9, 2011 loan of $40,523.00, increasing the total alleged loans to $327,773.00. This court finds that pursuant to the Rule, the Plaintiff should be allowed to conform its pleadings to the evidence. However, even if it were to deny this motion, this court finds that Plaintiff would still be entitled to recover the $40,523.00 loan amount under its *Quatum Meruit* cause of action discussed in section II c, infra.

made no argument that the four-year due date is not controlling or does not apply. Further, the Defendants did not raise any defenses to the Plaintiff's cause of action for money due on the loan.

The Defendants' only argument appears to be that they should not have to pay the money back because Blue Chip did not sell a certain number of beds. This court disagrees. There is nothing in the Contract that conditions the repayment of the loan on a certain number of beds being sold. The language upon which the Defendants apparently rely, paragraph 7(f) of the Contract, in no way conditions the repayment of the Loan on the number of Airus Beds purchased. On the contrary, that clause provides:

> Blue Chip exclusivity will continue for at least four years. Exclusivity for year 5 will be conditioned upon Blue Chip achieving sales target of six units per month on average for Years 1 through 4 inclusive. Blue Chip exclusivity for subsequent years will be conditioned upon achievement of prior year's targeted number of unit sales. Starting year 5, targeted number of unit sales will increase by 10% per year.

Contract ¶ 7(f). The plain terms of the Contract establish that only Blue Chip exclusivity beyond the first four years – not loan repayment – was conditioned on Blue Chip achieving the sales target. Further, while the Contract does provide that the "general intent" is that repayment would be due when Airus Medical manufacturing was operating a positive cash flow to include a reasonable salary for Defendant Bonifay, this language is followed by the unambiguous language that "there will be a firm outside due date of 4 years." *Id.* at ¶ 6(c). Based on the foregoing, this court finds that Plaintiff is entitled to the $327,773.00 loan proceeds that are currently due under the Contract.[3] Plaintiff did not request and presented no evidence regarding any interest due on the loan. Therefore, Plaintiff has waived any claim for interest due.

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[3] Even if this court were to determine that no time was set for the loan repayment, this of course would not mean that the loan was not due. *See, e.g., Okatie River, L.L.C. v. Se. Site Prep, L.L.C.*, 353 S.C. 327, 337, 577 S.E.2d 468, 473 (Ct. App. 2003) ("[I]n view of the fact that no time was set for repayment of the loan, the circuit court correctly held it was a loan payable on demand.").

B. Plaintiff's Second Cause of Action: Breach of Contract.

In addition to its cause of action for Money due on the Loan, the Plaintiff alleges that the Defendants breached the Contract by (1) failing to repair and service Airus Beds and parts, both in-warranty and out-of-warranty; (2) failing to provide replacement parts; and (3) failing to satisfy the manufacturer's product warranty. The Plaintiff alleges that, as a result of these breaches, it is entitled to the costs of the AFT bed products and parts remaining in Plaintiff's inventory that it can no longer sell, and for consequential and special damages associated with loss of business. This court agrees in part.

"When a plaintiff seeks special damages for breach of contract, he must plead and prove both the fact of damage and the amount of damage with a reasonable degree of certainty." *South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*, 303 S.C. 74, 77-78, 399 S.E.2d 8, 11 (Ct. App. 1990), aff'd, 310 S.C. 232, 423 S.E.2d 114 (1992); *Jackson v. Midlands Human Resources Center*, 296 S.C. 526, 374 S.E.2d 505 (Ct. App. 1988). "The fact of damage is proved by showing (1) that the plaintiff realized an actual loss he would not have incurred but for the defendant's breach of contract; and (2) the loss was a natural consequence of the breach which may reasonably be supposed to have been within the contemplation of the parties at the time the contract was made." Id. (citing *Charles v. Texas Company*, 199 S.C. 156, 18 S.E.2d 719 (1942)); *Goodwin v. Hilton Head Company*, 273 S.C. 258, 259 S.E.2d 611 (1979); *The Drews Company, Inc. v. Ledwith-Wolfe Associates, Inc.*, 296 S.C. 207, 371 S.E.2d 532 (1988).

"If the fact of damage is established, the law does not require the amount of damage to be proved with absolute mathematical certainty; damages may be recovered if there is evidence upon which a reasonable assessment of the loss can be made." *South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*, 303 S.C. 74, 77-78, 399 S.E.2d 8, 11 (Ct. App. 1990), aff'd, 310 S.C

232, 423 S.E.2d 114 (1992)(citing *Charles v. Texas Company*, 199 S.C. at 180, 18 S.E.2d at 729; *South Carolina Finance Corporation of Anderson v. West Side Finance Company*, 236 S.C. 109, 113 S.E.2d 329 (1960). The estimation of damages, however, cannot be based on conjecture or speculation; it must pass the realm of opinion not founded on facts and must rest on evidence from which a reasonably accurate conclusion regarding the amount of loss can be logically and rationally drawn. *The Drews Company, Inc. v. Ledwith-Wolfe Associates, Inc.*, 296 S.C. at 214, 371 S.E.2d at 536. There must be a certain standard or fixed method by which the loss may be estimated with a fair degree of accuracy. *Charles v. Texas Company*, 199 S.C. at 180, 18 S.E.2d at 729.

As discussed above, there is no dispute that a valid, enforceable Contract existed between the parties. The Defendants admitted this. In addition, the Defendants admitted in the Answer, and again in the Amended Answer, to the following contractual obligations:

- Defendants would (1) manufacture and provide the product; (2) provide a manufacturer's warranty; and (3) manufacture and provide parts for in-warranty and out-of warranty service.
- Defendants would issue and be responsible for a product warranty.
- Defendants would be responsible for warranty claims, including labor and parts.
- Defendants would provide parts as required for routine service calls. Parts for in-warranty repairs/replacement would be at no charge. Parts for out-of-warranty repairs/replacement would be at cost.

See Plaintiff's Complaint at ¶ 10; Amended Answer at ¶ 7. At trial, the evidence demonstrated that once the AFT beds were introduced to the market, the product experienced a variety of reliability issues and many warranty claims were made. The testimony at trial demonstrated that Blue Chip attempted to service the product and keep its costumers satisfied, but was unable to get the necessary parts from the Defendants to do so.

The evidence at trial demonstrated that Blue Chip's efforts were frustrated by the

Defendants' failure to provide the necessary parts to repair the malfunctioning beds. Blue Chip submitted numerous emails that evidenced the Defendants' failure to meet their contractual obligations. Mr. Resnick's testimony regarding the Defendants' breaches was convincing, plentiful and essentially unchallenged by the Defendants.

According to Mr. Resnick's undisputed testimony, as a result of the Defendants' conduct in failing to honor the product's warranty and failing to supply the parts, either for in-warranty or for out-of-warranty repairs and replacement, Blue Chip was unable to continue marketing and selling the beds. Mr. Resnick testified that Blue Chip lost several large customers as a result of not being able to service the malfunctioning AFT beds. According to Mr. Rensick, his 20 year-old company's reputation suffered tremendously. Mr. Rensick estimated this company lost a total of $500,000 in sales as a result of its loss of business stemming directly from the Defendants' failure to meet its contractual obligations related to warranty and parts. However, this loss of revenue is unsupported by documentary or testamentary evidence beyond Mr. Resnick's opinion. As such this Court considered the purported loss to be too speculative in nature upon which to base an award of damages.

Mr. Resnick further testified that Blue Chip still has a total of nine (9) AFT beds and related parts in inventory that it cannot sell and he considered worthless. Mr. Resnick also testified that, because of the Defendants' refusal to provide parts for the AFT bed service needs, Blue Chip was forced to cannibalize parts from the AFT beds it held in inventory, in an effort to meet costumers' needs for product service.[1] At trial, Blue Chip submitted a list of its unusable inventory, which

[1] In fact, Blue Chip has previously been granted summary judgment as to $17,058.79 Blue Chip paid the Defendants in an attempt to replace these parts. The Defendants refused to provide those parts, even after the Defendants required Blue Chip to prepay for those parts in full, and Blue Chip was forced to file suit. These parts were intended to replace the parts Blue Chip had to cannibalize from Blue Chip's remaining inventory of AFT beds to meet customers' service needs. That

was admitted into evidence as **Plaintiff's Exhibit 4**. According to this document and Mr. Resnick's testimony, Blue Chip paid $97,618.50 to the Defendants for Blue Chip's currently unusable inventory of AFT beds and parts.

Based on the foregoing, this Court finds that Plaintiff Blue Chip is entitled to recover an additional $97,618.50 which represents the cost of the unusable inventory that it purchased from the Defendants.[5]

C. **Plaintiff's Fourth Cause of Action: *Quantum Meruit***

The Plaintiff's final cause of action is for *Quantum Meruit*.[6] In its Complaint, Blue Chip alleges that it conferred substantial benefits to the Defendants in the form loans, the Defendants realized those benefits of the loans, and it would be unjust to allow Defendants to benefit from the loans without paying Blue Chip back. This court agrees.[6]

The elements of a *quantum meruit* claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010). *See also Okatie River, L.L.C. v. Sc. Site Prep, L.L.C.*, 353 S.C. 327, 336, 577 S.E.2d 468, 473 (Ct. App. 2003) ("In theory and actual practice, an action for money had and received is subsumed and amalgamated under the theories of *quantum meruit* quasi-contract implied by law actions.").

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remaining inventory was useless without those parts being replaced that remain in Blue Chip's inventory.

[5] Because the Court has found in favor of the Plaintiff on its Breach of Contract cause of action, it need not address the Plaintiff's Breach of Covenant of Good faith and Fair Dealing claim. *See generally Williams v. Riedman*, 339 S.C. 251, 274, 529 S.E.2d 28, 40 (Ct. App. 2000).

[6] Although the court need not address the Plaintiff's *Quantum Meruit* claim due to its previous rulings on the Plaintiff's Money due on the Loan and Breach of Contract causes of action, it nevertheless feels compelled to address this cause of action as an additional sustaining ground for Plaintiff's recovery of the $327,773.00 loan.

Here, there is no dispute that Blue Chip loaned the Defendants a total of $327,773.00. At trial, Blue Chip proffered indisputable evidence of the total loan amount, including its Check Register and the canceled checks. *See* **Plaintiff's Exhibits 2 and 2A**. Those documents were admitted into evidence and establish that Blue Chip issued a total of four (4) loans to Defendant Airus Medical LLC. On January 28, 2011, Blue Chip issued a check to Airus Medical LLC for $72,500. On March 18, 2011, Blue Chip issued a check to Airus Medical LLC for $129,450. On May 26, 2011, Blue Chip issued a check to Airus Medical LLC for $85,300. And finally, on August 9, 2011, Blue Chip issued a check to Airus Medical LLC for $40,523. Each of these checks were deposited into the Airus Medical LLC account. The Blue Chip Check Register, **Plaintiff's Exhibit 2**, lists these four (4) checks as "Airus Loan." Most importantly, the Defendants' own Financial Statement, admitted into evidence as **Plaintiff's Exhibit 36**, lists these exact amounts as "Third Party Loans." This evidence was not refuted, and these loans constitute a benefit conferred upon Defendant Airus Medical LLC.

Moreover, the Defendant realized the benefit of these "loans." The evidence demonstrates that these loans were deposited into the Defendant's account and labeled as third party loans. Indeed, the Defendants admitted to receiving the loans for "product development and start up costs" in both the original Answer and the Amended Answer. *See* Complaint at ¶ 12; Amended Answer at ¶ 7.

This court finds that, under the facts of this case, the Defendant's retention of the benefit of the $327,773.00 in loans would be unjust without repaying the loans to Blue Chip. The Defendants have retained the benefits of the loans to this day. Defendant Bonifay testified that he continues to operate his business and continues to manufacture and sell the AFT beds throughout the Country. Under these circumstances, this court finds that Plaintiff is entitled to the repayment

of the $327,773.00 in loans under its *Quantum Meruit* cause of action. *See, e.g., Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010); *Okatie River, L.L.C. v. Se. Site Prep, L.L.C.*, 353 S.C. 327, 336, 577 S.E.2d 468, 473 (Ct. App. 2003) (finding an action for money had and received is subsumed and amalgamated under the theories of *quantum meruit*.").

D. Defendants' First Counterclaim: Breach of Contract

The court next turns to the Breach of Contract Counterclaim the Defendants asserted in the original Answer and again in the Amended Answer. The Plaintiff timely answered the Counterclaim and asserted numerous defenses thereto. According to the Counterclaim, the Defendants assert that Plaintiff "has made at least one sale in the Defendant's [sic] territory in violation of the specific terms of the contract." After hearing the testimony and reviewing the evidence admitted at trial, this court finds that the Defendants have failed to establish any breach of contract on the part of the Plaintiff.

"The elements for breach of contract are (1) the existence of the contract; (2) its breach; and (3) the damages caused by such breach. *Branch Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Initially, the court finds that the plain language of the Contract did not preclude the Plaintiff from selling the AFT beds in Georgia, South Carolina, North Carolina, and Florida. On the contrary, the plain language of the Contract provides that Blue Chip merely did not have "exclusivity" to sell the AFT beds in these states. The Contract specifically omitted these states from Blue Chip's exclusivity so that the Defendants could operate a rental business. *See* Contract at ¶¶ 3(d); 7(c)(i)(2). In fact, the Contract specifically provides for "overlap" and that Blue Chip could not distribute AFT beds that "compete with Airus Medical's AFT beds." *See id.* at ¶¶ 7(g); 7(c)(vii).

In any event, even if this court were to find a breach occurred, the Defendants failed to put forth any credible evidence at trial – whether testimonial or documentary – of any actual damages resulting from an alleged breach. When the record is devoid of any credible evidence of actual damages the Defendants' counterclaim fails for this reason alone.

Finally, the Plaintiff raised numerous defenses to this counterclaim in its Answer and Amended Answer, including the defenses of acquiescence and estoppel. *See, e.g., Cooksey v. Beaumont Mfg. Co.*, 194 S.C. 395, 9 S.E.2d 790, 793 (1940) (finding error in failing to charge acquiescence and estoppel where Plaintiff acquiesced to the breach). As previously stated, the Counterclaim alleges that the Plaintiff sold at least one AFT bed in the "overlap" region, which, according to the Defendants' allegation, constituted a breach. However, the testimony, including Defendant Bonifay's own sworn testimony, was that he not only assisted the Plaintiff in the sale, but that he actually delivered and set up the AFT bed for the Plaintiff. Therefore, even if this court were to find that such a sale by Plaintiff in the "overlap" region constituted a breach and that the Defendants established damages resulting therefrom, the Plaintiff's defenses of acquiescence and estoppel would serve as a complete bar to recovery. The Defendants cannot recover from a breach that they facilitated and participated in. This court therefore finds in favor of the Plaintiff on the Defendants' first counterclaim for Breach of Contract.

E. Defendants' Second Counterclaim: Setoff

Finally, the Defendants amended their Answer and asserted a counterclaim for Setoff. Because the Defendants did not establish or succeed on their breach of contract counterclaim, any setoff claim is moot. However, even if the court were to award the Defendants damages on the counterclaim, this court finds that the $17,058.79 judgment that was previously awarded and satisfied by the Defendant would not entitle the Defendant to a setoff because that judgment was

for a completely separate injury and has previously been satisfied.

Pursuant to South Carolina law, a settlement by a joint tortfeasor "reduces the claim against the others to the extent of any amount stipulated by the release or the covenant." S.C. CODE ANN. § 15-38-50(1) (2005). Therefore, before entering judgment on a verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury. *Hawkins*, 330 S.C. at 113, 498 S.E.2d at 406-07. When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law. *Ellis v. Oliver*, 335 S.C. 106, 112, 515 S.E.2d 268, 271-72 (Ct. App. 1999). Here, the previous payment was for a separate injury. As such, the Defendants are not entitled to any setoff.

III. CONCLUSION

Based on the foregoing, this court finds in favor of the Plaintiff as follows:

1. Money Due on the Loan: The court finds in favor of the Plaintiff in the amount of **$327,773.00**. In doing so, the court will allow the Plaintiff to amended its pleadings to conform to the evidence.
2. Breach of Contract: The court finds in favor of the Plaintiff in the amount of $97,618.50.
3. *Quantum Meruit*: As an additional sustaining ground, the court finds in favor of the Plaintiff in the amount of **$327,773.00** for the money loaned to the Defendants. (*Only entitled to one recovery for this amount*).
4. Defendants' Counterclaim for Breach of Contract: The court finds in favor of the Plaintiff.
5. Defendants' Counterclaim for Setoff: The court finds in favor of the Plaintiff.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Plaintiff shall have judgment in the amount of $425,391.50 against Defendants Robert L. Bonifay, Jr., Airus Medical Services, LLC, and Airus Medical LLC to be applied joint and severally to each Defendant.

IT IS SO ORDERED.

Dale Edward Van Slambrook
Master in Equity, Berkeley County

Moncks Corner, SC
May 17, 2016.