

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Ferrell Cothran., Circuit Court Judge

Appellate Case No. 20017-000998
Civil Action No. 2015-CP-43-596

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AUG ~~X~~ 2017
SC Court of Appeals

Paul Branco and Branco Investments,
Inc., d/b/a Great American Cookie Co., Respondents,

v.

Hull Storey Retail Group, LLC, and
Sumter Mall, LLC..... Appellants.

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SC Court of Appeals

APPELLANTS' MOTION FOR REMAND WITHOUT PREJUDICE
FOR THE DISPOSITION OF THEIR POST-TRIAL MOTION

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Appellants respectfully request this Court remand this appeal, without prejudice, to the Sumter County Court of Common Pleas for the disposition of post-trial motions and with leave to refile the appeal within 30 days after receiving written notice of the trial court's ruling or declining to rule on the post-trial motion that has been set for a hearing on August 28, 2017.

This matter involves a commercial property dispute. The trial court conducted a bench trial in March 2017. Following the bench trial, a proposed order that was to be filed ruling in Plaintiff's favor was circulated to counsel for their review prior to its filing. In response, Defendants' counsel filed a Motion to Amend on March 21, 2017. *See Exhibit A.* The trial court filed its order ruling in Plaintiff's favor on March 23, 2017. *See Exhibit B.* The court did not schedule any hearing on the Motion to Amend, nor did it express any indication of whether and

when it might set a hearing or rule on the motion. Accordingly, and out of an abundance of caution, Appellants timely filed their notice of appeal on April 21, 2017. The parties subsequently communicated with the trial court regarding whether and when a hearing might be held, but no definitive answer was immediately forthcoming. On August 2, 2017, counsel received notice that the pending Motion to Amend had been scheduled for a hearing on August 28, 2017. See **Exhibit C** at p.9, line entry 65.

In situations containing the foregoing procedural facts, the appropriate action is for the matter to be returned to the trial court to rule on the motion without prejudice and with leave to refile within 30 days after receiving written notice of the trial court's ruling or declining to rule on the motion. See *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986); *Wicker v. Anderson City Council*, 289 S.C. 479, 347 S.E.2d 96 (1986); see also Toal, J., *Appellate Practice in South Carolina* (2d ed.) at 120.¹

Accordingly, Appellants respectfully request this Court remand the matter to the trial court without prejudice and with leave to refile the appeal following the trial court's ruling or declining to rule on the Motion to Amend. In the alternative, Appellants request this Court construe this motion as a request for dismissal without prejudice to refile following the trial court's decision. See *Hudson* and *Wicker*, *supra*. Finally, Appellants respectfully request this Court hold any pending appellate deadlines in abeyance pending the Court's ruling on this motion.

¹ *Hudson* and *Wicker* involved a timely-post trial motion made after the Notice of Appeal was timely filed. Here, in contrast, the post-trial motion was made *prior* to the timely filing of a Notice of Appeal. This slight distinction makes no difference to the practical outcome that, in either scenario, the trial court has jurisdiction to hear and rule on the post-trial motion, and the appellant retains the right to refile his appeal following the trial court's resolution of the motion.

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Exhibit A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)	2015-CP-43-596
)	
Paul Branco, Branco Investments, Inc.)	
d//b/a Great American Cookie Co.,)	
)	
Plaintiff)	SCRCP RULE 52(b) MOTION TO AMEND JUDGMENT
)	(ORDER)
Vs.)	
)	
Hull Storey Retail Group, LLC, and)	
Sumter Mall, LLC,)	
)	
Respondent.)	

COME NOW the Defendants, Hull Storey Retail Group, LLC and Sumter Mall, LLC and pursuant to SCRCR 52(b), respectfully ask the Court to reconsider and alter the findings in its Order of March __, 2017 (the "Order") which was emailed in draft form on March 9, 2017.

The Proposal for Purchase dated March 1, 2013, between Branco Investments, Inc. ("Branco") and Brooktenn, LLC ("Brooktenn")(the "Contingent Purchase Agreement") specifically states "[t]his proposal is contingent upon Buyers getting a satisfactory lease from Hull Storey Gibson within 90 days of signed proposal." The Order includes a finding that "Hull Storey approved Brooktenn's lease but attempted to get the \$70,000 purchase price from Branco by invoking paragraph 16.2 of the lease agreement between Hull Storey and Branco." The Respondent requests the Court to remove the finding that "Hull Storey approved Brooktenn's lease" as the record is replete of any signed lease document with Brooktenn.

"Any agreement for the use or occupation of real estate for more than one year shall be void unless in writing." S.C. Code Ann. § 27-35-20. To satisfy the requirement, the Brooktenn lease would have to be a written expression of agreement and signed by both Brooktenn and Sumter Mall, LLC. The Supreme Court of South Carolina has expounded on the writing requirement.

Contract for extension or renewal of lease must specify conditions of renewal with certainty. *Anderson v. Hall*, 155 S.C. 320, 152 S.E. 521 (1930). Any modification of written contract must

satisfy all requisites of valid contract. *Bishop Realty and Rentals, Inc. v. Perk, Inc.*, 292 S.C. 182, 355 S.E. (2d) 298 (S.C. App. 1987). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. *Hughes v. Edwards*, 265 S.C. 529, 220 S.E. (2d) 231 (1975). The essential terms and conditions of a lease agreement include a definite agreement as to the extent and boundary of the property to be leased, the term of the lease, the rental as well as the time and manner of payment. This "meeting of minds" required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all of the circumstances should be known. *McClintock v. Skelly Oil Co.*, 232 Mo. App. 1204, 114 S.W. (2d) 181 (Mo. Ap. 1938). The record before us evinces no meeting of the minds between William A. Chandler and William D. Player during their February 5, 1985, telephone conversation. There is no indication that essential terms were discussed, and the mere referral to the original lease is not sufficient.

Assuming that an agreement had been reached during the February 5th telephone conversation, such a lease modification would be outside the Statute of Frauds. Any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. South Carolina Code Ann. § 27-35-20 (1976). Moreover, a contract required to be in writing by the South Carolina Statute of Frauds cannot be orally modified. *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E. (2d) 856 (1983)(court held evidence of oral modification of the real estate contract as violative of the Statute of Frauds).

Player v. Chandler, 299 S.C. 101, 102-03; 382 S.E. 2d 891, 93-94; 1989-S.C. LEXIS 166, 3-5 (1989).

The only written document drafted between Sumter Mall, LLC, and Brooktenn was the draft ASSIGNMENT, ASSUMPTION, AMENDMENT AND RATIFICATION OF LEASE AGREEMENT emailed to both Branco and Brooktenn on April 30, 2013, and attached to the Complaint as Exhibit C (the "Draft Assignment"). Brooktenn sought the ten year term described in Section 6A of the Draft Assignment, and the Draft Assignment document includes the requirement that the tenant parties pay the \$20,000 assignment fee stated in Section 7 of the Draft Assignment to Sumter Mall, LLC, and the requirement that Branco waive any claim against Defendants is in Section 4. No other written document purporting to be the Brooktenn lease has been proffered. The Draft Assignment was never signed nor did the parties reach a meeting of the minds with respect to a lease between Brooktenn and Sumter Mall, LLC. In this context, to be a lease, any agreement of the parties for the lease of the space at Sumter Mall to Brooktenn for the ten year term requested would have to be in writing and signed by the parties. That

did not occur, and the Defendants request the Court remove the finding that "Hull Storey approved Brooktenn's lease".

The Order also includes a finding that "[t]his interference was not justified in anyway and there was no evidence of justification offered by defendant at trial or in the pleadings." The Defendant requests that the Court eliminate the finding. Judge Anderson of the U.S. District Court for the South Carolina District reviewed justification in a claim of tortious interference with contract under South Carolina law in BCD, LLC, v. BMW Mfg. Co., LLC, 2008 U.S. Dist. LEXIS 7410, 66-67 (Dist. Ct. 2008).

Absence of justification is an essential element of a tortious interference claim. *Waldrop Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co.*, 992 F.2d 59, 62 (4th Cir. 1993). The absence of justification means conduct that is carried out for an improper purpose, such as malice or spite, or through improper means, such as violence or intimidation. *Id.* at 63.

a. Improper Purpose

If some legitimate purpose or right exists, liability cannot be imposed even if the defendant exercises that right for malicious reasons. *Id.* Moreover, if a defendant acts for more than one purpose, the improper purpose must predominate in order to create liability. *Crandall Corp. v. Navistar Int'l. Transp. Corp.* 302 S.C. 265, 395 S.E. 2d 180 (S.C. 1990).

Id., 2008 U.S. Dist. LEXIS 7410, 66-67 (Dist. Ct. 2008).

b. Improper Means

Improper means are defined as "means that are illegal or independently tortious." *Love v. Gamble*, 316 S.C. 203, 448 S.E. 2d 876, 883 (S.C. Ct. App. 1994) (internal quotes omitted). In South Carolina, "improper methods may include violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information or breach of a fiduciary relationship." *Waldrop Bros.*, 992 F.2d at 63.

Id., at 69-70. Sumter Mall, LLC is in the business of leasing the Sumter Mall property for income and profit, and there was ample testimony about leasing of the Sumter Mall. The only asset of Sumter Mall, LLC is land and leasable space at the Sumter Mall, and obtaining payment from tenants for the right to occupy the Sumter Mall – whether it be up front payment or monthly rent or percentage rent or reimbursement for common area maintenance expenses or any other type of lawful payment – is the

business of Sumter Mall, LLC, and the justification for most if not all of its actions year by year. In the Order, the Court described that exact behavior by Sumter Mall, LLC.

Sumter Mall, LLC's right not to lease space to Brooktenn or to condition that lease on any lawful condition must be superior to Branco's request to extend the lease or for a new lease. It is the essence of private property ownership. "A party who in good faith exercises a legal right 'affords no basis for an action by the second party for intentional interference with a contract' despite the fact it may cause a third party not to perform a contract. *Webb v. Elrod*, 308 S.C. 445, 418 S.E. 2d 559, 581 (S.C. App. 1992)." *Gailliard v. Fleet Mortgage Corp.*, 880 F. Supp. 1085, 1089-90; 1995 U.S. Dist. LEXIS 4197, 12 (Dist. SC 1995). So long as its actions are not for an improper purpose or conducted by improper means (there is no allegation of either), Sumter Mall, LLC, has the absolute right to place any conditions it wants on the lease or sale of its space and property rights.

The Lease Agreement dated December 30, 2002, between Sumter Mall, LLC and Paul J. Branco and Ann Branco expired on April 30, 2013. Sumter Mall, LLC, had no obligation to lease space to Brooktenn nor to approve Brooktenn as a tenant. Branco had no right to extend nor to continue to occupy the property. The Order includes findings that the value of the sale of Branco's property in the Sumter Mall, including the right to occupy space in the Sumter Mall (which Branco had no right to occupy after April 30, 2013), as measured by the Contingent Purchase Agreement was \$70,000, but the value Branco received for its property removed from the Sumter Mall was \$5,000. The \$65,000 difference in those two amounts represents a value inherent in the Sumter Mall (of which Branco had no ownership right) – not Branco's property. While not laid out in a linear fashion, the Court describes the affirmative justification for Sumter Mall to request payment of \$20,000 as a term in the Draft Assignment – Branco was proposing to sell to Brooktenn a package of physical property items belonging to Branco PLUS real property rights belonging to Sumter Mall, LLC, and was proposing to the Court that Sumter Mall, LLC be paid nothing.

It is interesting to note that Branco and Brooktenn recognized that a portion of the value of those combined assets being sold belong to the mall owner. The Contingent Purchase Agreement between Branco as seller and Brooktenn as buyer includes the following provision: "Mall Transfer Fee . . . to be split 50/50 with seller (not to exceed \$2,500 for Seller)." Without ever broaching the subject with Sumter Mall, LLC – the only party of the three that owns the right to occupy Sumter Mall after April 30, 2013 – Branco and Brooktenn collectively understood that they would have to pay some amount (\$2,500 as 50% for seller Branco and \$2,500 as 50% for buyer Brooktenn is a contemplated amount of \$5,000) to Sumter Mall, LLC, to purchase an extension of the right or a new right to occupy the Sumter Mall. Sumter Mall, LLC, had the absolute right to require any condition of leasing the property and to require payment of any amount, or they could decline to lease to Brooktenn or Branco at all, and structuring a draft agreement with Brooktenn as an assumption and assignment and including a requirement that Brooktenn make an up front payment of \$20,000 in the Draft Assignment was not only reasonable, it was entirely within the right of Sumter Mall, LLC. The Contingent Purchase Agreement is in the record and was discussed at trial and contemplates payment to Sumter Mall, LLC for the continued right to occupy space. The Court has determined the difference in value between Branco's property standing alone and the combination of Branco's property and Sumter Mall's property. The desire of Sumter Mall, LLC to act in its own financial interest is justification for its actions and was presented at trial, and the Defendants request the Court eliminate the finding "[t]his interference was not justified in anyway and there was no evidence of justification offered by defendant at trial or in the pleadings."

The Order includes a statement that "Defendant intentionally procured the breach of this contract by deeming it an assignment and attempting to collect \$20,000 from plaintiff. Defendant further undermined the contract by attempting to sell plaintiff's equipment to Brooktenn LLC for \$20,000." Defendants request that the Court delete this finding. There is no assertion that the

defendants at any time stopped the Plaintiff from removing its equipment and selling it to Brooktenn or anyone else, and the Court made a finding that Branco did remove the equipment and sold it (or some of it) to another party for \$5,000. An integral part of the Contingent Purchase Agreement was the acquisition by Brooktenn of the right to occupy land owned by Sumter Mall, LLC. Included in the "assets" Branco was attempting to sell to Brooktenn was the right to occupy land owned by Sumter Mall, LLC. Branco's Lease had expired, and Brooktenn has never had a lease with Sumter Mall, LLC. Defendant was under no obligation to lease space to Brooktenn, and construing the absolute right of Sumter Mall, LLC not to lease space to a party as an intentional procurement of the breach of the Contingent Purchase Agreement would work the untenable result of *requiring* Sumter Mall, LLC to lease space to the tenant of an expiring lease on pain of tort liability. What are the terms of the required lease extension? Is Sumter Mall, LLC permitted to increase the rent? Is it permitted to extend the exclusive provisions of its other tenants onto the premises as a condition of the occupancy? How long does the required lease with the extending tenant last? Is there a guarantor? If Sumter Mall, LLC, as a landowner, is not permitted to pursue its own legitimate interest free of tort liability, then it is not able to pursue or protect its interests at all. At the time for performance of its Contingent Purchase Agreement, Branco did not own an essential part of the thing it was attempting to sell. Sumter Mall, LLC, had no duty or obligation to enter into a new lease nor to ratify and agree to assign the lease, and the Defendant was free to condition its entry into a lease with Brooktenn on any lawful consideration. Branco was likewise free to remove its equipment and sell it separate from the assets of Sumter Mall, LLC, which it did. That Brooktenn and the Defendants could not come to terms on that new lease is not actionable against the Defendants, and the Defendants respectfully request that the Court remove the finding that the Defendants interfered with the Contingent Purchase Agreement.

Further, inherent to a tortious interference with contract claim is the question whether the defendant had a legitimate business interest underlying its action. Judge Anderson also looked at the

question of legitimate business interest in BCD, LLC, v. BMW Mfg. Co., LLC, 2007 U.S. Dist. LEXIS 2852

(Amended by BCD, LLC v. BMW Mfg. Co., LLC, 2007 U.S. Dist. LEXIS 4187 (D.S.C., Jan. 16, 2007)).

South Carolina law of tortious interference has never adopted the Stranger Doctrine, but has consistently provided protection to all parties of a contract from the tort. *Ross v. Life Ins. Co.*, 273 S.C. 764, 766, 259 S.E.2d 814, 815 (1979). This protection does not expressly encompass "all parties to an interwoven contractual arrangement," *Atlanta Mkt. Ctr. Mgmt. Co. v. McLane*, 269 Ga. 604, 503 S.E. 2d 278, 283, but does extend to parties engaged in legitimate business activity. See *Gaillard v. Fleet Mfg. Corp.*, 880 F. Supp. 1085, 1089 (D.S.C. 1995) (acknowledging "[i]nterference with a contract is justified when it is motivated by legitimate business purposes"); see also *Waldrap Bros. Beauty Supply, Inc., v. Wynn Beauty Supply Co.*, 992 F.2d 59, 60-61 (4th Cir. 1993)(asserting "the tort law of South Carolina does not make legitimate competitive behavior actionable").

Id. at 6-7. More recently, Judge Harwell of the U.S. District Court for the District of South Carolina found that

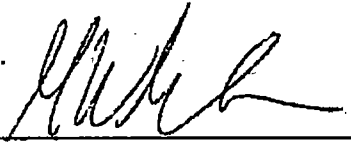
[w]hile intentional interference with contract and intentional interference with prospective contractual relations are distinct torts, they both require a plaintiff to show the defendant was a stranger to both the contract at issue and the business relationship giving rise to and underpinning the contract. See *Dutch Dork Dev. Grp. II, LLC v SEL Properties, LLC*, 406 S.C. 596, 604, 733 S.E. 2d 840, 844 (2012) (discussing intentional interference with contract); . . . This principle, often called the "stranger doctrine," prevents a party to an actual or prospective contract from being sued. (*Citations omitted*).

Jimmy Callum, Jr., v. CVS Health Corporation, 137 F. Supp. 3d 817, 861-862; 2015 U.S. Dist. LEXIS 13080, 98 (2015).

Because the procurement of the right to occupy space in the Sumter Mall is a contingency in the Contingent Purchase Agreement, and because Sumter Mall, LLC has a legitimate interest of its own in the subject matter – namely, in the leasing and occupancy of the Sumter Mall – the Defendants' action in pursuing those business interests in this case are not actionable, and its motive to capture the value of its premises in a lease with Brooktenn is reasonable. The Defendants did not go seek out Brooktenn to discuss the Contingent Purchase Agreement. Rather, Brooktenn and Branco approached Sumter Mall, LLC about extending the lease of space in the Sumter Mall. Sumter Mall, LLC's, choice of whether or not to lease space to Brooktenn and the terms and conditions of and payment for that potential lease of space are at the heart of Sumter Mall, LLC's legitimate business interest. In addition to the specific

requests to modify the findings in the Order as outlined above, the Defendants would ask the Court to modify its findings to provide that the Defendants' actions in this matter were in furtherance of its business interests and are not actionable.

RESPECTFULLY SUBMITTED this 14th day of March, 2017.



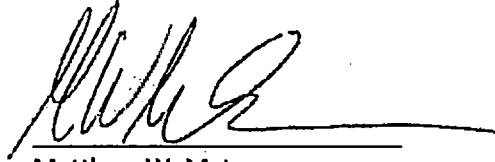
Matthew W. Matson
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706/434-1743

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the foregoing Motion to Amend Judgment by email to Plaintiff's attorney of record at the following address:

Patrick M. Killen
pkillen@mcgowanhood.com

This 14th day of March, 2017.



Matthew W. Matson
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Exhibit B

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)	2015-CP-43-596
Paul Branco and Branco Investments, Inc.)	
d/b/a Great American Cookie Co.,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER OF JUDGMENT
)	
Hull Storey Retail Group, LLC and)	
Sumter Mall, LLC,)	
)	
Defendants.)	

This matter came before this Court by way of a bench trial on February 28, 2017 before the Honorable Ralph Ferrell Cothran Jr. The plaintiffs appeared and were represented by Patrick M. Killen, Esq. The defendants also appeared and were represented by William Buxton, Esq. and Matthew Matson, Esq., of the Georgia bar.

The court has carefully considered all facts and arguments raised by all parties and finds for the plaintiff in the amount of \$63,625.00 in actual damages.

FINDINGS OF FACT

The plaintiff, Paul Branco (hereinafter “Branco”), owned and operated two Great American Cookie Co. (hereinafter “GAC”) franchises, one in the Sumter Mall and the other in the Magnolia Mall in Florence. Branco began the Magnolia Mall GAC franchise in Florence in 2001. Branco entered into a contract (hereinafter “lease”) with defendant, Sumter Mall, LLC, a South Carolina LLC under the control and direction of Defendant Hull Storey Retail Group, LLC, giving Branco a lease on unit 55 in Sumter Mall. The lease term was from December 30, 2002 to April 30, 2013. Beginning in 2003, Branco operated a GAC store in unit 55 and paid monthly rent to the defendants as provided in the lease for the next ten (10) years and four (4) months.

In September of 2012, Branco and defendant Hull Storey began discussions about the

possibility of Branco's daughter taking over from Branco and operating the GAC store in Sumter Mall. Ultimately, Branco was told by Hull Storey that, in order for Branco's daughter to be approved by Hull Storey as a lessee, Branco would have to sign as a guarantor on the daughter's lease. Branco was not interested in signing as a guarantor for his daughter and withdrew the proposal to have his daughter take over the GAC franchise.

Following this, Branco Investments, Inc. (hereinafter "Branco Investments"), the owner of the equipment and assets utilized in the Sumter Mall and Magnolia Mall GAC franchises, through Branco, negotiated an assets sale with Brooktenn, LLC (hereinafter "Brooktenn"), a Georgia limited liability company owned by Stewart Applebaum (hereinafter "Applebaum"). Brooktenn owns and operates several GAC franchises in neighboring and other southeastern states. Brooktenn applied to Hull Storey, and was approved for, a lease to operate a GAC franchise in Sumter Mall.

When Hull Storey became aware of Branco's deal with Brooktenn, Hull Storey made a demand of \$70,000.00 for a "lease assignment fee." Evidence suggested Hull Storey knew and understood that Brooktenn, LLC was not taking an assignment of Branco's lease, but Hull Storey nevertheless cited paragraph 16.2 of the lease (which deals with lease assignments) as the basis for the demand. Hull Storey eventually reduced its demand from \$70,000.00 to \$20,000.00.

Both Branco and Brooktenn were told by Hull Storey that Brooktenn would not be allowed to operate in the Sumter Mall unless the \$20,000.00 was paid. Branco was even told by Hull Storey that Brooktenn's lease application ". . . **has been** approved if we can determine a way to come up with 20k." (emphasis added). When both Branco and Brooktenn objected and pointed out that there was or would be no lease assignment, Hull Storey then told Branco that the \$20,000.00 was instead based on an effort to recoup capital investments made by the defendants in the Sumter Mall, such as carpet in the common areas of the building. Branco continued to refuse to pay the \$20,000.00.

Once it became clear Branco would not pay to it the \$20,000.000, Hull Storey turned to Brooktenn for the money. When Brooktenn refused, Hull Storey offered to finance the \$20,000.00 over the first twelve months of Brooktenn's lease. Brooktenn declined.

Evidence showed Hull Storey subsequently contacted Applebaum and suggested Applebaum should break his asset sale agreement with Branco. Hull Storey told Applebaum that Branco likely could not remove his equipment from the Sumter Mall and that, in exchange for \$20,000.00, Hull Storey would give Brooktenn the equipment for use in operation of Brooktenn's GAC store. It was even suggested by Hull Storey to Applebaum that Brooktenn would come out \$50,000.00 "better" if it backed out of its deal with Branco. Applebaum testified that due to Hull Storey's conduct, Brooktenn withdrew from the agreement with Branco and abandoned its effort to operate a franchise in Sumter. Applebaum testified he has been in business for years and dealt with many malls and landlords but had never encountered this sort of behavior (as employed by Hull Storey).

Because Brooktenn withdrew from the agreement with Branco Investments, Branco lost \$70,000.00. Branco testified that after removing the equipment from the Sumter Mall, he was able to sell some of it for \$5,000.00 to another buyer. The remaining equipment is in Branco's possession but is of little value because, once removed from the store, it became obsolete.

This Court finds Branco neither renewed his lease with Hull Storey nor made, attempted to make or contemplated any assignment of his lease with the mall. Hull Storey allowed Branco to remain in the store until May 15, 2013. During that 15-day period Branco failed to pay rent to Hull Storey for an amount totaling \$1,375.00. Based on these facts, the court finds Hull Storey owes the plaintiff \$63,625 in actual damages.

CONCLUSIONS OF LAW

The plaintiff has alleged four causes of action in this case, breach of contract with fraudulent intent, tortious interference with a contract, fraud, and constructive fraud respectively.

(Breach of Contract with Fraudulent Intent)

To recover for a breach of contract, the plaintiff must prove: “(1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach.” *Hennes v. Shaw*, 397 S.C. 391, 725 S.E.2d 501 (2012).

In this case there was a valid contract between the plaintiff and defendant in the 10 year lease between Branco and Hull Storey. The plaintiff failed to prove defendant breached this contract. The plaintiff’s arguments at trial and in the pleadings failed to show any specific language in the contract that the defendant violated. Therefore, the court finds for the defendant on this cause of action.

(Tortious Interference with a Contract)

To succeed on a claim for tortious interference with a contract the plaintiff must satisfy the following elements: “(1) existence of a valid contract; (2) the wrongdoer’s knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages.” *Dutch Fork Dev. Group II, LLC v. Sel Props*, 406 S.C. 596, 604 (2012) quoting *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517 (1993).

The court finds persuasive the evidence showing Branco Investments had a valid contract with Brooktenn for the asset sale discussed at length in this order’s findings of fact. Hull Storey had knowledge of this contract. Hull Storey intentionally interfered with this agreement, and ultimately procured its breach, by deeming it a lease assignment and attempting to collect \$20,000 first from Branco and then from Brooktenn.

Notably, Hull Storey undermined Branco and Brooktenn's contract by suggesting Brooktenn should ignore its deal with Branco, gambling Branco would be unable to move his equipment which Hull Storey would then sell to Brooktenn for \$20,000.00 instead of the \$70,000 Brooktenn agreed to pay Branco. This interference was not justified in any way and there was no credible evidence of justification offered by defendants at trial or in the pleadings.

As a result of Hull Storey's interference with Branco and Brooktenn's asset sale agreement, Brooktenn walked away from the deal and Branco lost the opportunity to sell his assets. The sale price on the contract was \$70,000 but this amount is offset by Branco's sale of some of the equipment for \$5,000 and unpaid rent owed to Hull Storey of \$1,375.00. After these deductions, the total amount of plaintiff's damages is \$63,625. Therefore, the court finds for the plaintiff on this cause of action for actual damages of \$63,625.

(Fraud and Constructive Fraud)

In the present case, the plaintiff argued that the defendant made a false, material representation that proximately caused his injuries. However, at trial the plaintiff never specified with statement made by the defendant was fraudulent and did not prove that he, Branco, relied on the false statement. Therefore the court finds for the defendants on this cause of action.

Finally, the court finds for the plaintiff on the defendant's counterclaim because no evidence was presented at trial to support this cause of action.

AND IT IS SO ORDERED.

March ____, 2017

The Honorable R. Ferrell Cothran
Chief Administrative Judge
Third Judicial Circuit



Sumter Common Pleas

Case Caption: Paul Branco , plaintiff, et al VS Hull Storey Retail Group Llc ,
defendant, et al
Case Number: 2015CP4300596
Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Exhibit C

**Sumter County Third Judicial Circuit - Roster Details
Motions/Mon.August 28, 2017 @9:30am/Crtrm 3A**

Court Agency	Common Pleas	Judge	Cothran	Roster Id	78
Roster Type	Motion	Roster Begin Date	08/28/2017	Roster End Date	08/28/2017

Number of motions = 65

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
1	08/28/2017	9:30 AM	0:30	Pl'ts Motion/Compel	William H. Nock, Trustee Of The Belk Family Liquidating Trust, Mar-PLT	03/30/2017	2017CP4300517 William H. Nock, Trustee Of The Belk Family Liquidating Trust, Mar VS Linda B. Harris , defendant, et al	Breach of Cont 140	Kenneth R. Young Jr. (803) 773-4371	Pope D. Johnson III (803) 799-9791	
2	08/28/2017	9:30 AM	0:15	Def's Motion/Dismiss	Patricia B. Schmid-DEF	06/20/2017	2017CP4300517 William H. Nock, Trustee Of The Belk Family Liquidating Trust, Mar VS Linda B. Harris , defendant, et al	Breach of Cont 140	Kenneth R. Young Jr. (803) 773-4371	Pope D. Johnson III (803) 799-9791	
3	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Vacate	Blanchard Machinery Company-PLT	05/02/2017	2017CP4300241 Blanchard Machinery Company VS Michael Floyd	Debt Collection 110	Joey Randell Floyd (803) 252-7693 Robert Crum Osborne III (803) 252-7693		This is set for Damages.
4	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Damages	Mary C Tomlin-PLT	11/09/2016	2014CP4301809 Mary C Tomlin VS Lewis Woods	Personal Injury 350	Joseph Thomas McElveen III (803) 775-1263 x251		.Atty McElveen in Legislature1/3/17 Per email-Plt atty is having trouble contacting their client.
5	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Alter and/or Amend	Charlie L Jones-PLT	05/03/2017	2016CP4300414 Charlie L Jones VS Loyds Of London , defendant, et al	Breach of Cont 140	Charlie L Jones (803) 572-2998	John Richard Moorman (803) 775-1263 Kirby Darr Shealy III (803) 254-4190	Mtn summ/judge under adv. w/J. Cothran
6	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Strike	Charlie L Jones-PLT	05/03/2017	2016CP4300414 Charlie L Jones VS Loyds Of London. , defendant, et al	Breach of Cont 140	Charlie L Jones (803) 572-2998	John Richard Moorman (803) 775-1263 Kirby Darr Shealy III (803) 254-4190	Mtn summ/judge under adv. w/J. Cothran
7	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Other	Charlie L Jones-PLT	05/05/2017	2016CP4300414 Charlie L Jones VS Loyds Of London , defendant, et al	Breach of Cont 140	Charlie L Jones (803) 572-2998	John Richard Moorman (803) 775-1263 Kirby Darr Shealy III (803) 254-4190	Mtn summ/judge under adv. w/J. Cothran
8	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Enlarge Time	Charlie L Jones-PLT	02/22/2017	2016CP4300414 Charlie L Jones VS Loyds Of London , defendant, et al	Breach of Cont 140	Charlie L Jones (803) 572-2998	John Richard Moorman (803) 775-1263 Kirby Darr Shealy III (803) 254-4190	Mtn summ/judge under adv. w/J. Cothran.
9	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Other	Charlie L Jones-PLT	05/11/2017	2016CP4300414 Charlie L Jones VS Loyds Of London , defendant, et al	Breach of Cont 140	Charlie L Jones (803) 572-2998	John Richard Moorman (803) 775-1263 Kirby Darr Shealy III (803) 254-4190	Mtn summ/judge under adv. w/J. Cothran
10	08/28/2017	9:30 AM	0:15	Pl'ts Motion/Summary Judgment	Charlie L Jones-PLT	05/26/2017	2016CP4300414 Charlie L Jones VS Loyds Of London	Breach of Cont 140	Charlie L Jones (803) 572-2998	John Richard Moorman (803) 775-1263	Mtn summ/judge under adv. w/J. Cothran.

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Court Agency		Common Pleas		Judge	Cothran		Roster Id		78		
Roster Type		Motion		Roster Begin Date		08/28/2017		Roster End Date		08/28/2017	
Number of motions = 65											
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
							defendant, et al			Kirby Darr Shealy III (803) 254-4190	
11	08/28/2017	9:30 AM	0:15	Def's Motion/Dismiss	National Healthcare Of Sumter, Inc.-DEF	11/01/2016	2016CP4301874 Jasper Briggs VS Bnt Transportation Service, Llc , defendant, et al	Wrongful Death 360	Michael McKinney Jordan (803) 774-1000 David Breault Lail (843) 972-0150 David Butler Yarborough Jr. (843) 972-0150	John Arthur Jones (843) 577-7700 William Curry McDow (803) 576-3719	
12	08/28/2017	9:30 AM	0:15	Def's Motion/Dismiss	National Healthcare Of Sumter, Inc.-DEF	11/01/2016	2016CP4301874 Jasper Briggs VS Bnt Transportation Service, Llc , defendant, et al	Wrongful Death 360	Michael McKinney Jordan (803) 774-1000 David Breault Lail (843) 972-0150 David Butler Yarborough Jr. (843) 972-0150	John Arthur Jones (843) 577-7700 William Curry McDow (803) 576-3719	6/5/17 Atty's are requesting con't to next mth term.
13	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss	Palmetto Health Tuomey-DEF	04/11/2017	2017CP4300501 William C Gibbons VS Palmetto Health Tuomey , defendant, et al	Person Inj/Other 399	Steven Smith McKenzie (803) 435-8847	Mark Steven Barrow (803) 256-2233 Benson Hall Driggers (803) 256-2233 G. Murrell Smith Jr. (803) 778-2471 x234	
14	08/28/2017	9:30 AM	0:15	Plf's Motion/Entry of Default	Tuomey Healthcare System Inc-PLT	04/10/2017	2016CP4301306 Tuomey Healthcare System Inc VS Nexsen Pruet Llc	Legal Malpract 210	Margaret Nicole Fox (803) 744-0800 James Mixon Griffin (803) 744-0800	Gray Thomas Culbreath (803) 724-1850 John Dwight Hudson Jr. (803) 724-1777 Lindsay Anne Joyner (843) 693-7880 John Thomas Lay Jr. (803) 724-1800 Jessica Ann Waller (803) 724-1722	
15	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss	Nexsen Pruet Llc-DEF	04/10/2017	2016CP4301306 Tuomey Healthcare System Inc VS Nexsen Pruet Llc	Legal Malpract 210	Margaret Nicole Fox (803) 744-0800 James Mixon Griffin (803) 744-0800	Gray Thomas Culbreath (803) 724-1850 John Dwight Hudson Jr. (803) 724-1777 Lindsay Anne Joyner (843) 693-7880 John Thomas Lay Jr.	

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Court Agency		Common Pleas		Judge		Cothran		Roster Id		78	
Roster Type		Motion		Roster Begin Date		08/28/2017		Roster End Date		08/28/2017	
Number of motions = 65											
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
										(803) 724-1800 Jessica Ann Waller (803) 724-1722	
16	08/28/2017	9:30 AM	0:30	Def's Motion/Strike	Nexsen Pruet Llc-DEF	04/11/2017	2016CP4301306 Tuomey Healthcare System Inc VS Nexsen Pruet Llc	Legal Malpract 210	Margaret Nicole Fox (803) 744-0800 James Mixon Griffin (803) 744-0800	Gray Thomas Culbreath (803) 724-1850 John Dwight Hudson Jr. (803) 724-1777 Lindsay Anne Joyner (843) 693-7880 John Thomas Lay Jr. (803) 724-1800 Jessica Ann Waller (803) 724-1722	
17	08/28/2017	9:30 AM	0:15	Def's Motion/Compel	Tyler Andrew Damm-DEF	04/07/2017	2016CP4302193 George Missouri VS Tyler Andrew Damm , defendant, et al	Motor Veh Accid 320	John Derrick Clark (803) 775-1234 Sharon Baker Clark (803) 775-1234	Ronald Barton Diegel (803) 782-4100 x1207 G. Murrell Smith Jr. (803) 778-2471 x234 James David Weeks (803) 775-5856	per email-atty's requesting continuance past May 15th term.
18	08/28/2017	9:30 AM	0:15	Def's Motion/Compel	Tyler Andrew Damm-DEF	04/07/2017	2016CP4302193 George Missouri VS Tyler Andrew Damm , defendant, et al	Motor Veh Accid 320	John Derrick Clark (803) 775-1234 Sharon Baker Clark (803) 775-1234	Ronald Barton Diegel (803) 782-4100 x1207 G. Murrell Smith Jr. (803) 778-2471 x234 James David Weeks (803) 775-5856	
19	08/28/2017	9:30 AM	0:30	Def's Motion/Summary Judgment	Douglas Peterson-DEF	12/02/2016	2016CP4301435 Brittani Morton VS Tevin Jarron Johnson , defendant, et al	Motor Veh Accid 320	Joseph Thomas McElveen III (803) 775-1263 x251	Alice Price Adams (803) 782-4100 Edward Andrew Love (843) 407-5525	Atty McElveen in Legislature
20	08/28/2017	9:30 AM	0:30	Def's Motion/Compel	Heather D. Frye-DEF	12/15/2016	2016CP4301531 Frances A. Servance VS Heather D. Frye	Motor Veh Accid 320	Joseph Thomas McElveen III (803) 775-1263 x251	Elliott Bishop Daniels (803) 454-1256	Atty McElveen in Legislature
21	08/28/2017	9:30 AM	0:10	Def's Motion/Compel	Florencia Mendoza Perez-DEF	01/17/2017	2016CP4301496 Michael J. Witherspoon Sr. , plaintiff, et al VS Florencia Mendoza Perez , defendant, et al	Motor Veh Accid 320	Joseph Thomas McElveen III (803) 775-1263 x251	L. Darby Plexico III (803) 771-6600	Atty McElveen in Legislature
22	08/28/2017	9:30 AM	0:30	Def's Motion/Strike	Sc Department Of Disabilities And	02/01/2017	2017CP4300144 Naomi Simmons ,	Medical Malpract 220	C. Carter Elliott Jr. (843) 546-0650	Samuel F. Arthur III (843) 669-8787	

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Court Agency	Common Pleas	Judge	Cothran	Roster Id	78
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Number of motions = 65

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
					Special Needs-DEF		plaintiff, et al VS Sc Department Of Disabilities And Special Needs , defendant, et al			G. Murrell Smith Jr. (803) 778-2471 x234	
23	08/28/2017	9:30 AM	0:30	Def's Motion/Strike	Sumter County Disabilities And Special Needs Board-DEF	02/28/2017	2017CP4300144 Naomi Simmons , plaintiff, et al VS Sc Department Of Disabilities And Special Needs , defendant, et al	Medical Malpract 220	C. Carter Elliott Jr. (843) 546-0650	Samuel F. Arthur III (843) 669-8787 G. Murrell Smith Jr. (803) 778-2471 x234	
24	08/28/2017	9:30 AM	1:0	Plt's Motion/Strike	CitiMortgage-PLT	08/18/2016	2013CP4301079 Wilmington Savings Fund Society FSB , plaintiff, et al VS Carol Blades , defendant, et al	Foreclosure 420	Heidi B. Carey (803) 799-9993 Nikole Deanna Haitiwanger (803) 727-1200 Sarah Beth Nielsen (803) 255-9284 Christopher M Wasson (803) 799-9993 Thad H. Westbrook (803) 255-5568 Damon Christian Wlodarczyk (803) 799-9993	Adam Protheroe (803) 533-0116 x4616 Frank L. Valenta Jr. (803) 896-9900	5/12/17 Atty filed order/con't for the mtn/compel.
25	08/28/2017	9:30 AM	0:30	Plt's Motion/Compel	Kenneth Young Jr-PLT	01/19/2017	2011CP4300019 Lowman Reiter , plaintiff, et al VS Joseph Dawson	Real Prop/Other 499	Kenneth R. Young Jr. (803) 773-4371	Joseph Dawson (912) 368-5024 Jocelyn Newman (803) 576-1779 Charles Joseph Webb (803) 253-8707	Judge Young and Judge James has recused themselves from this case. Per email Atty T. Griffith motion has been withdrawn and case has been settled/11-7-11 never recieved any dismissal from Atty T. Griffith Atty Webb has submitted order/con't on mtn/compel. He's in bankruptcy ct. Monday.
26	08/28/2017	9:30 AM	0:15	Def's Motion/Relieve As Counsel	Joseph Dawson-DEF	11/29/2016	2011CP4300019 Lowman Reiter , plaintiff, et al VS Joseph Dawson	Real Prop/Other 499	Kenneth R. Young Jr. (803) 773-4371	Joseph Dawson (912) 368-5024 Jocelyn Newman (803) 576-1779 Charles Joseph Webb (803) 253-8707	Judge Young and Judge James has recused themselves from this case. Per email Atty T. Griffith motion has been withdrawn and case has been settled/11-7-11 never recieved any dismissal from Atty T. Griffith

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Court Agency	Common Pleas	Judge	Cothran	Roster Id	78
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#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
27	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss	Yamaha Motor Manufacturing Corporation of America-DEF	03/06/2017	2015CP4302407 James H Efros VS Yamaha Motor Corporation, Usa , defendant, et al	Products Liab 340	John E. Parker (803) 943-2111	A. Walker Barnes (843) 577-4435 Robert H. Hood (843) 577-1201 Robert Holmes Hood Jr. (843) 577-4435 Rebecca Laffitte (803) 231-7831 Thomas E. Player Jr. (803) 775-2306 James M. Saleeby Jr. (843) 669-8787	
28	08/28/2017	9:30 AM	0:15	Def's Motion/Dismiss	Sc Department Of Transportation-DEF	03/08/2017	2016CP4302311 Kendra K. Mccray-White VS. City Of Sumter , defendant, et al	Motor Veh Accid 320	Nelson Russell Parker (803)-435- 8894 x103	James Miller Davis Jr. (803) 806-8222 James Jordan Johnson (803) 661- 6285 x105 Andrew Foster McLeod (843) 537- 5204 David Leon Morrison (803) 661 -6285	5/11/17 Order/Con't is in circulation past May15th.
29	08/28/2017	9:30 AM	0:30	Def Motion/Dismiss	Rodney James- DEF	05/08/2017	2016CP4302209 Venciner C Sayles VS Steeple West Liberty Ltd , defendant, et al	Premises Liab 330	John Derrick Clark (803) 775-1234	Charles Epps Ipock (843) 669-6002 Roopal S. Ruparelia (803) 540-7846	
30	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss & Summary Judgment	A.F.M. Land Sales, Lic-DEF	05/11/2017	2016CP4300784 Jim Livingston , plaintiff, et al VS Tom Persival , defendant, et al	Fraud/Bad Faith 150	Sarah Crawford Campbell (843) 623-5911 Melvin Wayne Cockrell III (843) 623-5911 Wallace H. Jordan Jr. (843) 662-4474 Kenneth R. Young Jr. (803) 773-4371	J. Boone Aiken III (843) 669-8787 J. David Banner (843) 669-8787 x306 David Cornwell Holler (803) 778- 2471 Thomas E. Player Jr. (803) 775-2306	
31	08/28/2017	9:30 AM	0:15	Plt's Motion/Interpleader	Americas Insurance Company -PLT	05/12/2017	2016CP4302231 Americas Insurance Company VS Robert Burgess , defendant, et al	Relief 820	Phillip E. Reeves (864) 271-9580	John Derrick Clark (803) 775-1234 Bradley Parker Green (843) 747- 2455	
32	08/28/2017	9:30 AM	0:20	Def's Motion/Change Venue	Albert T Gilpin Md- DEF	05/17/2017	2017CP4300611 Derricka Wells VS Albert T Gilpin Md , defendant, et al	Medical Malpract 220	Diane M. Rodriguez (803) 774-4444	Mary Agnes Hood Craig (843) 577- 4435 Elioree A. Ganés	

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Court Agency		Common Pleas		Judge		Cothran		Roster Id		78	
Roster Type		Motion		Roster Begin Date		08/28/2017		Roster End Date		08/28/2017	
Number of motions = 65											
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
										(843) 577-1208 Benjamin Houston Joyce (843) 577-1230	
33	08/28/2017	9:30 AM	0:15	Def's Motion/Compel	Dorothy Ramsey-DEF	05/24/2017	2017CP4300233 Willie Mae Mcquilla VS Dorothy Ramsey	Motor Veh Accid 320	James David Weeks (803) 775-5856	Samuel M. Mokeba (803) 799-9091	
34	08/28/2017	9:30 AM	0:30	Plt's Motion/Determine Venue	Susan Simmons-PLT	05/24/2017	2017CP4300252 Susan Simmons , plaintiff, et al VS Ansel R Mcfaddin III , defendant, et al	Medical Malpract 220	C. Carter Elliott Jr. (843) 546-0650	David Cornwell Holler (803) 778-2471 Kenneth Norman Shaw (864) 240-3200	
35	08/28/2017	9:30 AM	0:30	Def's Motion/Reconsider	Ansel R Mcfaddin III -DEF	06/02/2017	2017CP4300252 Susan Simmons , plaintiff, et al VS Ansel R Mcfaddin III , defendant, et al	Medical Malpract 220	C. Carter Elliott Jr. (843) 546-0650	David Cornwell Holler (803) 778-2471 Kenneth Norman Shaw (864) 240-3200	
36	08/28/2017	9:30 AM	0:15	Plt's Motion/Compel	Aline W Swagart-PLT	05/25/2017	2016CP4301683 Aline W Swagart VS Black River Electric Cooperative	Special- Comp/Oth 699	Daniel Webster Williams (803) 259-2759	David Cornwell Holler (803) 778-2471	
37	08/28/2017	9:30 AM	0:30	Plt's Motion/In Limine	Wheelz LLC d/b/a Sumter Chrysler Dodge Jeep Ram- DEF	06/21/2017	2016CP4300521 Bettiann Ivey VS Wheelz LLC d/b/a Sumter Chrysler Dodge Jeep Ram	Breach of Cont 140	John Stephen Keffer (803) 774-1004	Karl Stephen Brehmer (803) 771-6600 Patrick McFadden Killen (803) 774-5026	
38	08/28/2017	9:30 AM	0:15	Def's Motion/In Limine	Cimarronhill Inc- DEF	05/26/2017	2016CP4300521 Bettiann Ivey VS Wheelz LLC d/b/a Sumter Chrysler Dodge Jeep Ram	Breach of Cont 140	John Stephen Keffer (803) 774-1004	Karl Stephen Brehmer (803) 771-6600 Patrick McFadden Killen (803) 774-5026	
39	08/28/2017	9:30 AM	0:20	Def's Motion/Alter and/or Amend	Acceptance Insurance Company -DEF	05/30/2017	2016CP4300072 Heyward D Pack VS Crystal M Gainey	Personal Injury 350	Dwight Christopher Moore (803) 778-6520	Robert David McKissick (843) 669-0089 Wesley Brian Sawyer (803) 454-1233	
40	08/28/2017	9:30 AM	0:30	Plt's Motion/Default Judgment	William Gulledege-PLT	06/26/2017	2017CP4300738 William Gulledege VS Farmers Telephone Cooperative, Inc. defendant, et al	Employment 180	J. Lewis Cromer (803) 799-9530 Ryan Kyle Hicks (803) 799-9530	Kevin Kendrick Bell (803) 929-1400 James Andrew Byars (803) 540-2051	
41	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss	Samuel E Burrows-DEF	05/30/2017	2017CP4300590 Wells Fargo Bank, N.A. VS Samuel E Burrows defendant, et al	Real Prop/Other 499	William Taylor Stanley (803) 404-6900 x3042	William E. DuRant Jr. (803) 774-1000	

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Court Agency		Common Pleas		Judge	Cothran		Roster Id	78			
Roster Type		Motion		Roster Begin Date	08/28/2017		Roster End Date	08/28/2017			
Number of motions = 65											
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
42	08/28/2017	9:30 AM	0:20	Motion/Other	Time Warner Cable Southeast, Llc-DEF	07/21/2017	2017CP4300738 William Gullede VS Farmers Telephone Cooperative, Inc. , defendant, et al	Employment 180	J. Lewis Cromer (803) 799-9530 Ryan Kyle Hicks (803) 799-9530	Kevin Kendrick Bell (803) 929-1400 James Andrew Byars (803) 540-2051	
43	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss	Farmers Telephone Cooperative, Inc.-DEF	05/30/2017	2017CP4300738 William Gullede VS Farmers Telephone Cooperative, Inc. , defendant, et al	Employment 180	J. Lewis Cromer (803) 799-9530 Ryan Kyle Hicks (803) 799-9530	Kevin Kendrick Bell (803) 929-1400 James Andrew Byars (803) 540-2051	
44	08/28/2017	9:30 AM	0:15	Def's Motion/Dismiss	Triangle Rent-A-Car-DEF	05/31/2017	2017CP4300902 Kapresia Holden , plaintiff, et al VS Triangle Rent-A-Car , defendant, et al	Motor Veh Accid 320	Dwight Christopher Moore (803) 778-6520	Alexis Vitali Blich (803) 454-1208 Robert Lawrence Reibold (803) 454-0955	
45	08/28/2017	9:30 AM	0:15	Def's Motion/Compel	Jackie T. Bradley-DEF	06/02/2017	2016CP4300609 Sumter County VS Jackie T. Bradley	Condemnatio n 410	S. Murry Kinard (803) 359-1003	Vincent Austin Sheheen (803) 432-4391	
46	08/28/2017	9:30 AM	0:15	Def's Motion/Compel	Levon Heitzenroder -DEF	06/05/2017	2017CP4300232 Betty Wells , plaintiff, et al VS Levon Heitzenroder	Motor Veh Accid 320	James David Weeks (803) 775-5856	John Austin Hood (800) 774-8242	
47	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss	Veronica W. Norfleet-DEF	06/08/2017	2017CP4300538 Geneva Walker VS Wilbert L. Walker , defendant, et al	Real Prop/Other 499	Michael McKinney Jordan (803) 774-1000	Mark Brandon Goddard (803) 227-4334 Cooper C. Lynn (803) 888-7734	
48	08/28/2017	9:30 AM	1:0	Plt's Motion/Refer to Master or Special Referee	Willow Homes Limited Partnership-PLT	06/09/2017	2015CP4302212 Willow Homes Limited Partnership VS Main Street Properties Llc.	Foreclosure 420	Kenneth R. Young Jr. (803) 773-4371	Michael McKinney Jordan (803) 774-1000	
49	08/28/2017	9:30 AM	0:15	Def's Motion/Enlarge Time	Larry Carter-DEF	06/12/2017	2017CP4300860 Wells Fargo Bank, N.A. VS Larry Carter , defendant, et al	Foreclosure 420	Robert Paul Davis (803) 744-5219	Larry Carter (803) 464-2406	
50	08/28/2017	9:30 AM	0:5	Plt's Motion/Judgment on the Pleadings	Discover Bank-PLT	06/16/2017	2017CP4300829 Discover Bank VS Katherine C Faulling	Debt Collection 110	Arianda Kay Cutler (704) 549-8276 x2003 LaRita Lynn Dingle (704) 549-8276 x2002		
51	08/28/2017	9:30 AM	0:30	Def's Motion/Dismiss	Kubota Corporation -DEF	06/19/2017	2016CP4301777 Luis Rojas , plaintiff, et al VS Jaenick Limited Partnership , defendant, et al	Personal Injury 350	Randolph Murdaugh IV (803) 943-2111 Henry Thad White Jr. (843) 665-8187	Alfred Johnston Cox (803) 779-1833 x1728 John Francis Kuppens (803) 255-9482 Jay T. Thompson (803) 255-9300	

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52	08/28/2017	9:30 AM	0:15	Def's Motion/Compel	State Farm Fire & Casualty Company-DEF	06/19/2017	2017CP4300137 Sarah Singleton VS State Farm Fire & Casualty Company	Breach of Cont 140	Thomas Jefferson Goodwyn Jr. (803) 251-4517 Rachel Gottlieb Peavy (803) 251-4517	Robert William Whelan (843) 534-4113	
53	08/28/2017	9:30 AM	1:0	Def's Motion/Dismiss	Black River Electric Cooperative-DEF	06/20/2017	2016CP4301683 Aline W Swagart VS Black River Electric Cooperative	Special-Comp/Oth 699	Daniel Webster Williams (803) 259-2759	David Cornwell Holler (803) 778-2471	
54	08/28/2017	9:30 AM	0:30	Def's Motion/Summary Judgment	State Farm Insurance Company-DEF	06/20/2017	2016CP4301973 Travis Benjamin VS State Farm Insurance Company	Motor Veh Accid 320	Dennis N. Cannon Jr. (803) 432-4402	Charles R. Norris (843) 720-4303 Matthew Wyatt Orville (843) 534-4221	
55	08/28/2017	9:30 AM	0:15	Def's Motion/Compel	Lewis Weeks-DEF	06/20/2017	2016CP4302226 Cindyella York VS Lewis Weeks	Motor Veh Accid 320	Robert Fredrick Goings (803) 350-9230	John Austin Hood (800) 774-8242	
56	08/28/2017	9:30 AM	0:30	Def's Motion/Set Aside Default	Linda R. Benenhaley-DEF	06/26/2017	2017CP4300573 Harvey P. McDonald , plaintiff, et al VS Linda R. Benenhaley	Person Inj/Other 399	Marvin E. McMillan Jr. (803) 775-2306	Gregory Brian Collins (803) 227-4931 John Adam Ribock (803) 779-2300	
57	08/28/2017	9:30 AM	0:15	Def's Motion/Summary Judgment	Bi-Lo Lic-DEF	06/27/2017	2016CP4301238 Patricia Day VS Bi-Lo Lic	Personal Injury 350	Michael McKinney Jordan (803) 774-1000	Mark Steven Barrow (803) 256-2233 Ryan C. Holt (803) 256-2233	
58	08/28/2017	9:30 AM	0:15	Def's Motion/Stay	City Of Sumter-DEF	06/29/2017	2017CP4300525 Tomekia Kind , plaintiff, et al VS City Of Sumter , defendant, et al	Wrongful Death 360	Willie H. Brunson (803) 774-3444 C. Carter Elliott Jr. (843) 546-0650	Robert G. Cooper (803) 661-6285 James Jordan Johnson (803) 661-6285 x105	
59	08/28/2017	9:30 AM	0:30	Def's Motion/Summary Judgment	Meredith P Moore-DEF	06/30/2017	2015CP4302124 Donald Brunson VS Emma W Player , defendant, et al	Contract/Oth er 199	Patrick McFadden Killen (803) 774-5026	M. Stokely Holder (864) 335-8808	
60	08/28/2017	9:30 AM	0:20	Def's Motion/Dismiss	James O Osterkamp-DEF	07/06/2017	2017CP4300910 Kenya Lee Gam , plaintiff, et al VS Julie Bellu	Motor Veh Accid 320	Ronald James Talbert (843) 264-3579	John Adam Ribock (803) 779-2300 Andrew Luther Richardson Jr. (803) 779-2300	
61	08/28/2017	9:30 AM	0:20	Def's Motion/Dismiss	James O Osterkamp-DEF	07/06/2017	2017CP4300912 Kayla Gamble , plaintiff, et al VS Julie Bellu , defendant, et al	Motor Veh Accid 320	Ronald James Talbert (843) 264-3579	John Adam Ribock (803) 779-2300 Andrew Luther Richardson Jr. (803) 779-2300	
62	08/28/2017	9:30 AM	0:20	Def's Motion/Dismiss	James O Osterkamp-DEF	07/06/2017	2017CP4300913 Robert Lee Gamble ,	Motor Veh Accid 320	Ronald James Talbert (843) 264-	John Adam Ribock (803) 779-2300	

**Sumter County Third Judicial Circuit - Roster Details
Motions/Mon.August 28, 2017 @9:30am/Ctrrm 3A**

Court Agency	Common Pleas	Judge	Cothran	Roster Id	78
Roster Type	Motion	Roster Begin Date	08/28/2017	Roster End Date	08/28/2017

Number of motions = 65

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
							plaintiff, et al VS Julie Bellu , defendant, et al		3579	Andrew Luther Richardson Jr (803) 779-2300	
63	08/28/2017	9:30 AM	0:15	Plt's Motion/Judgment on the Pleadings	Barclays Bank Delaware-PLT	03/03/2017	2016CP4302175 Barclays Bank Delaware VS Thomas Eugene Dubose	Debt Collection 110	Adam S. Tesh (803) 771-4400		
64	08/28/2017	9:30 AM	0:15	Plt's Motion/Judgment on the Pleadings	Barclays Bank Delaware-PLT	03/03/2017	2016CP4302313 Barclays Bank Delaware VS Edwin Matos	Debt Collection 110	Adam S. Tesh (803) 771-4400		
65	08/28/2017	9:30 AM	0:15	Motion/Alter and/or Amend	Hull Storey Retail Group Llc-DEF	03/21/2017	2015CP4300596 Paul Branco , plaintiff, et al VS Hull Storey Retail Group Llc , defendant, et al	Breach of Cont 140	Patrick McFadden Killen (803) 774-5026	William Andrew Wallace Buxton (803) 778-7404 Timothy E. Madden (864) 250-2279	

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Ferrell Cothran, Circuit Court Judge

Case No. 2015-CP-43-596

Paul Branco and Branco Investments,
Inc., d/b/a Great American Cookie Co., Respondents,

v.


Hull Storey Retail Group, LLC, and
Sumter Mall, LLC Appellants,

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Hull Storey Retail Group, LLC, and Sumter Mall, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleadings: Appellants' Motion for Remand Without Prejudice for the
Disposition of Their Post-Trial Motion

Counsel Served: Patrick M. Killen
MCGOWAN, HOOD & FELDER, LLC
E-Mail: pkillen@mcgowanhood.com
28 N. Main Street
Sumter, SC 29150
(803) 774-5026



Kelli Diamond Martin
Administrative Assistant

August 4, 2017

Nelson Mullins

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Timothy E. Madden
Tel: 864.250.2279
Fax: 864.250.2381
tim.madden@nelsonmullins.com

August 4, 2017

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AUG 4 2017
SC Court of Appeals

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

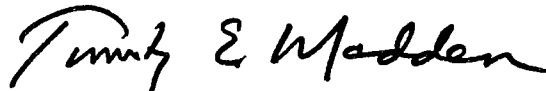
RE: Branco *et al.* v. Hull Storey Retail Group, LLC *et al.*
Appellate Case No. 20017-000998
Civil Action No. 2015-CP-43-596
Our File No. 53746/01500

RECEIVED
AUG 04 2017
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Appellants' Motion for Remand Without Prejudice for the Disposition of Their Post-Trial Motion in the above-referenced matter. We ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is our check in the amount of \$25 as the required filing fee. A copy of this motion has been served by mail on opposing counsel.

Very truly yours,


Timothy E. Madden

TEM/tem
Enclosures
cc: Patrick M. Killen, Esq.